



The
Treasury

TIPP 5.12

Privacy Management Plan & Guidelines

NSW Treasury Internal Policy and Procedure Document

29 January 2014

Preface

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

NSW Treasury is committed to open and accountable government in accordance with the *Government Information (Public Access) Act 2009* 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 PPIP Act and *Health Records and Information Privacy Act 2001*.

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

Philip Gaetjens
Secretary
NSW Treasury

January 2014

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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 Protection Act 1998* (NSW) (PPIP Act).

NSW Treasury has developed this 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 this Privacy Management 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 *Health Records and Information Privacy Act 2002* (NSW) (HRIP Act).
- 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.

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 Privacy Management Plan as a reference and guidance tool.

1 Introduction

Key points

This Privacy Management Plan (Plan) has been developed by NSW Treasury as per section 33 of the *Privacy and Personal Information Protection Act 1998* (PPIP Act).

This Plan identifies:

- collections of personal information 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
- how NSW Treasury conducts internal reviews under section 53 of the PPIP Act.

1.1 The role and functions of NSW Treasury

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
- Resource Allocation Group
- Commercial Policy and Financing Group
- Corporate Group
- 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 management
- recruitment
- complaints handling
- managing applications for *Government information under the Government Information (Public Access) Act 2009*.

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

As a NSW public sector agency, NSW Treasury is regulated by the *Privacy and Personal Information Protection Act 1998* (the PPIP Act) and the *Health Records and Information Privacy Act 2001* (HRIP Act).

2 Personal Information

2.1 Definition

Personal information is defined in section 4 of the PPIP Act as being 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.

2.2 Exclusions from the definition

Personal information is defined in section 4 of the PPIP Act as being 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.

Both the PPIP Act and HRIP Act exclude the following categories of personal information from their scope:

- information which relates to a person who has been dead for more than 30 years; or
- information which is contained in a publicly available publication; or
- information which 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 Privacy 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 Privacy 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

Employee records for staff of NSW Treasury, including:

- 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 human resources (HR) staff. Apart from the employee the file relates to, People and Performance (P&P) Branch staff are the only other members of the department that have authorised access to personnel files.

These records contain details including name, date of birth, home address, home phone number and emergency contact details. These records are stored in soft copy on the SAP database, maintained by Service First. Additionally, hardcopy files are stored and kept secure by Service First.

ServiceFirst, a division of the NSW Department of Finance and Services, is contracted to manage some corporate services functions for Treasury, such as Human Resources, Finance and Information Technology. Therefore ServiceFirst holds and is responsible for more detailed personal information about Treasury staff such as recruitment, payroll and leave records.

The Service Partnership Agreement 2013–14 between NSW Treasury and ServiceFirst notes that ServiceFirst will have access to information from and about NSW Treasury in the course of business, and that ServiceFirst is bound to comply with the PPIP Act. The Agreement states:

"Staff employed, appointed or otherwise engaged to work for ServiceFirst are bound by the DFS 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, ServiceFirst will have access to information from and about the client. ServiceFirst 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 Executive 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
- contact details for stakeholders participating in stakeholder consultation forums
- contact details for people who have made formal access applications under the *Government Information (Public Access) Act 2009*.

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 ServiceFirst, 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 8-19 of the Act. They set privacy standards which public sector agencies are expected to follow when dealing with personal information. The Information Protection Principles (IPPs) govern the collection, retention, accuracy, use and disclosure of personal information, including rights of access and correction.

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

3.1.1 Collecting personal information (S. 8-11 of the 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
- it is 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
- Don't 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 (S.12 of the Act)

NSW Treasury takes reasonable security safeguards against the loss, unauthorised access, use, modification and disclosure of personal information. Treasury has in place information security policies which provide guidance to staff around the handling and storage of personal information. 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
- NSW Treasury must take reasonable steps to prevent any unauthorised use or disclosure of the information by a contractor or service provider, and remember to bind our contractors to the same privacy obligations as us.

3.1.3 Accessing personal information (S. 13-14 of the 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 *Government Information (Public Access) Act 2009* (GIPA Act).

NSW Treasury will allow people to update or amend their personal information, to ensure it is accurate, relevant, up-to-date, complete or not misleading.

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. 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 (S. 15-17 of the 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, NSW Treasury will notify the individual of the primary purpose for which the information is collected.

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.

NSW Treasury will endeavour to ensure that an individual's personal information is accurate, complete and current. 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.

Use tips:

- The primary purpose for which NSW Treasury has collected the information should have been set out in a privacy notice. 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 (S. 18-19 of the Act)

NSW Treasury will only disclose personal information if:

- at the time NSW Treasury collected their information, the person was given a privacy notice 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 Act.

Disclosure tips:

- NSW Treasury can usually disclose information in ways it clearly notified the person about at the time their personal information was collected. However, if NSW Treasury didn't 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 NSW, we will usually have to get the person's consent for the disclosure.
- The disclosure of personal information, without prior notice, is also allowable under an exemption which allows exchanges of information which are 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". (See Direction on Information Transfers between Public Sector Agencies, the 2012-13 version of which is at http://www.ipc.nsw.gov.au/lawlink/privacynsw/ll_pnsw.nsf/pages/privacy_2012_s41_direction_transfers_between_public_sector)

3.1.6 Exemptions

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

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

4 Code of Practice & 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 Information Protection Principles 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 Information Protection Principles under the PPIP Act.

The Information and Privacy Commissioner 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 Information Protection Principle.

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

The Public Service Commission has developed a Code of Practice for the annual data collection of the NSW Public Sector Workforce Profile to allow analysis and reporting about employment characteristics. NSW Treasury provides personal information to the Public Service Commission for this purpose. Confidentiality and privacy arrangements underpin the workforce profile.

4.2 Direction on Information Transfers between Public Sector Agencies

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

While the full text of this direction should be viewed it basically provides certain exemptions from the requirements of the 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 Act;
- Performance agreements between agencies.

4.3 Direction on the use of information for investigative purposes

While the full text of this direction should be viewed it basically provides certain exemptions from the requirements of the 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 the PIPP Act, a Public Register is defined as being “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 register must not disclose any personal information kept in the register 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 Legislation

- *Anti-Discrimination Act 1977*
- *Criminal Records Act 1991*
- *Government Information (Public Access) Act 2009*
- *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

NSW Treasury has a suite of internal policy documents. The Treasury Internal Policies and Procedures (TIPPs) impacting on the processing of personal and health information include:

- TIPP 5.4 - Public Interest disclosures Internal reporting policy
- TIPP 5.9 - Fraud and Corruption Prevention
- TIPP 2.5 - Treasury 's Code of Conduct
- TIPP 4.5 - Use of communication devices
- TIPP 4.6 - Correct use of email
- TIPP 4.7 - Management of email accounts for officers on leave.

8 How to Access and Amend Personal Information

People have the right to access personal information NSW Treasury holds about them.

They also have the right to amend their own personal or health information that NSW Treasury holds, for example, if they need to update their contact details.

NSW Treasury must provide access to or amend personal or health information without excessive delay or expense. NSW Treasury does not charge any fees to access or amend personal or health information.

NSW Treasury encourages staff wanting to access or amend their own personal or health information to contact People & Performance 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 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
- explain how the person wants to access or amend it

We aim to respond in writing to formal applications within **20 working days**. We will contact the person to advise how long the request is likely to take, particularly if it may take longer than expected.

If a person believes that we are 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 people to contact our office to ask for an update or timeframe.

9 Internal Review

9.1 Request for Internal Review

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

A breach of an individual's privacy is defined as a breach of one or more of the Information Protection Principles or the Health Privacy Principles.

Applications for internal review must:

- be in writing
- be addressed to NSW Treasury
- include a return address in Australia
- 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 s. 53 of the PPIP Act is attached as Appendix B

Request for review must be on the following matters:

- an alleged breach of the IPPs or any Code of practice applicable to NSW Treasury, and/or an alleged breach of the IPPs or any Code of practice applicable to NSW Treasury, and/or
- alleged disclosure of personal information from public registers held by NSW Treasury.

Applicants who are not satisfied with the findings of the review or with the action taken by NSW Treasury in relation to the application, have the right to appeal to the Administrative Decisions Tribunal (ADT) under s. 55 of the Act.

9.2 Internal Review Process

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 Information & Parliamentary Coordinator.

Internal reviews will generally be conducted by an independent Director within Treasury, i.e. a Director who had 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.

The PPIP Act requires that the NSW Privacy Commissioner be informed of the receipt of an application for an internal review of conduct and receive regular progress reports of the investigation. In addition, the Commissioner is entitled to make submissions to NSW Treasury in relation to the application for internal review.

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 the Administrative Decisions Tribunal
- send a letter to the NSW Privacy Commissioner with details of the application. A photocopy of the written complaint will also be provided to the Privacy Commissioner.

There is an example of a letter of notification to the Privacy Commissioner of receipt of request for an internal review at **Appendix C**.

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 Information & Privacy Commission. A copy is at **Appendix D**.

An internal review must be completed within 60 days of the receipt of the application. The applicant is advised of the finding within 14 days of the completion of the review.

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 HPPs
- any action we propose to take
- the reasons for the proposed action (or no action)
- the applicant's entitlement to have the findings and the reasons for the findings reviewed by the Administrative Decisions Tribunal.

A summary of the findings of the review must be given to the Commissioner within 14 days of its completion.

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

NSW Treasury records all applications for Internal Review in a file tracking database system. This system tracks the progress of the Internal Review process and the determination and outcome of the completed review. The details recorded in this system will provide the statistical information on Internal Review application required by the Act, to be included in NSW Treasury's Annual Report.

10 External Review

An external review process is available.

Any individual who considers his or her privacy has been breached can also make a complaint to the Privacy Commissioner under s. 45 without going through the internal review process of NSW Treasury.

If the applicant is unhappy with the outcome of Treasury's internal review she or he can apply to the NSW Civil & Administrative Tribunal (the Tribunal) to review the decision. If Treasury has not completed the internal review within 60 days, the applicant can also take the matter to the Tribunal.

To seek an external review, a person must apply to the Tribunal. Generally a person has **28 days** from the date of the internal review decision to seek an external review. A person must seek an internal review before they have the right to seek an external review.

The Tribunal has the power to make binding decisions on an external review.

For more information about seeking an external review including current forms and fees, please contact the Tribunal:

website: www.adt.lawlink.nsw.gov.au
phone: (02) 9377 5711
visit/post: NSW Civil & Administrative Tribunal
Level 19, John Maddison tower,
86-90 Goulburn Street, Sydney NSW 2000

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

11 Promoting the Plan

11.1 Executive & Governance

The NSW Treasury's Group Executive (TGE) is committed to transparency in relation to compliance with the PPIP Act and HRIP Act. The TGE reinforce transparency and compliance with the PPIP Act and HRIP Act by:

- endorsing the plan and making it publicly available
- providing a copy of the plan to the Audit and Risk Branch
- reporting on privacy issues in our annual report in line with the Annual Reports (Departments) Act 1985 (NSW)
- identifying privacy issues when implementing new systems.

11.2 Staff Awareness

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

- the plan is published in a prominent place on Treasury's intranet and website
- introduction to the plan is included in staff induction with training provided as required
 - refresher, specialised and on-the-job privacy training is provided
- the plan is highlighted annually during Privacy Awareness Week, as a minimum
- additional material is published on the Treasury intranet and website e.g. the *Privacy and Personal Information Protection Act (1998) Policy Statement*
- privacy briefing sessions are provided at appropriate management forums
- staff are notified 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 we hold, or if you have any concerns, please feel free to contact the Privacy Coordinator of NSW Treasury:

Information & Parliamentary Coordinator
Level 27, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
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 & Privacy Commission
Level 11, 1 Castlereagh Street, Sydney
Telephone: 1800 472 679

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

Email: ipcinfo@ipc.nsw.gov.au

Appendix A:

Template privacy notice and consent wording

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 their personal information 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, also use the **Template consent wording**, below.

If personal information is being collected verbally (e.g. over the telephone), see **Verbal collections** below.

Template privacy notice

NSW Treasury is requesting this information from you so that we can ...
[describe the primary purpose for which this information is being collected – e.g. process your registration for a seminar, assess your job application, investigate your complaint, etc]. We may also ... [describe any directly related purposes for which the information might be used – e.g. auditing, reporting or program evaluation].

For the same purpose, NSW Treasury may provide this information about you to ... [list any persons or organisations that such information is usually disclosed to, outside of NSW Treasury – e.g. the Minister responsible for the subject of their correspondence, or a contractor or consultant].

NSW Treasury will not disclose your personal information to anybody else unless we are required to do so by law – for example if the information is needed in an emergency or for a law enforcement purpose.

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 our Privacy Officer.

Template consent wording

If the Department wishes to use or disclose personal information for an unrelated secondary purpose (i.e. a purpose not directly related to the primary purpose for which the information was collected), the Department will generally need to seek the person's consent to that secondary use or disclosure.

Consent cannot be a 'requirement' or pre-condition to a transaction. Consent is only valid if it is voluntary, informed, specific, time-limited, and given by a person with the capacity to make decisions about the handling of their personal information.

Ideally, a request for consent will be made at the time the information is collected in the first place. Therefore where a secondary use or disclosure of personal information is anticipated at the time of collection, the following **Template consent wording** should be used, as an additional part of the privacy notice, inserted after the third paragraph of the **Template privacy notice** (see above).

With your permission, we would also like to *[use / disclose]* your information to ...

[describe here the intended secondary purpose – e.g. put you on our 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 Officer.

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 (please select one):

- s53 of the *Privacy and Personal Information Protection Act 1998* (PPIP Act) ☐
- s21 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 9228 4611 or visit the Information & Privacy Commission website at www.ipc.nsw.gov.au.

1	Name of the agency you are complaining about: NSW Treasury
2	Your full name:
3	Your postal address: Telephone number: Email address:
4	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
5	What is the specific conduct 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</i>

	<i>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>
6	<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>
7	When did the conduct occur (date)? <i>(Please be as specific as you can)</i>
8	When did you first become aware of this conduct (date)?
9	<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>
10	What effect did the conduct have on you?
11	What effect might the conduct have on you in the future?
12	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>

13	<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>

12.1.1 Applicant's signature and lodgement

Applicant's signature:

Date:

Please post or deliver this form and application fee to:

Privacy Coordinator
Executive & Ministerial Services
NSW Treasury
Level 27 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000.

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 PPIP 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 Acts although you will be assessing the alleged conduct against different standards (the IPPs and the HPPs).ⁱ

A privacy complaint may come under:

- the PPIP Act, section 53,ⁱⁱ if it relates to personal information, and the Information Protection Principles (IPPs), or
- the HRIP Act, section 21, if it relates to health information and the Health Privacy Principles (HPPs).

Preliminary steps		Date completed
1	<p>Is the complaint about a person's <i>personal information</i>?ⁱⁱⁱ</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>	
2	<p>Is the complaint about a person's <i>health information</i>?^{iv}</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 PPIP Act. This means that the IPPs and other standards under the PPIP Act will apply.</p> <p><input type="checkbox"/> Both – See the notes below.^v</p>	
3	<p>According to the complainant, when did the alleged conduct occur?</p>	

Preliminary steps		Date completed
4	<p>Is the complaint about conduct that occurred after 1 July 2000?</p> <p><input type="checkbox"/> Yes – Go to Q.5.</p> <p><input type="checkbox"/> No – The PPIP Act does not apply. Follow your agency's normal complaint handling procedures.</p>	
5	<p>Is the complaint about health information and conduct that occurred after 1 September 2004?</p> <p><input type="checkbox"/> Yes – the HRIP Act covers this complaint.</p> <p><input type="checkbox"/> No – the PPIP Act covers this complaint.</p>	
6	<p>According to the complainant, when did they first <i>become aware of</i> the alleged conduct?^{vi}</p>	
7	<p>When was this application / privacy complaint first lodged?^{vii}</p>	
8	<p>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.^{viii}</p> <p>Will you accept this late application?</p> <p><input type="checkbox"/> Yes – Go to Q.9.</p> <p><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.</p>	
9	<p>When will 60 days elapse from the date at Q.7?</p> <p>After this date the complainant may go to the Administrative Decisions Tribunal ('the Tribunal') without waiting for the results of this review.</p>	

Preliminary steps	Date completed
<p>10 For complaints about a person's health information go to Q.11</p> <p>For complaints about a person's personal information, not including health information, tick all of the following types of conduct^x 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's not clear</p>	
<p>11 For complaints about a person's health information, tick all of the following types of conduct^x 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>12 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></p> <p>Insert the reviewing officer's name here:</p>	
<p>13 Write to the complainant, stating:</p> <p><input type="checkbox"/> your understanding of the conduct complained about,</p> <p><input type="checkbox"/> your understanding of the privacy principle/s at issue (either IPPs at Q.10 or HPPs at Q.11),</p> <p><input type="checkbox"/> that the agency is conducting an Internal Review under the PPIP Act or the HRIP Act, as appropriate,</p> <p><input type="checkbox"/> the name, title, and contact details of the reviewing officer,</p> <p><input type="checkbox"/> how the reviewing officer is independent of the person/s responsible for the alleged conduct,</p> <p><input type="checkbox"/> the estimated completion date for the review process,</p> <p><input type="checkbox"/> that if your review is not complete by the date at Q.9, the complainant can go to the Tribunal for an external review of the alleged conduct, and</p> <p><input type="checkbox"/> that a copy of this letter will be provided to the NSW Privacy Commissioner for their oversight role.</p>	
<p>14 Send a copy of your letter at Q.13 to the NSW Privacy Commissioner, GPO Box 7011, SYDNEY NSW 2001; or fax (02) 8114 3755 or email privacyinfo@privacy.nsw.gov.au</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>	

	Now you can start the review itself		
15	<p>Under the PPIP Act</p> <p>You need to determine:</p> <p><input type="checkbox"/> whether the alleged conduct occurred,</p> <p><input type="checkbox"/> if so, whether the conduct complied with all the IPPs (and Part 6 public register provisions if applicable)^{xi}, and</p> <p><input type="checkbox"/> if the conduct did not comply with an IPP (or the public register provisions), whether the non-compliance was authorised by:</p> <p>an exemption under the PPIP Act^{xii}, a Privacy Code of Practice^{xiii}, or a s.41 Direction from the Privacy Commissioner.^{xiv}</p>	<p>Under the HRIP Act</p> <p>You need to determine:</p> <p><input type="checkbox"/> whether the alleged conduct occurred,</p> <p><input type="checkbox"/> if so, whether the conduct complied with all the HPPs^{xv}, and</p> <p><input type="checkbox"/> if the conduct did not comply with an HPP, whether the non-compliance was authorised by:</p> <p>an exemption under the HRIP Act^{xvi}, a Health Privacy Code of Practice^{xvii}, or a s.62 Direction from the Privacy Commissioner.^{xviii}</p>	
16	<p>Four weeks after sending the letter at Q.13, send a progress report to the complainant and the Privacy Commissioner.^{xix} Include:</p> <p><input type="checkbox"/> details of progress of the review,</p> <p><input type="checkbox"/> if there are delays, an explanation of this and a revised estimated completion date for the review process, an</p> <p><input type="checkbox"/> a reminder that if the review is not complete by the date at Q.9, the complainant can go to the Tribunal for an external review of the alleged conduct.</p>		

	On completion of the review		
17	<p>Under the PPIP Act</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> <p><input type="checkbox"/> whether there was sufficient evidence to establish that the alleged conduct occurred,</p> <p><input type="checkbox"/> which of the IPPs (and/or the public register provisions) you examined and why,</p> <p><input type="checkbox"/> whether the conduct complied with the IPPs/ public register provisions,</p> <p><input type="checkbox"/> if the conduct did not comply with an IPP or public register provision, whether the non-compliance was authorised by:</p> <ul style="list-style-type: none"> ▪ an exemption under the PPIP Act, ▪ a Privacy Code of Practice, or ▪ a s.41 Direction from the Privacy Commissioner, and <p><input type="checkbox"/> an appropriate action for the agency by way of response/ remedy.</p>	<p>Under the HRIP Act</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> <p><input type="checkbox"/> whether there was sufficient evidence to establish that the alleged conduct occurred,</p> <p><input type="checkbox"/> which of the HPPs you examined and why,</p> <p><input type="checkbox"/> whether the conduct complied with the HPPs,</p> <p><input type="checkbox"/> if the conduct did not comply with an HPP, whether the non-compliance was authorised by:</p> <ul style="list-style-type: none"> ▪ an exemption under the HRIP Act, ▪ a Health Privacy Code of Practice, or ▪ a s.62 Direction from the Privacy Commissioner, and <p><input type="checkbox"/> an appropriate action for the agency by way of response/ remedy.</p>	
18	<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>		

	On completion of the review		
19	<p><u>Under the PPIP Act</u></p> <p>Finalise your determination of the Internal Review, by making one of the following findings:</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</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><u>Under the PPIP Act</u></p> <p>Finalise your determination of the Internal Review, by making one of the following findings:</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</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>	
20	<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>	
21	<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>		

	On completion of the review		
22	<p>What action is proposed by the agency as a result of this review? (You can have more than one.)</p> <p><input type="checkbox"/> apology to complainant</p> <p><input type="checkbox"/> rectification²⁰ to complainant, eg:</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> <p><input type="checkbox"/> other type of rectification</p> <p><input type="checkbox"/> expenses paid to complainant</p> <p><input type="checkbox"/> compensatory damages paid to complainant</p> <p><input type="checkbox"/> other remedy to complainant</p> <p><input type="checkbox"/> review of policies, practices or systems</p> <p><input type="checkbox"/> change in policies, practices or systems</p> <p><input type="checkbox"/> training (or further training) for staff</p> <p><input type="checkbox"/> other action</p> <p><input type="checkbox"/> no action</p>		
23	<p>Is the proposed action likely to match the expectations of the complainant?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Unsure</p>		
24	<p>Under the PPIP Act</p> <p>Notify the complainant and the Privacy Commissioner²¹ in writing:</p> <p><input type="checkbox"/> that you have completed the Internal Review,</p> <p><input type="checkbox"/> what your findings are, i.e. which one of the following:</p>	<p>Under the HRIP Act</p> <p>Notify the complainant and the Privacy Commissioner²² in writing:</p> <p><input type="checkbox"/> that you have completed the Internal Review,</p> <p><input type="checkbox"/> what your findings are, i.e. which one of the following:</p>	

	On completion of the review		
	<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 exemption, Code or s.41 Direction <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”) <input type="checkbox"/> what the reasons for your findings are, <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, <input type="checkbox"/> what action/s you are going to take as a result, <input type="checkbox"/> that the complainant has the right to apply to the Tribunal for a review of the conduct complained about, and <input type="checkbox"/> the contact details for the Tribunal.	<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 Direction <input type="checkbox"/> alleged conduct occurred; the conduct did not comply with the HPPs; the non-compliance was not authorised (“a breach”) <input type="checkbox"/> what the reasons for your findings are, <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, <input type="checkbox"/> what action/s you are going to take as a <input type="checkbox"/> result, <input type="checkbox"/> that the complainant has the right to apply to the Tribunal for a review of the conduct complained about, and <input type="checkbox"/> the contact details for the Tribunal.	
25	Keep a record of this review for your annual reporting requirements. ²³		

Notes:

The 12 information protection principles (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 health privacy principles (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.

¹ s.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 for an application for Internal Review are as follows:

s. 53(3): An application for such a review must:

- (a) be in writing, and
- (b) be addressed to the public sector agency concerned, and
- (c) specify an address in Australia to which a notice under subsection (8) may be sent, and
- (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.)

¹ “Personal information” is defined at s.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 (eg. for “information or an opinion about an individual’s suitability for appointment or employment as a public sector official”) so check s.4 in full. However if you are thinking of relying on one of these exemptions, especially s.4(3)(b) or s.4(3)(j), please first seek advice from Office of the Privacy Commissioner as to the extent to which the exemption applies.

¹ “Health information” is defined at s.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 s.5 of the HRIP Act (eg. for “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 s.5 (3)(b) or s.5 (3)(m), please first seek advice from Office of the Privacy Commissioner as to the extent to which the exemption applies.

¹ 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.

¹ Note that in *Y v DET*, the 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.

¹ 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

⁸ 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.

⁹ '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.

¹⁰ 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.)

¹¹ 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 and the public register provisions) might also raise issues about data security under IPP 5, or notification about collection at IPP 3.

¹² Exemptions are found in the PPIP Act at sections 4-6, 20, and 23-28.

¹³ 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

¹⁴ Section 41 Directions only modify the IPPs, not the public register provisions. These Directions are usually temporary so check the dates carefully, and contact Office of the Privacy Commissioner for earlier versions of Directions if necessary. View all current s.41 [Public Interest Directions](#).

¹⁵ 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.

¹⁶ Exemptions are found in the HRIP Act at sections 5, 10, 13-17, 22 and within the HPPs in Schedule 1.

¹⁷ Health Privacy Codes of Practice are instruments made by the Health Minister (under the HRIP Act). View the [Privacy Codes of Practice](#) on the Office of the Privacy Commissioner website.

¹⁸ 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 Office of the Privacy Commissioner website.

¹⁹ 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.

²⁰ 'Rectification' means putting things right, the way they should have been in the first place.

²¹ Sections 53(8) and 54 of the PPIP Act.

²² Sections 53(8) and 54 of the PPIP Act; this also applies to the HRIP Act.

²³ 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 clause 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

(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,

Information & Parliamentary Coordinator

ⁱ The 12 information protection principles (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 health privacy principles (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.

ⁱⁱ s.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 for an application for Internal Review are as follows:

s. 53(3): An application for such a review must:

- (a) be in writing, and
- (b) be addressed to the public sector agency concerned, and
- (c) specify an address in Australia to which a notice under subsection (8) may be sent, and
- (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.*)

ⁱⁱⁱ “Personal information” is defined at s.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 (eg. for “information or an opinion about an individual’s suitability for appointment or employment as a public sector official”) so check s.4 in full. However if you are thinking of relying on one of these exemptions, especially s.4(3)(b) or s.4(3)(j), please first seek advice from Office of the Privacy Commissioner as to the extent to which the exemption applies.

^{iv} “Health information” is defined at s.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 s.5 of the HRIP Act (eg. for “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 s.5 (3)(b) or s.5 (3)(m), please first seek advice from Office of the Privacy Commissioner as to the extent to which the exemption applies.

^v 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.

^{vi} Note that in *Y v DET*, the 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.

^{vii} 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

⁸ 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.

⁹ ‘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.

¹⁰ 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.)

¹¹ 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 and the public register provisions) might also raise issues about data security under IPP 5, or notification about collection at IPP 3.

¹² Exemptions are found in the PPIP Act at sections 4-6, 20, and 23-28.

¹³ 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

¹⁴ Section 41 Directions only modify the IPPs, not the public register provisions. These Directions are usually temporary so check the dates carefully, and contact Office of the Privacy Commissioner for earlier versions of Directions if necessary. View all current s.41 [Public Interest Directions](#).

¹⁵ 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.

¹⁶ Exemptions are found in the HRIP Act at sections 5, 10, 13-17, 22 and within the HPPs in Schedule 1.

¹⁷ Health Privacy Codes of Practice are instruments made by the Health Minister (under the HRIP Act). View the [Privacy Codes of Practice](#) on the Office of the Privacy Commissioner website.

¹⁸ 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 Office of the Privacy Commissioner website.

¹⁹ 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.

²⁰ 'Rectification' means putting things right, the way they should have been in the first place.

²¹ Sections 53(8) and 54 of the PPIP Act.

²² Sections 53(8) and 54 of the PPIP Act; this also applies to the HRIP Act.

²³ 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 clause 6 of the Annual Reports (Departments) Regulation 2010 and clause 10 of the Annual Reports (Statutory Bodies) Regulation 2010.