



The  
Treasury

**TIPP 5.12**

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# **Privacy Management Plan and Guidelines**

**NSW Treasury Internal Policy  
and Procedure Document**

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**March 2017**

## Preface

I am pleased to present the NSW Treasury's Privacy Management Plan and Guidelines (Plan), developed in accordance with the requirements of section 33 of the *Privacy and Personal Information Act 1998* (NSW) (PIIP Act).

NSW Treasury is committed to open and accountable government in accordance with the *Government Information (Public Access) Act 2009* (GIPA Act) and Goal 31 of the *NSW 2021 State Plan*, while at the same time recognising the privacy rights of individuals.

This plan demonstrates a commitment by NSW Treasury to protect the privacy rights of our stakeholders, staff and members of the public pursuant to the requirements of the PIIP Act and *Health Records and Information Privacy Act 2001* (HRIP Act).

This internal guidelines document aims to ensure that correct procedures are followed in applying and responding to the Plan.

I urge all staff to read this Plan and use the procedures and message contained within to ensure NSW Treasury meets its privacy obligations.

**Rob Whitfield**  
**Secretary**  
NSW Treasury

March 2017

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## Executive Summary

All NSW Government agencies are required to have a privacy management plan under section 33 of the *Privacy and Personal Information Act 1998 (NSW)* (PPIP Act)..

NSW Treasury has developed its Privacy Management Plan to demonstrate and ensure that our organisation applies correct procedures to manage the personal information of our stakeholders and staff.

The purpose of the Plan is to:

- demonstrate to the people of New South Wales how NSW Treasury upholds and respects the privacy of its staff and all those who deal with NSW Treasury;
- explain how we manage personal information in line with the PPIP Act and health information under the HRIP Act; and
- provide guidance and training for NSW Treasury staff in dealing with personal and health information. This helps to ensure that we comply with the PPIP Act and the HRIP Act (together, **the Acts**).

The introduction of this Plan indicates that Treasury takes the privacy of its staff and the people of NSW seriously and we will protect privacy with the use of this Plan as a reference and guidance tool.

This internal guidelines document aims to ensure that correct procedures are followed in applying and responding to the Plan.

# 1 Introduction

## Key points

This Plan has been developed by NSW Treasury as per section 33 of the PPIP Act.

This Plan identifies:

- collections of Personal Information (as defined at section 2.1 below) which NSW Treasury holds or is responsible for;
- the policies and practices used by NSW Treasury to comply with the Act;
- how details of those policies and practices are made known to staff of NSW Treasury and all engaged by the department; and
- how NSW Treasury conducts Internal Reviews under section 53 of the PPIP Act.

## 1.1 The role and functions of NSW Treasury

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NSW Treasury advises the Treasurer and the NSW Government on state financial management policy and reporting, and on economic conditions and issues.

NSW Treasury comprises:

- Fiscal and Economic Group;
- Agency Budget and Policy Group;
- Commercial Group;
- Corporate Group; and
- NSW Industrial Relations.

NSW Treasury collects, holds, uses and discloses Personal Information for the purpose of carrying out its functions. For instance, Treasury may handle Personal Information for the purpose of:

- managing correspondence on behalf of the Treasurer;
- human resources (**HR**) management;
- recruitment;
- complaints handling; and
- managing applications for Government information (meaning information contained in a record held by an agency) under the GIPA Act.

Treasury takes the privacy of its staff and the people of NSW seriously and we will protect privacy with the use of this Plan as a reference and guidance tool.

As a NSW public sector agency, NSW Treasury is regulated by the PPIP Act and the HRIP Act.

## 2 Personal Information

### 2.1 Definition

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Personal Information is information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion (section 4 of the PPIP Act).

### 2.2 Exclusions from the definition

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Both the Acts exclude from the definition of Personal Information, information which:

- relates to a person who has been dead for more than 30 years; or
- is contained in a publicly available publication; or
- refers to a person's suitability for employment as a public sector official.

#### ***Information in a publicly available publication***

The definitions exclude information about named or identifiable people which is published in newspapers, books or the Internet, broadcast on radio or television, posted on social media such as Facebook or Twitter, or made known at a public event. Because such information is publicly available, it cannot be protected from use or further disclosure.

#### ***Employment-related information***

Information referring to suitability for employment as a Treasury member of staff (such as selection reports and references for appointment or promotions, or disciplinary records) is excluded from the definitions and therefore from the provisions of the Acts.

Such information, however, is still treated by Treasury with the same care as if it were protected by the Acts.

Other employee-related Personal Information is protected by the Acts.

For example, records or information about work activities such as video or photographs of staff in their workplace, are protected and may only be used in compliance with the Acts' provisions.

Other examples of work-related Personal Information are staff training records, leave applications and attendance records. All these are within the scope of the definitions and are protected by the Acts.

## 2.3 Types of Personal Information held by NSW Treasury

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Employee records for staff of NSW Treasury are held by NSW Treasury. This information includes, but is not limited to:

- records of dates of birth, addresses and contact details;
- payroll, attendance and leave records;
- performance management and evaluation records;
- training records;
- workers compensation records;
- occupational health and safety records; and
- records of gender, ethnicity and disability of employees for equal employment opportunity reporting purposes.

Information on file cannot be accessed without consent of the respective employee. An employee of NSW Treasury may access their own file under the supervision of HR staff.

Apart from the employee the file relates to, Human Resources (**HR**) Branch staff are the only other members of the department that have authorised access to personnel files.

The records of Personal Information are stored in soft copy on the SAP database, maintained by GovConnect.

GovConnect is formed by two outsourced vendors managed by the Vendor Management Office, a division of NSW Finance, Services and Innovation. Corporate services functions are managed by Infosys (Human Resources & Finance) and Unisys (Information Technology) on behalf of Treasury. Therefore GovConnect holds and is responsible for more detailed personal information about Treasury staff such as recruitment, payroll and leave records.

The Service Partnership Agreement between NSW Treasury and GovConnect notes that GovConnect will have access to information from and about NSW Treasury in the course of business, and that GovConnect is bound to comply with the PPIP Act. The Agreement States:

*"Staff employed, appointed or otherwise engaged to work for GovConnect are bound by the DFSI Code of Conduct and the Privacy and Personal Information Protection Act 1998 (the Act). The Code of Conduct guides the ethical standards, obligations and principles that regulate the professional standards of Public Service employees. The Act provides a legislative framework which applies to the handling of customer information under this agreement.*

*In the course of business, GovConnect will have access to information from and about the client. GovConnect is bound to handle all customer information in accordance with the Act, as well as relevant information security policies and the Code of Conduct. Such information will be used strictly for purposes relevant to delivering services and will not be released to third parties without the express written consent of the client."*

## Health Information

NSW Treasury only stores medical information for the purpose of referral to Medicare Solutions, the department's provider of health assessments for new employees, as required.

## Information collected relating to conflict of interest

NSW Treasury's Leadership Team (LT) is required to declare any conflict of interest on appointment. This information is reviewed annually and updated as necessary.

## Digital images

NSW Treasury holds digital images of all staff members which are used for the production of staff identification cards and other internal uses including publication on Treasury's intranet.

## Contact details

NSW Treasury holds contact details such as contact details for:

- government agency CEOs, members of inter-departmental working groups and similar, members of government boards and advisory committees;
- stakeholders participating in stakeholder consultation forums; and
- people who have made formal access applications under the GIPA Act.

## Correspondence records

NSW Treasury holds the following correspondence records:

- contact details of people who have written to or emailed the Treasurer or NSW Treasury;
- details of the nature of their correspondence, which can include sensitive Personal Information about matters such as ethnicity, religion or sexuality;
- copies of replies to correspondence; and
- records of to whom, if anyone, their correspondence was referred.

This information is only used for the purpose of communicating a reply to the correspondent either from NSW Treasury or the Treasurer's Office. Once a matter has been progressed and processed it is closed and filed accordingly on relevant files stored and secured by GovConnect, as the Department's primary provider of records management services.

### 3 The Information Protection Principles (IPPs)

#### 3.1 Applying the privacy principles in NSW

NSW Treasury is guided by sections 8 to 19 of the PPIP Act. These sections provide a set privacy standards which public sector agencies are expected to follow when dealing with Personal Information. The IPPs govern the collection, retention, accuracy, use and disclosure of Personal Information, including rights of access and correction.

12 Information Protection Principles	
<b>Collection</b>	1. Lawful 2. Direct 3. Open 4. Relevant
<b>Storage</b>	5. Secure
<b>Access</b>	6. Transparent 7. Accessible 8. Correct
<b>Use</b>	9. Accurate 10. Limited
<b>Disclosure</b>	11. Restricted 12. Safeguarded

##### 3.1.1 Collecting Personal Information (sections 8 to 11 of the PPIP Act)

NSW Treasury will only collect Personal Information if it is:

- for a lawful purpose that is directly related to one of our functions; and
- reasonably necessary for NSW Treasury to have the information.

NSW Treasury will ensure that when Personal Information is collected from an individual, either verbally or in written forms, the individual will be advised accordingly. This advice will include the purpose of the collection; any intended recipients of the information (where applicable); their right to access and correct the information; and the details of any agency that is collecting or holding the information on NSW Treasury’s behalf (if applicable).

NSW Treasury also advises individuals if the collection is voluntary or if it is lawfully required and informs individuals of any penalties or other possible consequences for not complying with Treasury’s request.

When collecting Personal Information from an individual, Treasury endeavours to ensure that the information is relevant, accurate, up to date and complete for the purposes for which it is being collected. Treasury will also endeavour to ensure that the

collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual, having regard to the purposes for which it is being collected.

**Collection tips:**

- When designing a form, ask yourself: “*do we really need each bit of this information?*”
- By limiting the collection of Personal Information to only what you need, it is much easier to comply with the principles.
- If collecting Personal Information about someone, collect it from the source to ensure accuracy and gain any permission for disclosure of the information
- Do not ask for information that is not relevant or very sensitive.
- Individuals providing their Personal Information to NSW Treasury have a right to know the full extent of how the information they provide will be used and disclosed, and to choose whether or not they wish to go ahead with providing information on that basis.

**3.1.2 Storing Personal Information (section.12 of the PPIP Act)**

NSW Treasury takes reasonable security safeguards against the loss, unauthorised access, use, modification and disclosure of Personal Information.

NSW Treasury has in place information security policies which provide guidance to staff around the handling and storage of Personal Information.

NSW Treasury’s security measures further include the use of restricted drives and authorised access. Personal Information is kept for no longer than is necessary and is disposed of once no longer required in a secure in accordance with governmental requirements.

**Storage tips:**

NSW Treasury must:

- only provide Personal Information to a contractor or service provider if they really need it to do their job; and
- take reasonable steps to prevent any unauthorised use or disclosure of the Personal information by a contractor or service provider, and remember to bind our contractors to the same privacy obligations.

**3.1.3 Accessing Personal Information (sections 13-14 of the PPIP Act)**

It is NSW Treasury’s intention to provide the fullest opportunity for individuals to access information which it holds on them. Generally, requests for access by an individual to their Personal Information will be available on an informal basis. Where a decision to grant access to information contained within documents is refused, individuals have the right to make an application under the GIPA Act.

## Treasury Internal Policy and Procedure Document (TIPP 5-.12)

NSW Treasury will endeavour to ensure that all Personal Information is accurate, complete and current. Further, should an individual become aware of, or detect an error in Treasury's records about their personal affairs, NSW Treasury will make the necessary changes.

If NSW Treasury disagrees with the person about whether the information needs changing, we must instead allow the person to add a statement to our records.

### Access tips:

- People should generally be able to see easily what information we hold about them.
- NSW Treasury will let complainants, clients and staff see their own Personal Information at no cost and through an informal request process.
- NSW Treasury cannot charge people to lodge their request for access or amendment. NSW Treasury can, however, charge reasonable fees for copying or inspection, if we tell people what the fees are up-front.

### 3.1.4 Using Personal Information (sections 15-17 of the PPIP Act)

NSW Treasury will only use Personal Information for the purposes for which it was collected or for other directly related purposes. At the time NSW Treasury collects Personal Information from an individual, they will notify the individual of the primary purpose for which the information is collected.

For Example:

- If the primary purpose of collecting a complainant's information was to investigate their workplace grievance, directly related secondary purposes within the reasonable expectations of the person for which their Personal Information could be used by NSW Treasury would include independent auditing of workplace grievance files.

### Use tips:

- The primary purpose for which NSW Treasury has collected the Personal Information should have been set out in a privacy notice (**Appendix A**). To use Personal Information for a purpose set out in the privacy notice is usually permissible, but for any other purpose, check with the Treasury's Privacy Coordinator first.

### 3.1.5 Disclosing Personal Information (sections 18-19 of the PPIP Act)

NSW Treasury will only disclose Personal Information if:

- at the time NSW Treasury collected their information, the person was given a privacy notice (template at **Appendix A**) to inform them their Personal Information would or might be disclosed to the proposed recipient, or
- the disclosure is directly related to the purpose for which the information was collected, and NSW Treasury has no reason to believe that the individual concerned would object to the disclosure, or
- the person concerned has consented to the proposed disclosure.

If an individual's Personal Information is disclosed to other NSW Public sector agencies, those agencies can only use information for the purpose for which it was disclosed to them. The information continues to be covered by the PPIP Act.

#### Disclosure tips:

- NSW Treasury can usually disclose information in the way it notified the individual about at the time their Personal Information was collected.
- However, if NSW Treasury did not tell the person about the proposed disclosure in a privacy notice, or if it is health information and NSW Treasury wants to send it outside of New South Wales, the individual's consent is usually required.
- The disclosure of Personal Information, without prior notice, is also allowable under where the exchange of information is reasonably necessary '*for the purpose of referring inquiries between agencies*', or '*to allow agencies to deal with or respond to correspondence from Ministers or Members of Parliament*'. (For more information see the [Direction on Information Transfers between Public Sector Agencies](#) (2015).

### 3.1.6 Exemptions

There are a number of exemptions to the IPPs that limit their coverage in a number of ways including:

- information that is contained in a publicly available publication (section 4(3) of the PPIP);
- exchanges of information which are reasonably necessary for the purpose of referring inquiries between agencies;
- disclosure relating to law enforcement and related matters (section 24 of the PPIP Act); and
- where non-compliance is lawfully authorised or required or otherwise lawfully permitted.

## 4 Code of Practice and PPIP section 41 Directions

Under the PIPP Act, Privacy Codes of Practice can be developed by agencies that provide for the modification of the application of one or more IPPs to particular activities or categories of information.

This is undertaken to take account of particular circumstances relating to legitimate use of Personal Information by agencies that might otherwise be in contradiction to the IPPs under the PPIP Act.

The Information and Privacy Commission can also prepare Codes of Practice common to a number of agencies. All Codes are approved by the NSW Attorney-General.

In addition, under section 41 of the PPIP Act the Privacy Commissioner may make a direction to waive or modify the requirement for an agency to comply with an IPP.

### 4.1 Privacy Code of Practice for the NSW Public Sector Workforce Profile

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The NSW Public Service Commission has developed a [Privacy Code of Practice for the NSW Public Sector Workforce Profile](#) to allow analysis and reporting about employment characteristics.

NSW Treasury provides Personal Information to the NSW Public Service Commission for this purpose. Confidentiality and privacy arrangements underpin the workforce profile.

### 4.2 Direction on information transfers between Public Sector Agencies

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The Privacy Commissioner recognises that there are many transfers of Personal Information between government agencies in NSW which are both legitimate and necessary.

The direction provides certain exemptions from the requirements of the PPIP Act relating to where exchanges of Personal Information between agencies are reasonably necessary for the purpose of dealing with:

- responses to correspondence from Ministers or MPs;
- referral of inquiries;
- auditing accounts or performance of a program or programs administered by an agency or agencies;
- law enforcement purposes not covered by the exemptions in the PPIP Act; and
- performance agreements between agencies.

### 4.3 Direction on the use of information for investigative purposes

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The direction provides certain exemptions from the requirements of the PPIP Act to an agency where non-compliance is reasonably necessary for the proper exercise of any of the agency's investigative functions or its conduct of any lawful investigations.

## 5 Public Registers

Under section 3(1) of the PIPP Act, a Public Register is defined as ‘a register of Personal Information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee).’

The PPIP Act requires that a public sector agency responsible for keeping a Public Register must not disclose any Personal Information contained in it unless the agency is satisfied that it is to be used for a purpose relating to the purpose of the register.

NSW Treasury does not currently hold any Public Registers.

## 6 Other relevant legislation

- *Anti-Discrimination Act 1977*
- *Criminal Records Act 1991*
- *GIPA Act*
- *Ombudsman Act 1974*
- *Public Interest Disclosures Act 1994*
- *State Records Act 1998*
- *Workplace Surveillance Act 2005*

## 7 Policies affecting processing of personal and health information

The [Treasury Internal Policies and Procedures \(TIPPs\)](#) impacting on the processing of personal and health information include:

- TIPP 2.5 - [Treasury 's Code of Ethics and Conduct](#);
- TIPP 4.5 - [Use of communication devices policy](#);
- TIPP 4.6 - [Correct use of email](#);
- TIPP 4.7 - [Management of IT assets and information access for staff on leave](#);
- TIPP 5.4 - [Public interest disclosures internal reporting policy](#); and
- TIPP 5.9 - [Fraud and Corruption Prevention](#).

## 8 How to access and amend Personal Information

People have the right to access, amend and update Personal Information that NSW Treasury holds about them.

NSW Treasury must provide access to this information without excessive delay and does not charge any fees to access or amend it.

NSW Treasury encourages staff wanting to access or amend their own personal or health information to contact HR Branch.

For members of the public, a request for access to any Personal Information held by NSW Treasury should be made in writing to the NSW Treasury Privacy Coordinator (see page 15 for contact details).

Any person can make a formal application to the NSW Treasury Privacy Coordinator and this application should:

- include the person's name and contact details (postal address, telephone number and email address if applicable);
- state whether the person is making the application under the PPIP Act (Personal Information) or HRIP Act (health information);
- explain what personal or health information the person wants to access or amend; and
- explain how the person wants to access or amend it.

NSW Treasury aims to respond in writing to formal applications within **20 working days** and will advise the applicant how long the request is likely to take, particularly if it may take longer than expected.

If an individual believes that NSW Treasury is taking an unreasonable amount of time to respond to an application, they have the right to seek an Internal Review.

Before seeking an Internal Review, we encourage individuals to first contact NSW Treasury to request provision of an update or timeframe.

## 9 Internal Review

### 9.1 Request for Internal Review

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An individual who considers his or her privacy has been breached can make a complaint to NSW Treasury under section 53 of the PPIP Act and request a formal internal review of NSW Treasury's conduct in relation to the privacy matter (**Internal Review**).

A breach of an individual's privacy is where a breach of one or more of the IPPs or the Health Privacy Principles has occurred.

Applications for Internal Review must:

- be in writing addressed to NSW Treasury;
- include a return address in Australia; and
- be lodged with NSW Treasury within six months of the time the applicant first became aware of the conduct which is the subject of the application.

The form for applying for a review of conduct under section 53 of the PPIP Act is at **Appendix B**.

Request for review must be either an alleged:

- breach of the IPPs or any Code of practice applicable to NSW Treasury; or
- disclosure of Personal Information from Public Registers held by NSW Treasury. Applicants who are not satisfied with the findings of the review or the action taken by NSW Treasury in relation to the Internal Review, have the right to appeal to the NSW Civil and Administration Tribunal (**NCAT**) under s. 55 of the PPIP Act.

### 9.2 Internal Review Process

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The Privacy Coordinator is responsible for receiving, allocating and overseeing Internal Reviews in relation to privacy matters.

Within NSW Treasury, the responsibilities of the Privacy Coordinator are currently held by the Manager of Parliamentary Support and Information.

Internal Reviews will generally be conducted by a NSW Treasury Director with no involvement in the matter giving rise to the complaint of breach of privacy. The Director may seek legal or other assistance in conducting the review.

Under section 54(1) of the PPIP Act, NSW Treasury is required to notify the NSW Privacy Commissioner of the receipt of an application for an Internal Review of conduct and keep the NSW Privacy Commissioner informed of the progress reports of the internal review. In addition, the Privacy Commissioner is entitled to make submissions to NSW Treasury in relation to the application for Internal Review (section 54(2) of the PPIP).

Under section 53(6) of the PPIP, an Internal Review must be completed within 60 days of the receipt of the application.

Under section 53(8) of the PPIP Act, as soon as practicable, or in any event within 14 days, after the completion of the internal review NSW Treasury must inform the applicant of the:

- findings of the review (and the reasons for those findings); and
- action proposed to be taken by NSW Treasury (and the reasons for taking that action); and
- the right of the person to have those findings, and NSW Treasury's proposed action, administratively reviewed by NCAT.

When NSW Treasury receives an Internal Review, the Privacy Coordinator will send:

- an acknowledgment letter to the applicant and advise that if the Internal Review is not completed within 60 days they have a right to seek a review of the conduct by NCAT; and
- a letter to the NSW Privacy Commissioner with details of the application and a photocopy of the written complaint.

There is an example of a letter of notification to the Privacy Commissioner of receipt of request for an Internal Review at **Appendix D**.

The Director responsible for completing the final determination must consider any relevant material submitted by the applicant or the Privacy Commissioner. Before completing the review, the Director should enquire if the Privacy Commissioner wishes to make a submission.

It is recommended that the Director send a draft copy of the preliminary determination to the Privacy Commissioner for comment.

NSW Treasury follows the model of the Internal Review process provided by the NSW Information and Privacy Commission (**Appendix C**).

In finalising the determination, the Director will prepare a report containing their finding and recommended action.

NSW Treasury may:

- take no further action on the matter;
- make a formal apology to the applicant;
- take appropriate remedial action, which may include the payment of monetary compensation to the applicant;
- undertake that the conduct will not occur again; and/or
- implement administrative measures to ensure that the conduct will not occur again.

The reviewing Director will notify the applicant in writing of:

- the findings of the review;
- the reasons for the finding, described in terms of the IPPs and/or the Health and Privacy Principles;
- any action NSW Treasury proposes to take;
- the reasons for the proposed action (or no action); and/or
- their entitlement to have the findings and the reasons for the findings reviewed by NCAT.

The Privacy Coordinator provides a single point of contact for individuals seeking further information on how NSW Treasury complies with the PPIP Act. The Privacy Coordinator will receive all correspondence and enquiries regarding the PPIP Act and Internal Review requests.

The Privacy Coordinator's role also includes monitoring, recording and reporting on the progress of all Internal Review applications received.

### **9.3 Recording of Internal Reviews**

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NSW Treasury records all applications for Internal Review in a secure Objective file and workflow. The workflow tracks the progress of the Internal Review process and the determination of the completed review.

The details recorded in this system will provide the statistical information on Internal Review applications to be included in NSW Treasury's Annual Report.

## **10 External Review**

An external review process is also available.

### **10.1 External Review by the Privacy Commissioner**

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Any individual who considers his or her privacy has been breached can make a complaint to the Privacy Commissioner under section 45 of the PPIP Act without going through the Internal Review process of NSW Treasury. The complaint must be made within 6 months (or such later time as the Privacy Commissioner may allow) from the time the individual first became aware of the conduct or matter the subject of the complaint.

## 10.2 External Review by NCAT

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If the applicant is not satisfied with the outcome of NSW Treasury's Internal Review they may apply to NCAT to review the decision. If NSW Treasury has not completed the Internal Review within 60 days, the applicant can also take the matter to NCAT.

To seek an external review to NCAT, the individual must apply within **28 days** from the date of the Internal Review decision [**Drafting note: cannot find this timeframe set out in the PPIP Act, only in the HRIP Act section 48(2)**].

A person must seek an Internal Review before they have the right to seek an external review (section 55(1) of the PPIP Act).

NCAT has the power to make binding decisions on an external review (section 55(2) of the PPIP Act).

For more information including current forms and fees, please contact NCAT:

website: [www.adt.lawlink.nsw.gov.au](http://www.adt.lawlink.nsw.gov.au)  
phone: (02) 9377 5711  
visit/post: NSW Civil & Administrative Tribunal  
Level 9, John Maddison tower,  
86-90 Goulburn Street, Sydney NSW

NCAT cannot give legal advice; however, the NCAT website has general information about the process it follows and legal representation.

## 11 Promoting the Plan

### 11.1 Executive & Governance

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The NSW Treasury's LT is committed to transparency in relation to compliance with the Acts. The LT reinforces transparency and compliance with the Acts by:

- endorsing this Plan and making it publicly available;
- providing a copy of this Plan to the Audit and Risk Branch;
- reporting on privacy issues in the NSW Treasury's Annual Report in line with the *Annual Reports (Departments) Act 1985* (NSW); and
- identifying privacy issues when implementing new systems.

### 11.2 Staff Awareness

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To ensure that NSW Treasury staff are aware of their rights and obligations under the Act, NSW Treasury currently:

- publishes this Plan and additional material (such as the PPIP Act Policy Statement) in a prominent place on the NSW Treasury intranet and website;
- introduces the Plan during staff induction with training provided as required;
- provides refresher, specialised and on-the-job privacy training;
- as a minimum, highlights the Plan annually during Privacy Awareness Week;
- provides privacy briefing sessions at appropriate management forums; and
- notifies staff of the privacy offence provisions (Parts 8 of the PPIP Act and the HRIP Act contain offences for certain conduct of public sector officials and other persons. Such offences include any relating to corrupt disclosure and use of personal and health information by public sector officials; and inappropriately offering to supply personal or health information that has been disclosed unlawfully.)

## 12 Further Information and Contacts

For further information about this Plan, the personal and health information NSW Treasury holds, or if you have any concerns, please contact the Privacy Coordinator of NSW Treasury:

Manager, Information, Access and Governance  
NSW Treasury  
Level 29, 52 Martin Place, Sydney NSW 2001  
Telephone: 02 9228 4611

For more information on privacy rights and obligations in New South Wales, please contact the NSW Privacy Commissioner at:

NSW Information and Privacy Commission  
Level 17, 201 Elizabeth Street, Sydney  
Telephone: 1800 472 679

Web: <http://www.ipc.nsw.gov.au>

Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)

## Appendix A: Privacy notice and consent template text

### About privacy notices

When collecting Personal Information, NSW Treasury should tell the person:

- whether the collection is required by law;
- what the consequences will be if they do not provide the information;
- what it will be used for;
- who will hold/store the information (if not the Department);
- who else might receive the information from the Department; and
- how they can access or update/correct their information.

The following **Template privacy notice** should be used when NSW Treasury is collecting Personal Information in writing, and only intends to use or disclose the information for the purpose for which it is collected.

If any other secondary use or disclosure is contemplated, insert the highlighted wording in the box below after the second paragraph.

If Personal Information is being collected verbally, see **Verbal collections** below.

#### Template privacy notice

Providing us with the requested information is not required by law. However if you choose not to provide us with the requested information, ... [*describe the main consequences for person if information is not provided – e.g. NSW Treasury cannot investigate your complaint*].

You may request access to your information at any time. To access or update your personal information, or for more information on our privacy obligations, ask to speak to the NSW Treasury Privacy Coordinator.

[insert the following highlighted paragraph **only** where the Department wishes to use or disclose Personal Information for a secondary purpose not directly related to the primary purpose for which the information was collected.]

With your permission, we would also like to [use/disclose] your information to: [*describe here the intended secondary purpose – e.g. put you on your mailing list for future community events*].

- I consent to my personal information being [used / disclosed] for the purpose of [name the secondary purpose].

Signature:

#### Verbal collections

When collecting Personal Information verbally (e.g. during telephone discussions), we can use less formal wording, so long as we explain *how* the person's Personal Information will be used, *and to whom else* it will likely be disclosed. If the person asks further questions about whether the information is really needed, then we can go into more depth, and we can also mention their access and amendment rights or offer to let them speak to Treasury's Privacy Coordinator.

However if we need to obtain the person's verbal consent to a secondary use or disclosure, we must explain what it is we are asking, and we must ensure that they understand they are free to say 'no'. We must also make a file-note of what was said.

## Appendix B: Privacy Complaint (Internal Review Application) Form

Please complete this form to apply for a review of conduct under section **(select one)**:

- 53 of the *Privacy and Personal Information Protection Act 1998* (PPIP Act)
- 21 of the *Health Records and Information Privacy Act 2002* (HRIP Act)

If you need help in filling out this form, please contact the Privacy Coordinator on (02) 9228 4611 or visit the Information & Privacy Commission website at [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au).

<b>1</b>	Name of the agency you are complaining about:  <b>NSW Treasury</b>
<b>2</b>	Your full name:
<b>3</b>	Your postal address:  Telephone number:  Email address:
<b>4</b>	If you are complaining on behalf of someone else, please provide their details here:  What is your relationship to this other person? (e.g. parent or lawyer)  Is the other person capable of making the complaint him or herself?  <input type="checkbox"/> yes  <input type="checkbox"/> no  <input type="checkbox"/> unsure
<b>5</b>	What is the specific <b>conduct</b> you are complaining about? ( <i>'Conduct' can include an action, a decision, or even inaction by the Department. For example the 'conduct' in your case might be a decision to refuse you access to your personal information, or the action of disclosing your personal information to another person, or the inaction of a failure to protect your personal information from being inappropriately accessed by someone else.</i> )

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<p><b>6</b></p>	<p>Please tick which of the following describes your complaint: <i>(You can tick more than one)</i></p> <p><input type="checkbox"/> collection of my personal or health information</p> <p><input type="checkbox"/> security or storage of my personal or health information</p> <p><input type="checkbox"/> refusal to let me access or find out about my own personal or health information</p> <p><input type="checkbox"/> accuracy of my personal or health information</p> <p><input type="checkbox"/> use of my personal or health information</p> <p><input type="checkbox"/> disclosure of my personal or health information</p> <p><input type="checkbox"/> other</p> <p><input type="checkbox"/> unsure</p>
<p><b>7</b></p>	<p>When did the conduct occur (date)? <i>(Please be as specific as you can)</i></p>
<p><b>8</b></p>	<p>When did you first become aware of this conduct (date)?</p>
<p><b>9</b></p>	<p>You need to lodge this application within 6 months of the date you have written at Q.8.</p> <p>If more than 6 months has passed, you need to ask Treasury's Privacy Coordinator for special permission to lodge a late application. If you need to, write here to explain why you have taken more than 6 months to make your complaint:</p>
<p><b>10</b></p>	<p>What effect did the conduct have on you?</p>
<p><b>11</b></p>	<p>What effect might the conduct have on you in the future?</p>
<p><b>12</b></p>	<p>What would you like to see NSW Treasury do about the conduct? <i>(For example: an apology, a change in policies or practices, your expenses paid, damages paid to you, training for staff, etc.)</i></p>

<b>13</b>	<p>I understand that this form will be used by NSW Treasury to process my request for an Internal Review.</p> <p>I understand that details of my application will be referred to the NSW Privacy Commissioner as required by law, and that the Privacy Commissioner will be kept advised of the progress of the review.</p> <p>I would prefer the Privacy Commissioner to have:</p> <p><input type="checkbox"/> a copy of this application form, or</p> <p><input type="checkbox"/> just the information provided at Q's 5 - 12.</p>
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**12.1.1 Applicant's signature and lodgement**

Applicant's signature: ..... Date: .....

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Please post this form with the application fee to:

Manager Parliamentary Support and Information  
Executive & Ministerial Services  
NSW Treasury  
GPO Box 5469, Sydney NSW 2001

**Please keep a copy for your own records**

## Appendix C: Internal Review Checklist



### How to use this form

The *Privacy and Personal Information Protection Act 1998* (the **PIIP Act**) and the *Health Records and Information Privacy Act 2002* (the **HRIP Act**) provide that public sector agencies deal with complaints by way of Internal Review. This process is the same under both the PIIP Act and the HRIP Act, although you will be assessing the alleged conduct against different standards (as set out below).<sup>1</sup>

A privacy complaint may come under the:

- PIIP Act, section 53,<sup>2</sup> if it relates to personal information, and the Information Protection Principles (IPPs); or
- HRIP Act, section 21, if it relates to health information and the Health Privacy Principles (HPPs).

Preliminary steps		Date completed
<b>1</b>	<p>Is the complaint about a person's <i>personal information</i>?<sup>3</sup></p> <p><input type="checkbox"/> Yes – You should treat their complaint as a request for Internal Review. Go to Q.2.</p> <p><input type="checkbox"/> No – Follow your agency's normal complaint handling procedures.</p>	
<b>2</b>	<p>Is the complaint about a person's <i>health information</i>?<sup>4</sup></p> <p><input type="checkbox"/> Yes – You should treat their complaint as a request for Internal Review under the HRIP Act. This means that the HPPs and other standards under the HRIP Act will apply.</p> <p><input type="checkbox"/> No – You should treat their complaint as a request for Internal Review under the PIIP Act. This means that the IPPs and other standards under the PIIP Act will apply.</p> <p><input type="checkbox"/> Both – See the notes below.<sup>5</sup></p>	

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Preliminary steps		Date completed
3	According to the complainant, when did the alleged conduct occur?	
4	Is the complaint about conduct that occurred after 1 July 2000?  <input type="checkbox"/> Yes – Go to Q.5.  <input type="checkbox"/> No – The PPIP Act does not apply. Follow your agency’s normal complaint handling procedures.	
5	Is the complaint about health information and conduct that occurred after 1 September 2004?  <input type="checkbox"/> Yes – the HRIP Act covers this complaint.  <input type="checkbox"/> No – the PPIP Act covers this complaint.	
6	According to the complainant, when did they first <i>become aware of the alleged conduct</i> ? <sup>6</sup>	
7	When was this application / privacy complaint first lodged? <sup>7</sup>	
8	If more than six months lapsed between the date at Q.6 and the date at Q.7, your agency must decide whether you will accept a late application. <sup>8</sup>  Will you accept this late application?  <input type="checkbox"/> Yes – Go to Q.9.  <input type="checkbox"/> No – Explain your reasons as to why you are unable to accept this older than 6 months complaint to the complainant, then follow your agency’s normal complaint handling procedures.	
9	When will 60 days elapse from the date at Q.7?  After this date the complainant may go to the New South Wales Civil and Administrative Tribunal (NCAT) without waiting for the results of this review.	

Preliminary steps	Date completed
<p><b>10</b> For complaints about a person's <b>health information</b> go to Q.11</p> <p>For complaints about a person's <b>personal information</b>, not including health information, tick all of the following types of <b>conduct</b><sup>9</sup> that describe the complaint. Then go to Q.12.</p> <p><input type="checkbox"/> collection of the complainant's personal information (IPPs 1-4)</p> <p><input type="checkbox"/> security or storage of the complainant's personal information (IPP 5)</p> <p><input type="checkbox"/> refusal to let the complainant access or find out about their own personal information (IPPs 6-7)</p> <p><input type="checkbox"/> accuracy or relevance of the complainant's personal information (IPPs 8-9)</p> <p><input type="checkbox"/> use of the complainant's personal information (IPP 10)</p> <p><input type="checkbox"/> disclosure of the complainant's personal information (IPPs 11-12, and/or the public register provisions in Part 6 of the Act)</p> <p><input type="checkbox"/> other / it is not clear</p>	
<p><b>11</b> For complaints about a person's <b>health information</b>, tick all of the following types of <b>conduct</b><sup>10</sup> which describe the complaint:</p> <p><input type="checkbox"/> collection of the complainant's health information (HPPs 1-4)</p> <p><input type="checkbox"/> security or storage of the complainant's health information (HPP 5)</p> <p><input type="checkbox"/> refusal to let the complainant access or find out about their own health information (HPPs 6-7)</p> <p><input type="checkbox"/> accuracy or relevance of the complainant's health information (HPPs 8-9)</p> <p><input type="checkbox"/> use of the complainant's health information (HPP 10)</p> <p><input type="checkbox"/> disclosure of the complainant's health information (HPP 11)</p> <p><input type="checkbox"/> assignment of identifiers to the complainant (HPP 12)</p> <p><input type="checkbox"/> refusal to let the complainant remain anonymous when entering into a transaction with your agency (HPP 13)</p> <p><input type="checkbox"/> transfer of the complainant's health information outside New South Wales (HPP 14)</p> <p><input type="checkbox"/> including the complainant's health information in a health records linkage system (HPP 15)</p> <p><input type="checkbox"/> other / it's not clear</p>	

Preliminary steps	Date completed
<p><b>12</b> Appoint a reviewing officer. <i>(The reviewing officer must be someone who was not substantially involved in any matter relating to the conduct complained about. For other requirements see s.53(4) of the PPIP Act. This also applies to the HRIP Act.)</i> <b>[Drafting note: what section of the HRIP Act?]</b></p> <p>Insert the reviewing officer's name here:</p>	
<p><b>13</b> Write to the complainant, stating:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> your understanding of the conduct complained about,</li> <li><input type="checkbox"/> your understanding of the privacy principle/s at issue (either IPPs at Q.10 or HPPs at Q.11),</li> <li><input type="checkbox"/> that the agency is conducting an Internal Review under the PPIP Act or the HRIP Act, as appropriate,</li> <li><input type="checkbox"/> the name, title, and contact details of the reviewing officer,</li> <li><input type="checkbox"/> how the reviewing officer is independent of the person/s responsible for the alleged conduct,</li> <li><input type="checkbox"/> the estimated completion date for the review process,</li> <li><input type="checkbox"/> that if your review is not complete by the date at Q.9, the complainant can go to NCAT for an external review of the alleged conduct, and</li> <li><input type="checkbox"/> that a copy of this letter will be provided to the NSW Privacy Commissioner for their oversight role.</li> </ul>	
<p><b>14</b> Send a copy of your letter at Q.13 to the NSW Privacy Commissioner, GPO Box 7011, SYDNEY NSW 2001; or fax (02) 8114 3756 or email <a href="mailto:ipcinfo@ipc.nsw.gov.au">ipcinfo@ipc.nsw.gov.au</a>.</p> <p>Include a copy of the complainant's application – either the written request or the information provided on the <i>Privacy Complaint: Internal Review Application Form</i>.</p>	

Review process itself begins		Date completed	
<b>15</b>	<p><b>Under the PPIP Act</b></p> <p>You need to determine:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> whether the alleged conduct occurred;</li> <li><input type="checkbox"/> if so, whether the conduct complied with all the IPPs (and Part 6 public register provisions if applicable)<sup>11</sup>; and</li> <li><input type="checkbox"/> if the conduct did not comply with an IPP (or the public register provisions), whether the non-compliance was authorised by: <ul style="list-style-type: none"> <li>an exemption under the PPIP Act<sup>12</sup>,</li> <li>a Privacy Code of Practice<sup>13</sup>, or</li> <li>a s.41 Direction from the Privacy Commissioner.<sup>14</sup></li> </ul> </li> </ul>	<p><b>Under the HRIP Act</b></p> <p>You need to determine:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> whether the alleged conduct occurred;</li> <li><input type="checkbox"/> if so, whether the conduct complied with all the HPPs<sup>15</sup>; and</li> <li><input type="checkbox"/> if the conduct did not comply with an HPP, whether the non-compliance was authorised by: <ul style="list-style-type: none"> <li>an exemption under the HRIP Act<sup>16</sup>,</li> <li>a Health Privacy Code of Practice<sup>17</sup>, or</li> <li>a s.62 Direction from the Privacy Commissioner.<sup>18</sup></li> </ul> </li> </ul>	
<b>16</b>	<p>Four weeks after sending the letter at Q.13, send a progress report to the complainant and the Privacy Commissioner.<sup>19</sup> Include:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> details of progress of the review;</li> <li><input type="checkbox"/> if there are delays, an explanation of this and a revised estimated completion date for the review process; and</li> <li><input type="checkbox"/> a reminder that if the review is not complete by the date at Q.9, the complainant can go to NCAT for an external review of the alleged conduct.</li> </ul>		

<b>On completion of the review</b>		<b>Date completed</b>	
<b>17</b>	<p><b>Under the PPIP Act</b></p> <p>Write up your findings about the facts, the law, and your interpretation of the law.</p> <p>Set out your preliminary determination about:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> whether there was sufficient evidence to establish that the alleged conduct occurred;</li> <li><input type="checkbox"/> which of the IPPs (and/or the public register provisions) you examined and why;</li> <li><input type="checkbox"/> whether the conduct complied with the IPPs/ public register provisions; and</li> <li><input type="checkbox"/> if the conduct did not comply with an IPP or public register provision, whether the non-compliance was authorised by: <ul style="list-style-type: none"> <li>▪ an exemption under the PPIP Act,</li> <li>▪ a Privacy Code of Practice, or</li> <li>▪ a s.41 Direction from the Privacy Commissioner, and</li> </ul> </li> <li><input type="checkbox"/> an appropriate action for the agency by way of response/ remedy.</li> </ul>	<p><b>Under the HRIP Act</b></p> <p>Write up your findings about the facts, the law, and your interpretation of the law.</p> <p>Set out your preliminary determination about:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> whether there was sufficient evidence to establish that the alleged conduct occurred;</li> <li><input type="checkbox"/> which of the HPPs you examined and why;</li> <li><input type="checkbox"/> whether the conduct complied with the HPPs; and</li> <li><input type="checkbox"/> if the conduct did not comply with an HPP, whether the non-compliance was authorised by: <ul style="list-style-type: none"> <li>▪ an exemption under the HRIP Act,</li> <li>▪ a Health Privacy Code of Practice, or</li> <li>▪ a s.62 Direction from the Privacy Commissioner, and</li> </ul> </li> <li><input type="checkbox"/> an appropriate action for the agency by way of response/ remedy.</li> </ul>	
<b>18</b>	<p>Before completing the review, check whether the Privacy Commissioner wishes to make a submission. Ideally you should provide a draft copy of your preliminary determination to the Privacy Commissioner for comment.</p>		
<b>19</b>	<p><b>Under the PPIP Act</b></p> <p>Finalise your determination of the Internal Review, by making one of</p>	<p><b>Under the HRIP Act</b></p> <p>Finalise your determination of the Internal Review, by making one of</p>	

On completion of the review		Date completed	
	<p>the following <b>findings</b>:</p> <p><input type="checkbox"/> insufficient evidence to suggest alleged conduct occurred;</p> <p><input type="checkbox"/> alleged conduct occurred but complied with the IPPs/public register provisions;</p> <p><input type="checkbox"/> alleged conduct occurred; did not comply with the IPPs/ public register provisions; but non-compliance was authorised by an exemption, Code or s.41 Direction; and</p> <p><input type="checkbox"/> alleged conduct occurred; the conduct did not comply with the IPPs/ public register provisions; the non-compliance was not authorised ("<b>a breach</b>")</p>	<p>the following <b>findings</b>:</p> <p><input type="checkbox"/> insufficient evidence to suggest alleged conduct occurred;</p> <p><input type="checkbox"/> alleged conduct occurred but complied with the HPPs;</p> <p><input type="checkbox"/> alleged conduct occurred; did not comply with the HPPs; but non-compliance was authorised by an exemption, Code or s.62 Direction; and</p> <p><input type="checkbox"/> alleged conduct occurred; the conduct did not comply with the HPPs; the non-compliance was not authorised ("<b>a breach</b>")</p>	
<b>20</b>	<p>Did the agency breach an IPP or public register provision?</p> <p><input type="checkbox"/> Yes – Go to Q.22</p> <p><input type="checkbox"/> No – Go to Q.21</p>	<p>Did the agency breach an HPP?</p> <p><input type="checkbox"/> Yes – Go to Q.22</p> <p><input type="checkbox"/> No – Go to Q.21</p>	
<b>21</b>	<p>Even though the agency did not breach any IPP, public register provision or HPP, have you identified any need for improvement in policies, procedures, communicating with your clients, etc?</p> <p><input type="checkbox"/> Yes – Go to Q.22</p> <p><input type="checkbox"/> No – Go to Q.24</p>		
<b>22</b>	<p>What action is proposed by the agency as a result of this review? (<i>You can have more than one.</i>)</p> <p><input type="checkbox"/> apology to complainant</p> <p><input type="checkbox"/> rectification<sup>20</sup> to complainant, e.g.:</p> <p><input type="checkbox"/> access to their personal information or health information</p> <p><input type="checkbox"/> correction of their personal information or health information</p>		

<b>On completion of the review</b>		<b>Date completed</b>	
	<input type="checkbox"/> other type of rectification <input type="checkbox"/> expenses paid to complainant <input type="checkbox"/> compensatory damages paid to complainant <input type="checkbox"/> other remedy to complainant <input type="checkbox"/> review of policies, practices or systems <input type="checkbox"/> change in policies, practices or systems <input type="checkbox"/> training (or further training) for staff <input type="checkbox"/> other action <input type="checkbox"/> no action		
<b>23</b>	Is the proposed action likely to match the expectations of the complainant?  <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure		
24	<p><b>Under the PPIP Act</b></p> <p>Notify the complainant and the Privacy Commissioner<sup>21</sup> in writing:</p> <input type="checkbox"/> that you have completed the Internal Review, <p>What your findings are, i.e. which one of the following:</p> <input type="checkbox"/> insufficient evidence to suggest alleged conduct occurred <input type="checkbox"/> alleged conduct occurred but complied with the IPPs/ public register provisions <input type="checkbox"/> alleged conduct occurred; did not comply with the IPPs/ public register provisions; but non-compliance authorised by an	<p><b>Under the HRIP Act</b></p> <p>Notify the complainant and the Privacy Commissioner<sup>22</sup> in writing:</p> <input type="checkbox"/> that you have completed the Internal Review, <p>What your findings are, i.e. which one of the following:</p> <input type="checkbox"/> insufficient evidence to suggest alleged conduct occurred <input type="checkbox"/> alleged conduct occurred but complied with the HPPs <input type="checkbox"/> alleged conduct occurred; did not comply with the HPPs; but non-compliance authorised by an exemption, Code, or s.62	

On completion of the review		Date completed
<p>exemption, Code or s.41 Direction</p> <p><input type="checkbox"/> alleged conduct occurred; the conduct did not comply with the IPPs/ public register provisions; the non-compliance was not authorised (“a breach”)</p> <p><input type="checkbox"/> what the reasons for your findings are,</p> <p><input type="checkbox"/> a plain English explanation of the law behind your findings, including quoting in full the relevant legislative provisions you are talking about,</p> <p><input type="checkbox"/> what action/s you are going to take as a result,</p> <p><input type="checkbox"/> that the complainant has the right to apply to NCAT for a review of the conduct complained about, and</p> <p><input type="checkbox"/> the contact details for NCAT.</p>	<p>Direction</p> <p><input type="checkbox"/> alleged conduct occurred; the conduct did not comply with the HPPs; the non-compliance was not authorised (“a breach”)</p> <p><input type="checkbox"/> what the reasons for your findings are,</p> <p><input type="checkbox"/> a plain English explanation of the law behind your findings, including quoting in full the relevant legislative provisions you are talking about,</p> <p><input type="checkbox"/> what action/s you are going to take as a</p> <p><input type="checkbox"/> result,</p> <p><input type="checkbox"/> that the complainant has the right to apply to NCAT for a review of the conduct complained about, and</p> <p><input type="checkbox"/> the contact details for NCAT.</p>	
<b>25</b>	Keep a record of this review for your annual reporting requirements. <sup>23</sup>	

## Notes:

<sup>1</sup> The 12 IPPs in the PPIP Act are legal obligations the manner in which NSW government agencies (including statutory bodies and local councils) must handle personal information. The 12 IPPs cover the collection, storage, use and disclosure of personal information as well as access and correction rights.

The 15 HPPs in the HRIP Act are legal obligations describing the manner in which NSW public sector agencies and private sector organisations and individuals, such as businesses, private hospitals, GPs, gyms and so on must handle health information. The 15 HPPs prescribe what an organisation must do when it collects, stores, uses and discloses health information. The HPPs also cover access and correction rights.

<sup>2</sup> Section 53(1): a person (the applicant) who is aggrieved by the conduct of a public sector agency is entitled to a review of that conduct. The requirements under 53(3) of the PPIP Act for an application for Internal Review are as follows:

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- (a) be in writing; and
  - (b) be addressed to the public sector agency concerned;
  - (c) specify an address in Australia to which a notice of completion of review (under subsection 8 of the PPIP Act) may be sent;
  - (d) be lodged at an office of the public sector agency within 6 months (or such later date as the agency may allow) from the time the applicant first became aware of the conduct the subject of the application; and
  - (e) comply with such other requirements as may be prescribed by the regulations (there are no additional requirements prescribed at this time).
- <sup>3</sup> “Personal information” is defined at section 4 of the PPIP Act as *information or an opinion ... about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion*. There are some exemptions to the definition (for example *information or an opinion about an individual’s suitability for appointment or employment as a public sector official*) so check section 4 in full. However if you are thinking of relying on one of these exemptions, especially those in sections 4(3)(b) or 4(3)(j), please first seek advice from the Information and Privacy Commission as to the extent to which the exemption applies.
- <sup>4</sup> “Health information” is defined at section 6 of the HRIP Act as *personal information that is information or an opinion about the physical or mental health or a disability of an individual; express wishes about the future provision of health services; a health service provided or to be provided; any other personal information collected to provide or in providing a health service*. The definition also includes information having to do with organ donation and genetic information. There are some exemptions to the definition in section 5 of the HRIP Act (for example, *information or an opinion about an individual’s suitability for appointment or employment as a public sector official*) so check the Act. However if you are thinking of relying on one of these exemptions, especially those exemptions in sections 5 (3)(b) or s.5 (3)(m), please first seek advice from the NSW Privacy Commissioner as to the extent to which the exemption applies.
- <sup>5</sup> If it is easy to distinguish between what is health information and what is other personal information then apply the relevant Act to each piece of information the subject of the complaint. If it is unclear which Act should apply, or it is too difficult to deal with the information in distinct parts, then in our view, it is best to take a cautious approach and apply both Acts to *all* the information the subject of the complaint.
- <sup>6</sup> Note that in *Y v Director General, Department of Education and Training* [2011] NSWADT 149 (**Y v DET**), the Administrative and Disputes Tribunal (**ADT**) warned against agencies using ‘self-serving calculations’ when determining the date on which the complainant may have first become aware of the conduct complained of.
- <sup>7</sup> In *Y v DET*, the ADT found that “express reference” to the PPIP Act is not essential in correspondence with agencies, especially where the context suggests that a statutory right is being invoked. Therefore the complainant need not have used the phrase ‘Internal Review’ for their privacy complaint to be considered by law to be an Internal Review application. Agencies should therefore look to the date the first written complaint about a breach of privacy was made.
- <sup>8</sup> Your agency should have a clear and written policy on the grounds under which you will allow a late application, including the means by which you will notify complainants about those grounds and what the complainant must prove to you. Include your policy in your Privacy Management Plan.
- <sup>9</sup> ‘Conduct’ can include an action, a decision, or even inaction by your agency. For example the ‘conduct’ in this case might be a *decision* to refuse the complainant access to his or her personal information, or the *action* of disclosing his or her personal information to another person, or the *inaction* of a failure to protect the complainant’s personal information from being inappropriately accessed by someone else.

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- <sup>10</sup> See Q.14 on *Privacy Complaint: Internal Review Application Form*, if they have used that form. (it is not compulsory for the complainant to use any particular format, so long as their requests is in writing).
- <sup>11</sup> Don't forget to look at all the IPPs, as they can be inter-related. For example a complaint about disclosure (IPPs 11 and 12, contained in sections 18 and 19 of the PPIP Act, and the public register provisions) might also raise issues about data security under IPP 5 (contained in section 12 of the PPIP Act), or notification about collection at IPP 3 (contained in section 10 of the PPIP Act).
- <sup>12</sup> Exemptions are found in the PPIP Act at sections 4-6, 20, and 23-28.
- <sup>13</sup> Privacy Codes of Practice are instruments made by the Attorney General (under the PPIP Act). Many can be found on the Information and Privacy Commission website at: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)
- <sup>14</sup> Section 41 Directions only modify the IPPs, not the public register provisions. These Directions are usually temporary so check the dates carefully, and contact the Information and Privacy Commission for earlier versions of Directions if necessary. View all current section 41 [Public Interest Directions](#).
- <sup>15</sup> Don't forget to look at all the HPPs, as they can be inter-related. For example a complaint about disclosure (HPP 11) might also raise issues about data security under HPP 5, or notification about collection at HPP 4.
- <sup>16</sup> Exemptions are found in the HRIP Act at sections 5, 10, 13-17, 22 and within the HPPs in Schedule 1.
- <sup>17</sup> Health Privacy Codes of Practice are instruments made by the Health Minister (under the HRIP Act). View the [Privacy Codes of Practice](#) on the Information and Privacy Commission website.
- <sup>18</sup> Section 62 Directions modify the HPPs. These Directions will usually be temporary so check the dates carefully. Current section [62 Directions](#) can be viewed on the Information and Privacy Commission website.
- <sup>19</sup> You are obliged under section 54(1)(b) of the PPIP Act to keep the Privacy Commissioner notified of progress. This also applies to the HRIP Act.
- <sup>20</sup> 'Rectification' means putting things right, the way they should have been in the first place.
- <sup>21</sup> Sections 53(8) and 54 of the PPIP Act.
- <sup>22</sup> Sections 53(8) and 54 of the PPIP Act; this also applies to the HRIP Act.
- <sup>23</sup> The annual report of each public sector agency must include statistical details of any Internal Review conducted under the PPIP Act; this also applies to the HRIP Act. See section 6 of the *Annual Reports (Departments) Regulation 2010* and clause 10 of the *Annual Reports (Statutory Bodies) Regulation 2010*.

## **Appendix D: Draft letter to the Privacy Commissioner regarding receipt of application for internal review under section 53 of the PPIP Act**

(NSW Treasury letterhead)

File number:

Date

Dr Elizabeth Coombs  
NSW Privacy Commissioner  
GPO Box 7011  
Sydney NSW 2001

Dear Dr Coombs,

*Notification in accordance with s. 54(1) of the NSW Privacy and Personal Information Protection Act of 1998.*

NSW Treasury has received an application for Internal Review under s. 53 of the *Privacy and Personal Information Protection Act 1998*. A copy of the letter of application is attached.

The matter is being investigated. I shall keep you informed of the progress and outcome of the review.

Should you have any submissions regarding this matter, please send them to me at the above address.

Yours sincerely,

Manager, Parliamentary Support and Information