



Privacy Commissioner's right of appearance in the NSW Civil and Administrative Tribunal

The Privacy Commissioner has a right to appear and be heard in the NSW Civil and Administrative Tribunal (the Tribunal) in any administrative review of the conduct of a public sector agency under the *Privacy and Personal Information Protection Act 1998* (NSW) (PPIP Act) and *Health Records and Information Privacy Act 2002* (NSW) (HRIP Act), as well as in related proceedings and appeals.¹ This fact sheet has been prepared for citizens and agencies about the role of the Privacy Commissioner in these proceedings.

Who is the Privacy Commissioner?

The Privacy Commissioner is an independent statutory office holder with functions under the PPIP Act and the HRIP Act to promote and uphold the privacy rights of the people of New South Wales. Among those functions are:

- promoting the adoption of, and monitoring compliance with, the Information Protection Principles and the Health Privacy Principles²
- providing advice on matters relating to the protection of personal information and health information, and the privacy of individuals.³

How does the Commissioner become involved in a Tribunal matter?

The Tribunal notifies the Privacy Commissioner of all new applications lodged under the PPIP Act and HRIP Act, and the Commissioner decides whether to appear and be heard.

The Commissioner can exercise the right of appearance at any stage of the proceedings but will usually become involved from the first time the matter is listed.

Generally, the Commissioner will only appear or file submissions in proceedings that involve novel, complex or significant issues of law, where the Tribunal would benefit from submissions by the Commissioner.

How does the Commissioner exercise the right to appear and be heard?

Where the Privacy Commissioner decides to appear and be heard, their legal representative will attend case conferences, directions and hearings on their behalf.⁴

The Commissioner may file written submissions under procedural orders or their representative may make verbal submissions during the proceedings on one or more issues in the case.

Do I need to serve evidence and submissions on the Commissioner?

Where the Privacy Commissioner exercises the right to appear and be heard in a matter, the Commissioner will be included in the Tribunal's procedural orders for the filing and service of submissions and evidence.

If the Tribunal sets a timetable for the exchange of evidence and submissions, parties are required to serve a copy of their evidence and submissions on the Commissioner.

The Commissioner can receive service electronically at ipcinfo@ipc.nsw.gov.au or by mail.⁵

Parties should also notify the Commissioner of any proposed changes to listing dates or procedural orders.

¹ This fact sheet concerns the Privacy Commissioner's right to appear and be heard under section 55(6) of the PPIP Act. For information about the process of internal review and external review by the Tribunal see *IPC Factsheet: Privacy complaints: Your review rights*.

The Commissioner also has a right to appear and be heard in any proceedings before the Tribunal in relation to an inquiry under Division 2 of Part 6 of the HRIP Act (Complaints against private sector persons) (section 50(2) of the HRIP Act) and proceedings in relation to a review under Division 4 of Part 5 of the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) of a decision that concerns a privacy-related public interest consideration (section 104(2) of the GIPA Act; clause 9(4)(b) of Schedule 3 to the *Civil and Administrative Tribunal Act 2013* (NSW) (CAT Act)).

² Section 36(2)(a) of the PPIP Act and section 58(a) of the HRIP Act.

³ Section 36(2)(g) of the PPIP Act and section 58(e) of the HRIP Act.

⁴ The Commissioner does not attend mediations. In Appeal Panel proceedings, the Commissioner will generally attend all listings.

⁵ For further contact details, visit: <https://www.ipc.nsw.gov.au/about-us/contact-us>.

What do parties need to be aware of?

In exercising the right to appear and be heard, the Privacy Commissioner is not a party to the administrative review proceedings.⁶

The Commissioner does not appear at the request of or on behalf of the applicant or the agency. It is up to the parties to decide how they argue their own cases.

The Commissioner has an independent role in the Tribunal and does not provide legal advice or assistance to the parties.

What kinds of submissions does the Commissioner make?

The Privacy Commissioner's role and functions inform the submissions made in each matter. In particular the Commissioner must promote the adoption of, and monitor compliance with, the information protection principles.

The Commissioner appears in proceedings to provide assistance to the Tribunal on the applicable law, relevant policies and guidelines, and issues of statutory interpretation.⁷

The Commissioner makes submissions to assist the Tribunal to make the correct and preferable decision on an administrative review, or to determine an interim matter or appeal.

The Commissioner will not generally make submissions on procedural matters, such as whether the Tribunal should make an order dispensing with a hearing⁸ or whether two or more matters should be heard together.

For more information

Contact the Information and Privacy Commission NSW (IPC):

Freecall: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au
Website: www.ipc.nsw.gov.au

The IPC can give general information on the PPIP Act and HRIP Act but cannot give legal advice. You should seek your own legal advice about these issues.

⁶ *FM v Vice Chancellor, Macquarie University* [2003] NSWADT 78 (at [14]).

⁷ The Privacy Commissioner's role operates in a similar way to *amicus curiae* or 'friend of the court' at common law, that of 'a disinterested bystander who is able to assist the court by providing relevant information that may not otherwise be available' (*FM v Vice Chancellor, Macquarie University* [2003] NSWADT 78 at [8]).

⁸ See section 50 of the CAT Act.