

APPENDIX 3

Internal Review Checklist (IPC Format)



information
and privacy
commission
new south wales



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 the PPIP Act and the HRIP Act, although you will be assessing the alleged conduct against different standards (as set out below).¹

A privacy complaint may come under the:

- PPIP Act, section 53,² 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).

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Preliminary Steps		Date completed
1	<p>Is the complaint about a person's personal information?³</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 health information?⁴</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.⁵</p>	
3	<p>According to the complainant, when did the alleged conduct occur?</p>	
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>	

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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 become aware of the alleged conduct?</p>	
7	<p>When was this application / privacy complaint first lodged?⁶</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.⁷</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 six 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 New South Wales Civil and Administrative Tribunal (NCAT) without waiting for the results of this review. If the internal review is finalised after 60 days, the applicant will have 28 days from the date they were notified of the result of the internal review to go to the Tribunal.</p>	
10	<p>For complaints about a person’s health information go to Q.11 For complaints about a person’s personal information, not including health information, tick all of the following types of conduct⁸ 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>	

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11	<p>For complaints about a person's health information, tick all of the following types of conduct⁹ which describe the complaint:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Collection of the complainant's health information (HPPs 1-4) <input type="checkbox"/> Security or storage of the complainant's health information (HPP 5) <input type="checkbox"/> Refusal to let the complainant access or find out about their own health information (HPPs 6-7) <input type="checkbox"/> Accuracy or relevance of the complainant's health information (HPPs 8-9) <input type="checkbox"/> Use of the complainant's health information (HPP 10) <input type="checkbox"/> Disclosure of the complainant's health information (HPP 11) <input type="checkbox"/> Assignment of identifiers to the complainant (HPP 12) <input type="checkbox"/> Refusal to let the complainant remain anonymous when entering into a transaction with your agency (HPP 13) <input type="checkbox"/> Transfer of the complainant's health information outside New South Wales (HPP 14) <input type="checkbox"/> Including the complainant's health information in a health records linkage system (HPP 15) <input type="checkbox"/> Other / it's not clear 	
12	<p>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>	
13	<p>Write to the complainant, stating:</p> <ul style="list-style-type: none"> • your understanding of the conduct complained about • your understanding of the privacy principle/s at issue (either IPPs at Q.10 or HPPs at Q.11) • that the agency is conducting an Internal Review under the PPIP Act or the HRIP Act, as appropriate • the name, title, and contact details of the reviewing officer • 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 the relevant time frame to apply for an NCAT review • that notice of your application and the subject matter of the application will be provided to the NSW Privacy Commissioner for their oversight role.¹⁰ 	
14	<p>Send a copy of your letter at Q.13 to NSW Privacy Commissioner GPO Box 7011 SYDNEY NSW 2001 Fax (02) 8114 3756 Or email ipcinfo@ipc.nsw.gov.au.</p> <p>Include a copy of the complainant's application – either the written request or the information provided on the Privacy Complaint: Internal Review Application Form.</p>	

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Review process itself begins			Date completed
15	<p>Under the PPIP Act</p> <p>You need to determine:</p> <ul style="list-style-type: none"> <input type="checkbox"/> whether the alleged conduct occurred <input type="checkbox"/> if so, whether the conduct complied with all the IPPs (and Part 6 public register provisions if applicable)¹¹ <input type="checkbox"/> if the conduct did not comply with an IPP (or the public register provisions), whether the noncompliance was authorised by: <ul style="list-style-type: none"> • an exemption under the PPIP Act¹² • a Privacy Code of Practice¹³, or • a s.41 Direction from the Privacy Commissioner¹⁴ 	<p>Under the HRIP Act</p> <p>You need to determine:</p> <ul style="list-style-type: none"> <input type="checkbox"/> whether the alleged conduct occurred <input type="checkbox"/> if so, whether the conduct complied with all the HPPs¹⁵ <input type="checkbox"/> if the conduct did not comply with an HPP, whether the noncompliance was authorised by: <ul style="list-style-type: none"> • an exemption under the HRIP Act¹⁶ • a Health Privacy Code of Practice¹⁷, or • a s.62 Direction from the Privacy Commissioner¹⁸ 	
16	<p>It is recommended that four weeks after sending the letter at Q.13, send a progress report to the Privacy Commissioner and (if required) the complainant, including:</p> <ul style="list-style-type: none"> <input type="checkbox"/> details of the progress of the review <input type="checkbox"/> if there are delays, you may wish to provide an explanation of this and a revised estimated completion date for the review process <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 and the relevant timeframe to apply for a Tribunal review. 		

On completion of the review		Date completed
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 noncompliance 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 noncompliance 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, you should send a draft copy of your report (prior to finalization) to the Privacy Commissioner for comment, and to determine whether the Privacy Commissioner wishes to make a submission. The Privacy Commissioner is entitled to make submissions to the agency (s54(2)). At the very least you are required to provide the Privacy Commissioner with the findings of the review and the action your agency proposes to take (s54(1)(c)).</p>	

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19	<p>Under the PPIP Act</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 authorized (“a breach”)</p>	<p>Under the HRIP Act</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>		
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, 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> <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 Commissioner 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 findings at Q 19 you arrived at</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 within 28 days for a review of the conduct complained about</p> <p><input type="checkbox"/> the contact details for NCAT.</p>	<p>Under the HRIP Act</p> <p>Notify the complainant and the Privacy Commissioner 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 findings at Q 19 you arrived at:</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 within 28 days for a review of the conduct complained about</p> <p><input type="checkbox"/> the contact details for NCAT.</p>	
25	Keep a record of this review for your annual reporting requirements.		

Notes:

1. 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.
2. 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:
 - (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).
3. "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.

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4. “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.
5. 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.
6. 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.
7. 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.
8. ‘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.
9. 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).
10. Section 54 of the PPIP Act requires the agency to:
 1. Notify the Privacy Commissioner that it has received the application
 2. Inform the Privacy Commissioner of the progress of the internal review
 3. Inform the Privacy Commissioner of the findings and action it proposes to take as the Privacy Commissioner is entitled to make submissions.
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, 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).
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 the Information and Privacy Commission for earlier versions of Directions if necessary. View all current section 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 Information and Privacy Commission 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 Information and Privacy Commission website.