

KEMPSEY SHIRE COUNCIL

PRIVACY MANAGEMENT PLAN

Procedure 5.3.3

Policy No. and title	5.3	Access to Information Policy
Procedure	5.3.3	Privacy Management Plan
Version	1	
Date Adopted	7 March 2012	

1 Introduction

The Council respects the privacy of the residents and ratepayers of the Kempsey Shire area and has prepared the following Privacy Management Plan in accordance with the requirements of Section 33 of the *Privacy and Personal Information Protection Act (PPIP Act)*.

In order to comply with the requirements of this Act, Council will apply information protection principles in relation to its handling of personal information in accordance with the Act.

- » Personal information is defined as 'any information about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion'.

2 Information Protection Principles (IPPs)

The 12 Information Protection Principles (IPPs) are the key to the PPIP Act, and are summarised as follows:

2.1 Collection

- a) Lawful — when an agency collects your personal information, the information must be collected for a lawful purpose. It must also be directly related to the agency's activities and necessary for that purpose.
- b) Direct — your information must be collected directly from you, unless you have given your consent otherwise. Parents and guardians can give consent for minors.
- c) Open — you must be informed that the information is being collected, why it is being collected and who will be storing and using it. The agency should also tell you how you can see and correct the information.
- d) Relevant — the agency must ensure that the information is relevant, accurate, up-to-date and not excessive. The collection should not unreasonably intrude into your personal affairs.

2.2 Storage

- e) Secure — your information must be stored securely, not kept any longer than necessary, and disposed of appropriately. It should be protected from unauthorised access, use or disclosure.

2.3 Access

- f) Transparent — the agency must provide you with enough details about what personal information they are storing, why they are storing it and what rights you have to access it.
- g) Accessible — the agency must allow you to access your personal information without unreasonable delay and expense.
- h) Correct — the agency must allow you to update, correct or amend your personal information where necessary.

2.4 Use

- i) Accurate — agencies must make sure that your information is accurate before using it.
- j) Limited — agencies can only use your information for the purpose for which it was collected, for a directly related purpose, or for a purpose to which you have given your consent. It can also be used without your consent in order to deal with a serious and imminent threat to any person's health or safety.

2.5 Disclosure

- k) Restricted — the agency can only disclose your information with your consent or if you were told at the time they collected it from you that they would do so. The agency can also disclose your information if it is for a related purpose and they don't think that you would object. Your information can also be used without your consent in order to deal with a serious and imminent threat to any person's health or safety
- l) Safeguarded — the agency cannot disclose your sensitive information without your consent, for example information about your ethnic or racial origin, political opinions, religious or philosophical beliefs, health or sexual activities or trade union membership. It can only disclose sensitive information without your consent in order to deal with a serious and imminent threat to any person's health or safety

3 Privacy principles

(Part 2 Division 1 Sections 8 to 19 inclusive, PPIPA Act)

3.1 The Council will not collect personal information unless:

- a) Information is collected for a lawful purpose that is directly related to a function or activity of Council, and
- b) Collection of the information is reasonably necessary for that purpose.

The Council will not collect personal information by any unlawful means.

Under certain circumstances, Council will continue to collect and provide personal information to and from government departments involved in the normal functions of Council's operation. Any collection and disclosure needs to be justified in accordance with the information protection principles, a provision in the Act or an exemption based on a Code of Practice or a

direction from the Privacy Commissioner. There are many special case situations that justify the exchange of information between agencies.

Council will continue the practice of dealing with the NSW Commission for Children and Young People for enquiries on personnel and recruitment matters i.e. for pre-employment screening of people working with children (*Children and Young Peoples Act*).

Council will use personal information for a variety of purposes within its departments, as on most occasions the information was collected for one main purpose, but it may be used for a variety of other purposes. For example, the names and addresses of individual owners of property kept on the rate register are used to notify adjoining owners of proposed development, evaluate road openings and obstructions, evaluate tree preservation orders, investigate parking controls, and evaluate land dedications and laneway status as well as being the basis of the rating and valuation register.

- 3.2** When collecting personal information, Council will collect information only from the individual to whom the information relates unless:
- a) The individual has authorised collection from someone else.
 - b) The information has been provided by a parent or guardian of a person under the age of 16.
 - c) Where the information is to be used in proceedings before a court or tribunal.
 - d) Where another act or law permits and where compliance would prejudice the interests of the individuals concerned.
 - e) Where the information is to be used for a prize, award or benefit.
 - f) Where compliance might be detrimental to Council's investigative functions.
- 3.3** When Council collects personal information about an individual, it will take reasonable steps to make those persons aware of these matters:
- a) The fact that the information is being collected.
 - b) The purposes for which the information is collected.
 - c) The intended recipients of the information.
 - d) Whether the supply of the information is required by law or is voluntary and any consequences for the individual if the information (or any part of it) is not provided.
 - e) The existence of any right of access to, and correction of the information.
 - f) Council's name and address, where the information will be stored.
This will not apply in the following circumstances:
 - i) Where the information is to be used in proceedings by a court or tribunal.

- ii) Where another act or law permits and where compliance would prejudice the interests of the individuals concerned.
- iii) Where the information is to be used for a prize, award or benefit.
- iv) Where compliance might be detrimental to Council's investigative functions.

3.4 Council will take reasonable steps to ensure that:

- a) Information collected is relevant to a purpose, is not excessive, and is accurate, up to date and complete.
- b) The collection of the information does not intrude to an unreasonable extent on the personal affairs of the individual to whom the information relates.

3.5 With regards to the retention and security of personal information, Council will ensure:

- a) That information is used for a lawful purpose and is kept for no longer than is necessary.
- b) That the information will be disposed of securely.
- c) That the information is protected against loss, unauthorised access, use, modification or disclosure and against all other misuse (as are reasonable in the circumstances).
- d) If it is necessary to release the information to a person in connection with the provision of a service to Council, everything reasonable is done to prevent unauthorised use to disclosure of the information.

The culling and destruction of records is carried out by Councils' records team in accordance with the Council's approved General Disposal Authority as prescribed under the *State Records Act*.

3.6 If Council holds personal information about an individual it must take the necessary steps to enable that person to ascertain:

- a) Whether the Council holds personal information.
- b) Whether the Council holds personal information relating to that person.
- c) If Council holds personal information relating to that person.
- d) The nature of that information.
- e) The main purposes for which the information is being used.
- f) That person's entitlement to gain access to that information.

Principle 7 is subject to the *Government Information (Public Access) Act 2009 (GIPA Act)* provisions which provide that Council may impose any limitations or conditions on access which it would be entitled to utilise if the person had applied under the GIPA Act, i.e. it could exercise any of the discretions in the Act to deny access on the grounds that a document is an exempt document.

Council employees should enquire with the Human Resources section to

access their employee records.

- 3.7** Any person will be able to ascertain whether Council holds their personal information about another person by completing an access application form under the GIPA Act. Release of any personal information will be subject to notification and approval by the person concerned.
- 3.8** Any person who is concerned with the accuracy or use of their personal information kept by Council, may request amendments be made to that information by completing an Application for Amendment of Personal Records form.
- 3.9** Council will take reasonable steps to ensure the accuracy of personal information prior to use, having regard to the purpose for which it was collected, its proposed use, its relevance, accuracy, whether it is up to date, complete and not misleading, in accordance with Council's Code of Conduct, approved policies and recorded procedures.
- 3.10** Staff using relevant personal information will not notify individuals for approval to perform usual office functions. Personnel and recruiting records will be discussed with solicitors when the need arises and with administrative staff when necessary without prior approval of individuals. These processes relate to the normal operational functions of Council and any personal information collected will be used for multiple purposes if required for the business of Council. Information collected for one purpose can also be used for the protection of public revenue, for law enforcement purposes or to prevent or reduce a threat to life or health.

Council may pass personal information to a contractor or agent. In such cases, Council shall take steps that are within its power to protect the information against unauthorised use or disclosure while in the hands of the contractor or agent.

- 3.11** The GIPA Act and any other provision in an Act that permits disclosure will override the restrictions on disclosure of personal information. Records must be made available for inspection and/or copy, and may be available subject to the public interest test. Exceptions are:
- Where disclosure is in connection with proceedings for an offence or law enforcement, or an investigation.
 - For protection of public revenue.
 - To a law enforcement agency regarding a missing person.
 - Where required by a search warrant.
 - Where the person has consented.
 - When requested by a public utility when requested in writing.
 - For an award prize or benefit.
 - When information is requested by a potential employer.
- 3.12** Council will take reasonable care not to disclose personal information:
- a) That relates to an individual's ethnic or racial origin, political opinions, religion or philosophical beliefs, trade union membership, health or

sexual activities unless the disclosure is permitted by another Act or necessary to prevent a serious or imminent threat to the life or health of the individual concerned or another person. Other exceptions are:

- b) May impact protection of public revenue.
- c) Where the individual has consented.
- d) When requested by a public utility when requested in writing.
- e) That relates to any enquiry from anyone outside the state of NSW.
 - i) A relevant privacy law applies to personal information in force in that jurisdiction, or
 - ii) The disclosure is permitted under a privacy code of practice (a law determined by the Privacy Commissioner and published in the Government Gazette).

4 Other matters

Information concerning an individual who has been dead for 30 years is excluded from the legislation.

Personal information includes contact details, marital information, age, family composition, income, health, business activities, civic involvements and ownership of certain of animals.

5 Public registers

Part 6 Clauses 57, 58 & 59 PPIP Act

Council will not disclose personal information kept in a public register unless the information is to be used for a purpose relating to the purpose of the register, or an Act under which the register is kept.

The Privacy Code of Practice encourages disclosure of single items or one page in a register without explanation.

Council requires that any person who applies for information from a public register applies by completing a document access request form. Where whole or a substantial part is requested the applicant may be required to complete a statutory declaration describing the intended use of any information obtained from the inspection. A Justice of the Peace may witness signatures on statutory declarations for this purpose. Copying costs shall be in accordance with Council's Fees and Charges Schedule.

Registers maintained by Council and access details

Delegations Register	Full unrestricted public access and copying
Public Land Register (Section 53, <i>Local Government Act</i>)	Available to the public free of charge
Register and Tabling of Pecuniary Interest Returns (Section 405A <i>Local Government Act</i>)	Available to the public free of charge
Companion Animals Register (<i>Companion Animals Act 1998</i>)	Council will only allow access to designated Council staff or a police officer

Development Consent Register (Section 100 <i>Environmental Planning and Assessment Act</i>)	Available to the public free of charge
Building Certificates Register (Section 149G <i>Environmental Planning and Assessment Act</i>)	Available for inspection free of charge. Copies of certificates only available with owners consent and the payment of the prescribed fee.
Investments Register	Full unrestricted public access and copying upon payment of copying fees.
Community Land Register	Available for public inspection and copying upon payment of copying fees, though limited by Privacy Code of Practice
Cemetery Register	Available for public inspection and copying upon payment of copying fees, though limited by Privacy Code of Practice

Council requires that during certain circumstances it may be possible to suppress personal information held on registers. A letter addressed to the General Manager stating reasons and any supporting evidence may be required.

6 Review of certain conduct (internal review process)

Part 5 Clauses 52 & 53 PPIP Act

- a) Where a person who has requested information is aggrieved by the conduct of Council in the following circumstances:
 - a) Contravention of a privacy principle that applies to Council.
 - b) Contravention of a code of practice that applies to Council.
 - c) Disclosure of personal information kept on a public register.
- b) The person (applicant) is entitled to apply for an internal review.

As is the normal correspondence practice at Council, the application for review must be in writing and addressed to:

The General Manager
PO Box 3078
KEMPSEY NSW 2440

- c) On receipt of the review request, a copy will be forwarded to the Privacy Commissioner. The Privacy Commissioner will be informed of progress and the outcome of the review.

The application **must be lodged six months** from the time the applicant first became aware of the conduct (the subject of the application). Receipt of the application will be acknowledged.

At all times the contents of the review will be kept confidential in accordance with Council's Code of Conduct.

- d) The application will be dealt with by the Public Officer, who will consider any relevant material submitted by either the applicant or the Privacy Commissioner.

The review will be completed as soon as reasonably practicable within 60 days from receipt of the application for review.

Following completion of the review, Council will do one or more of the following:

- i) Take no further action on the matter.
 - ii) Make a formal apology to the applicant.
 - iii) Take appropriate remedial action.
 - iv) Provide undertakings that the conduct will not occur again.
 - v) Implement administrative measures to ensure that the conduct will not occur again.
- e) As soon as practicable within 14 days of the completion of the review, Council will notify the applicant in writing of:
- i) The findings and the reasons for those findings.
 - ii) Any proposed actions to be taken.
 - iii) The right of the applicant to have those findings and the Council's proposed actions, reviewed by the Administrative Appeals Tribunal.

7 Training and education

Staff training will be coordinated by the training officer under guidance of the Human Resource Manager. Included in the staff induction program is an overview of the GIPA Act.

8 Privacy complaint application procedure

Preliminary steps	Date completed
<p>1 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 Q2</p> <p><input type="checkbox"/> No – follow Council's normal complaint handling procedures</p>	
<p>2 Is the complaint about a person's health information?⁴</p> <p><input type="checkbox"/> Yes – you should treat the 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. Go to Q3.</p> <p><input type="checkbox"/> No – you should treat the 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. Go to Q3.</p> <p><input type="checkbox"/> Both – See the notes below. ⁵ Go to Q3.</p>	
<p>3 According to the complainant, when did the alleged conduct occur?</p>	
<p>4 Is the complaint about conduct that occurred after 1 July 2000?</p> <p><input type="checkbox"/> Yes – go to Q5.</p> <p><input type="checkbox"/> No – the PPIP Act does not apply. Follow Council's normal complaint handling procedures.</p>	
<p>5 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. Go to Q6.</p>	

No – the PPIP Act covers this complaint. Go to Q6.

6 According to the complainant, when did they first become aware of the alleged conduct?⁶

7 When was this application/privacy complaint first lodged?⁷

8 If more than six months lapsed between the date at Q6 and the date Q7, Council must decide whether we will accept a late application.⁸

Will you accept this application?

Yes – go to Q9.

No – Explain your reasons to the complainant, then follow Council's normal complaint handling procedures.

9 When will 60 days elapse from the date at Q7?

After this date the complainant may go to the Administrative Decisions Tribunal ('the tribunal') without waiting for the results of this review.

10 For complaints about a person's **health information** go to Q11.

For complaints about a person's **personal information**, not including health information, tick all of the following types of **conduct**⁹ that describe the complaint. Then go to Q12.

Collection of the complainant's personal information (IPPs 1-4)

Security or storage of the complainant's personal information (IPP 5)

Refusal to let the complainant access or find out about their own personal information (IPPs 6-7)

Accuracy or relevance of the complainant's personal information (IPPs 8-9)

Use of the complainant's personal information (IPP 10)

Disclosure of the complainant's personal information (IPPs 11-12, and/or the public register provisions in Part 6 of the Act)

Other/it's not clear

11 For complaints about a person's **health information**, tick all of the following types of **conduct**¹⁰ which describe the complaint:

Collection of the complainant's health information (HPPs 1-4)

Security or storage of the complainant's health information (HPP 5)

Refusal to let the complainant access or find out about their own health information (HPPs 6-7)

Accuracy or relevance of the complainant's health information (HPPs 8-9)

Use of the complainant's health information (HPP 10)

Disclosure of the complainant's health information (HPPs 11)

Assignment of identifiers to the complainant (HPP 12)

Refusal to let the complainant remain anonymous when entering into a transaction with your agency (HPP 13)

Transfer of the complainant's health information outside NSW (HPP 14)

Including the complainant's health information in a health records linkage system (HPP 15)

Other/it's not clear

12 Appoint a reviewing officer. (*The reviewing officer must be someone who was not substantially involved in any matter relating to the conduct complained about. For other requirements see s53(4) of the PPIP Act. This also applies to the HRIP Act.*)

Insert the reviewing officer's name here:

13 Write to the complainant, stating:

- Your understanding of the conduct complained about
- Your understanding of the privacy principle/s at issue (either IPPs at Q10 or HPPs at Q11)
- That the agency is conducting an Internal Review under the PPIP Act or the HRIP Act, as appropriate.
- The name, title, and contact details for the reviewing officer
- How the reviewing officer is independent of the person/s responsible for the alleged conduct
- The estimated completion date for the review process
- That if your review is not complete by the date at Q9, the complainant can go the Tribunal for an external review of the alleged conduct, and
- That a copy of this letter will be provided to the NSW Privacy Commissioner for their oversight role.

14 Send a copy of your letter at Q13 to the NSW Privacy Commissioner, at Locked Bag 5111, Parramatta NSW 2124; or fax (02) 8688 9660.

If the complainant has consented, ¹¹ include a copy of the complainant's application – either the whole application or just the information provided at Q's 5-12 on the *Privacy Complaint: Internal Review Application Form*.

Now you can start the review itself

15 Under the PPIP Act

You need to determine:

- Whether the alleged conduct occurred
- If so, whether the conduct complied with all the IPPs (and Part 6 public register provisions if applicable)¹², and
- If the conduct did not comply with an IPP (or the public register provisions), whether the non-compliance was authorised by:
 - An exemption under the PPIP Act¹³
 - A Privacy Code of Practice¹⁴, or
 - A s41 Direction from the Privacy Commissioner¹⁵

Under the HRIP Act

You need to determine:

- Whether the alleged conduct occurred
- If so, whether the conduct complied with all the HPPs¹⁶, and
- If the conduct did not comply with an HPP, whether the non-compliance was authorised by:
 - An exemption under the HRIP Act¹⁷
 - A Health Privacy Code of Practice¹⁸, or
 - A s62 Direction from the Privacy Commissioner¹⁹.

16 Four weeks after sending the letter Q13, send a progress report to the complainant and the Privacy Commissioner²⁰. Include:

- Details of progress of the review
- If there are delays, an explanation of this and a revised estimated date for the review process, and
- A reminder that if the review is not complete by the date at Q9, the complainant can go to the Tribunal for an external review of the alleged conduct.

On completion of the review

17 Under the PPIP Act

Write up the findings about the facts, the law, and your interpretation of the law.

Set out your preliminary determination about:

Under the HRIP Act

Write up your findings about the facts, the law, and your interpretation of the law.

Set out your preliminary determination about:

- | | |
|--|---|
| <input type="checkbox"/> Whether there was sufficient evidence to establish that the alleged conduct occurred | <input type="checkbox"/> Whether there was sufficient evidence to establish that the alleged conduct occurred |
| <input type="checkbox"/> Which of the IPPs (and/or the public register provisions) you examined and why | <input type="checkbox"/> Which of the HPPs you examined and why |
| <input type="checkbox"/> Whether the conduct complied with the IPPs/public register provisions | <input type="checkbox"/> Whether the conduct complied with the HPPs |
| <input type="checkbox"/> If the conduct did not comply with an IPP or the public register provisions, whether the non-compliance was authorised by: <ul style="list-style-type: none"> <input type="checkbox"/> An exemption under the PPIP Act <input type="checkbox"/> A Privacy Code of Practice, or <input type="checkbox"/> A s41 Direction from the Privacy Commissioner, and | <input type="checkbox"/> If the conduct did not comply with an HPP, whether the non-compliance was authorised by: <ul style="list-style-type: none"> <input type="checkbox"/> An exemption under the HRIP Act <input type="checkbox"/> A Health Privacy Code of Practice²¹, or <input type="checkbox"/> A s62 Direction from the Privacy Commissioner²², and |
| <input type="checkbox"/> An appropriate action for the agency by way of response/remedy. | <input type="checkbox"/> An appropriate action for the agency by way of response/remedy. |

18 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.

19 Under the PPIP Act

Finalise your determination of the Internal Review, by making one of the following findings:

- Insufficient evidence to suggest alleged conduct occurred
- Alleged conduct occurred but complied with the IPPs/public register provisions
- Alleged conduct occurred; did not comply with the IPPs/public register provisions; but non-compliance was authorized by an exemption, Code or s41 Direction
- Alleged conduct occurred; the conduct did not comply with the IPPs/public register provisions; the non-compliance was not authorised ('a breach')

Under the HRIP Act

Finalise your determination of the Internal Review, by making one of the following findings:

- Insufficient evidence to suggest alleged conduct occurred
- Alleged conduct occurred but complied with the HPPs
- Alleged conduct occurred; did not comply with the HPPs; but non-compliance was authorised by an exemption, Code or s62 Direction
- Alleged conduct occurred; the conduct did not comply with the HPPs; the non-compliance was not authorised ('a breach')

20 Did the agency breach an IPP or public register provision?

- Yes – go to Q22
- No – go to Q21

Did the agency breach an HPP?

- Yes – go to Q22
- No – go to Q21

21 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?

- Yes – go to Q22
- No – go to Q24

22 What action is proposed by Council as a result of this review? (You can have more than one).

- Apology to complainant
- Rectification²³ to complainant
 - Access to their personal information or health information
 - Correction of their personal information or health information
 - Other type of rectification
- Expenses paid to complainant
- Compensatory damages paid to complainant
- Other remedy to complainant

- Review of policies, practices or systems
- Change in policies, practices or systems
- Training (or further training) for staff
- Other action
- No action

23 Is the proposed action likely to match the expectations of the complainant?

- Yes
- No
- Unsure

24 Under the PPIP Act

Notify the complainant and the Privacy Commissioner²⁴ in writing:

- That you have completed the Internal Review
- What your findings are, i.e. which one of the following:
 - Insufficient evidence to suggest alleged conduct occurred
 - Alleged conduct occurred but complied with the IPPs/public register provisions
 - Alleged conduct occurred; did not comply with the IPPs/public register provisions; but non-compliance authorised by an exemption, Code or s41 Direction
 - Alleged conduct occurred; the conduct did not comply with the IPPs/public register provisions; the non-compliance was not authorised ('a breach')
- What the reasons for your findings are
- A plain English explanation of the law behind your findings, including quoting in full the relevant legislative provisions you are talking about
- What action/s you are going to take as a result
- That the complainant has the right to apply to the Tribunal for a review of the conduct complained about, and
- The contact details for the Tribunal

Under the HRIP Act

Notify the complainant and the Privacy Commissioner²⁵ in writing:

- That you have completed the Internal Review
- What your findings are, i.e. which one of the following:
 - Insufficient evidence to suggest alleged conduct occurred
 - Alleged conduct occurred but complied with the HPPs
 - Alleged conduct occurred; did not comply with the HPPs; but non-compliance authorised by an exemption, Code or s62 Direction
 - Alleged conduct occurred; the conduct did not comply with the HPPs; the non-compliance was not authorised ('a breach')
- What the reasons for your findings are
- A plain English explanation of the law behind your findings, including quoting in full the relevant legislative provisions you are talking about
- What action/s you are going to take as a result
- That the complainant has the right to apply to the Tribunal for a review of the conduct complained about, and
- The contact details for the Tribunal

25 Keep a record of this review for your annual reporting requirements.²⁶

Notes

- 1** The 12 information protection principles (IPPs) in the PPIP Act are legal obligations the manner of 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.

- 2** S53(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.

S53(3): an application for such a review must:

- f) Be in writing, and
 - g) Be addressed to the public sector agency concerned, and
 - h) Specify an address in Australia to which a notice under subsection (8) may be sent, and
 - i) 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
 - j) 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 s4 of the PPIP Act as "personal information that is 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 (e.g. for "information or an opinion about an individual's suitability for appointment or employment as a public sector official") so check s4 in full. However if you are thinking of relying on one of these exemptions, especially s4(3)(b) or s4(3)(j), please first seek advice from Privacy NSW as to the extent to which the exemption applies.
- 4** "Health information" is defined at s6 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 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 s5 of the HRIP Act (e.g. 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 s5(3)(b) or s5(3)(m), please first seek advice from Privacy NSW 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** 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.

- 7** 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. For more on this issue see the April 2003 PCO Newsletter, available on our website via http://infolink/lawlink/privacynsw//II_pnsw.nsf/pages/PNSW_08_news0403.
- 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 footnote 8 above.
- 11** See Q14 on the *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 request is in writing).
- 12** 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.
- 13** Exemptions are found in the PPIP Act at sections 4-6, 20, and 23-28.
- 14** Privacy Codes of Practice are instruments made by the Attorney General (under the PPIP Act). Many can be found on the Privacy NSW website at: http://infolink/lawlink/privacynsw/ii_pnsw.nsf/pages/PNSW_03_ppipcodes.
- 15** Section 41 Directions only modify the IPPs, not the public sector register provisions. These Directions are usually temporary so check the dates carefully, and contact Privacy NSW for earlier versions of Directions if necessary. All current s41 Directions can be found at http://infolink/lawlink/privacynsw/II_pnsw.nsf/pages/PNSW_03_ppips41.
- 16** 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.
- 17** Exemptions are found in the HRIP Act at sections 5, 10, 13-17, 22 and within the HPPs in Schedule 1.
- 18** Health Privacy Codes of Practice are instruments made by the Attorney General (under the HRIP Act). No Health Privacy Codes of Practice have been made to date.
- 19** Section 62 Directions modify the HPPs. These Directions will usually be temporary so check the dates carefully. To date no s62 Directions have been passed.
- 20** 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.

- 21** To date no Health Privacy Codes of Practice have been made.
- 22** To date no s62 Directions have been passed.
- 23** 'Rectification' means putting things right, the way they should have been in the first place.
- 24** Sections 53(8) and 54 of the PPIP Act.
- 25** Sections 53(8) and 54 of the PPIP Act; this also applies to the HRIP Act.
- 26** The annual report of each public sector agency must include statistical details of any Internal Review conducted: see s33(3) of the PPIP Act; this also applies to the HRIP Act.

VARIATION

Council reserves the right to review, vary or revoke this procedure which will be reviewed periodically to ensure it is relevant and appropriate.