Fact Sheet June 2024

A guide to privacy laws in NSW

Who is this information for?

NSW citizens who want to know more about their privacy rights.

Why is this information important?

This fact sheet provides information about how NSW privacy laws protect your personal and health information and also how to make a complaint.

How do I protect my privacy?

NSW privacy legislation focuses largely on information about you, that is, information that identifies you. In NSW, the Acts address two groups of information – personal information and health information.

What is personal information?

Personal information is any information that identifies you and includes:

- a written record which may include your name, address and other details about you
- photographs, images, video or audio footage
- fingerprints, blood or DNA samples.

What is health information?

Health information is a specific type of 'personal information' which may include information about your physical or mental health or disability. It includes:

- personal information you provide to any health organisation
- a health service already provided to you
- a health service that is going to be provided to you
- a health service you have asked to be provided to you
- some personal information for organ donation
- some genetic information about you, your relatives or your descendants.

How is my privacy protected in NSW?

In NSW, there are laws that protect your privacy:

The Privacy and Personal Information Protection Act 1998 (PPIP Act):

- protects your privacy rights in NSW by making sure that your personal information is properly collected, stored, used or released by NSW public sector agencies via the Information Protection Principles (IPPs)
- gives you the right to see and ask for changes to be made to your personal or health information
- allows you to make a complaint to the NSW Privacy Commissioner if you believe a NSW public sector agency has misused your personal information or breached one of the IPPs.

The Health Records Information Privacy Act 2002 (HRIP Act):

- protects your privacy rights in NSW by making sure that your personal and health information is properly collected, stored, used or released via the Health Privacy Principles (HPPs)
- gives you the right to see and ask for changes to be made to your personal or health information
- allows you to make a complaint to the NSW Privacy Commissioner if you believe a NSW public sector agency, health organisation or health service provider has misused your personal or health information or breached one of the HPPs.

***NOTE**: Some NSW public sector agencies may have specific provisions relating to the handling of personal information.*

In addition, there are Commonwealth privacy laws that protect the people of NSW when dealing with federal government departments and larger private sector organisations.

Who do the NSW laws apply to?

The PPIP Act applies to:

- NSW public sector agencies, including local councils and universities.

The HRIP Act applies to:

- NSW public sector agencies, including local councils and universities
- public and private sector health organisations – e.g. a private or public hospital or medical centre
- health service providers – e.g. your GP, dentist, therapist, physiotherapist, chiropractor, optometrist
- a larger-sized business with a turnover of over $3 million that holds health information – e.g. an insurance company.

***NOTE**: Organisations not covered by these laws (e.g. banks, real estate agents, shops or other private sector organisations) may be covered by the federal Privacy Act. Contact the Office of the Australian Privacy Commissioner on 1300 363 992 or visit their website – www.oaic.gov.au*

Who should I contact if I want to review or change my personal or health information?

If you want to access your own health or personal information, you should contact the holder of the information first and ask them how you can do this. This is usually the Privacy Contact Officer at the agency or organisation concerned. Their details should be on the agency's or organisation's website.

If you need further information, you can also contact us.

How much does it cost and how long should it take to access my personal or health information?

Under the PPIP Act for personal information (NSW public sector agencies only)

If you ask for your personal information under the PPIP Act it should be provided to you free and without excessive delay.

Under the HRIP Act for personal and health information (NSW public and private health service providers and those who collect health-related materials e.g. dentists, physiotherapists)

If you ask for your health or personal information under the HRIP Act it may be free or there may be a charge. When information is provided to you it should be done without undue delay or excessive costs.

If you want to access your own health or personal information, you should contact the holder of the information first and ask them how you can do this.

There may be other important considerations beyond costs and processing times, such as your review rights, how you want access, and whether other information is involved.

What can I do if I think my privacy has been breached?

If you believe a NSW public sector agency or organisation has misused your personal or health information you can:

Under the PPIP Act for personal information (NSW public sector agencies only)

- ask for an internal review from a NSW public sector agency (an investigation must be done if you make such a request)
- complain to the NSW Privacy Commissioner
- if you are not happy with the outcome of the review you have 28 days to apply to the NSW Civil and Administrative Tribunal (NCAT) for a review of the decision.

Under the HRIP Act for personal and health information (NSW public and private health service providers and those who collect health-related materials, e.g. dentists, physiotherapists)

- you may be able to ask for an internal review (applies to NSW public health service providers)
- you can complain to the NSW Privacy Commissioner about a private sector provider
- if you are not happy with the result and, if the Privacy Commissioner has written a report, you have 28 days to apply to NCAT for a review of the decision.

The Privacy Commissioner also has the power to accept broad-based privacy complaints.

***NOTE**: Depending on the circumstances the IPC may not always be able to accept your complaint, however, we can provide guidance regarding other options.*

Mandatory Notification of Data Breach Scheme

Under the PPIP Act, NSW public sector agencies and state-owned corporations are also required to notify the Privacy Commissioner and provide notifications to affected individuals in the event of an eligible data breach involving their personal or health information. More information about the Scheme and data breaches is available via the IPC website.

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

NOTE: The information in this fact sheet is to be used as a guide only. Legal advice should be sought in relation to individual circumstances.

Tips to help keep your privacy safe

In our daily lives we are often asked to disclose personal information such as names, addresses, signatures, banking details, phone numbers and more.

Here are some tips to help you keep your privacy safe:

- Hackers use phishing emails to access your secure information. Be cautious about all communications you receive and if you think an email is suspicious do not click on any links or open any attachments.
- Improve your security online by setting up two-factor authorisation. Adding one more step of authenticating your identity makes it harder for an attacker to access your data.
- Keep passwords, PINs and other access codes confidential and secure. Using a password manager is a good way of keeping your passwords and logins secure as they are stored in encrypted databases.
- Be wary of public Wi-Fi networks – these are often less secure than regular networks and give access to more data than necessary when providing Internet connection.
- Enable privacy settings and review them regularly when using online social media and networking sites (e.g., Facebook). Consider making your social media profiles private.
- Securely dispose of mail that contains personal details (e.g., by shredding). Never put sensitive documents that have your personal details in the recycle bin.
- You have a right to ask why any information is being collected about you. This includes, for example, state government agencies and other organisations. Their privacy policy may contain this information.

How can I make a complaint under the PPIP Act if I think my privacy (non-health information) has been breached?

START HERE:

Is your complaint about a NSW public sector agency (including a local council or university)?

NO → **Does your complaint involve a federal government agency (e.g., Centrelink) or a private sector business with a turnover of over $3 million?**

NO → **If your privacy complaint doesn't fall into any of these categories, you may be able to make a general complaint to the NSW Privacy Commissioner.** If the complaint is accepted, the Privacy Commissioner is only able to conciliate these matters.

YES → **Contact the Office of the Australian Privacy Commissioner.** Please visit www.oaic.gov.au or call 1300 363 992.

YES ↓

Making a complaint (internal review):

- **Lodge an application for an internal review with the organisation (within six months).** This is an internal investigation to assess if the agency has complied with its privacy obligations. The agency has to advise and consult with the NSW Privacy Commissioner. **The review should be done in 60 days (if practicable). There is no fee.**
- **The agency may have a specific form for you to fill in.** Check their website or contact the Privacy Contact Officer in the agency.
- **If not, there's a generic form on our website** – www.ipc.nsw.gov.au – complete the form and send it to the agency receiving the complaint.

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The agency will commence an internal review. This should be completed within 60 days of receiving the application and you will be kept informed of the progress during the review. The agency should complete the review as soon as reasonably practicable.

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After the review:

You will be informed in writing of the result of the agency's review. The agency must inform the NSW Privacy Commissioner. Depending on the findings, the agency may:

- Make a formal apology
- Take remedial action (e.g., payment of compensation)
- Make assurances that it won't happen again
- Make administrative changes to ensure it won't happen again
- Take no further action.

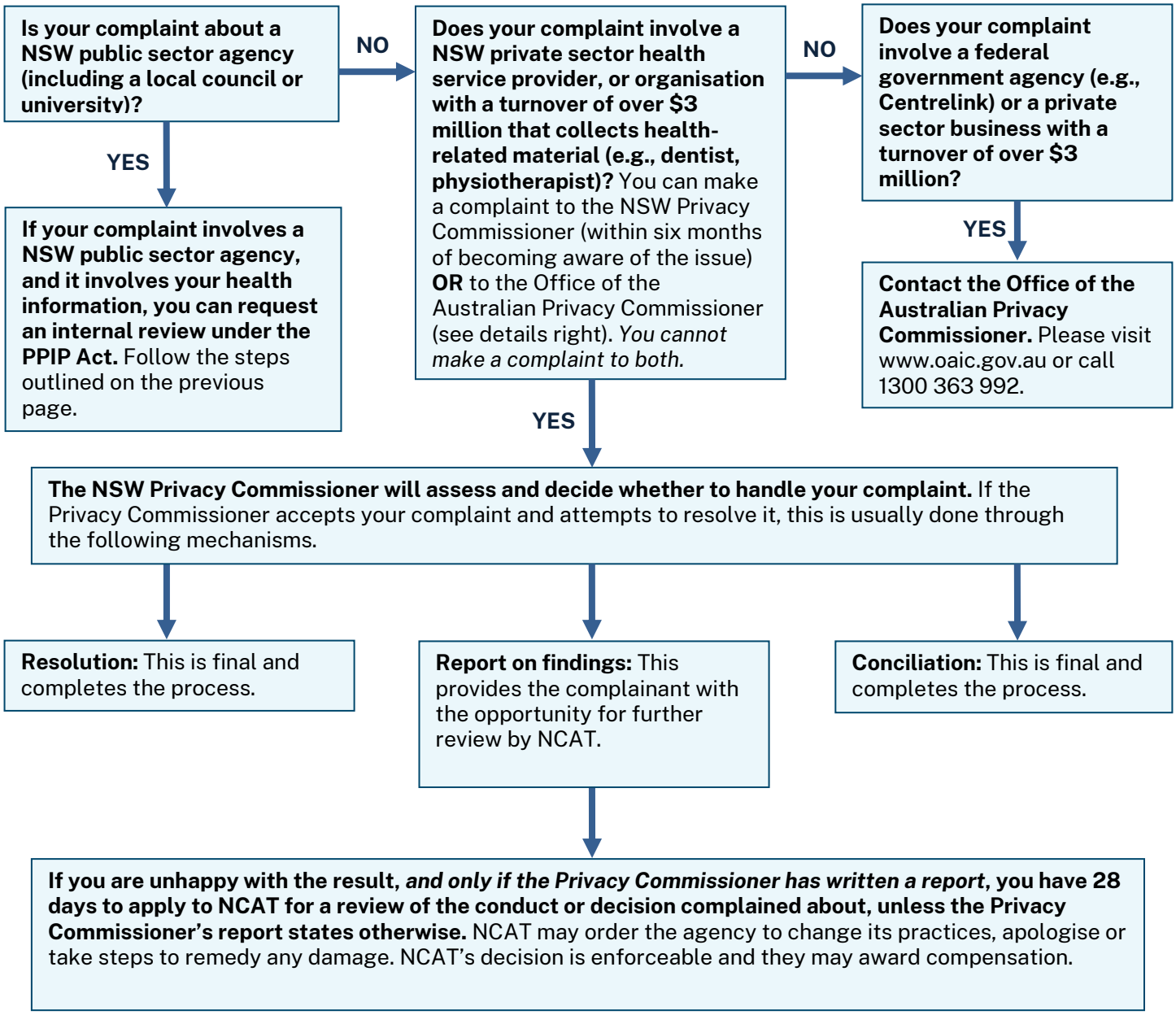
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If you are unhappy with the result of the review (or it is not completed in 60 days) you have 28 days* to apply to NCAT for a review of the conduct or decision complained about. NCAT may order the agency to change its practices, apologise or take steps to remedy any damage. NCAT's decision is enforceable and they may award compensation.

**Refer to Rule 24 of the Civil and Administrative Tribunal Rules 2014.*

How can I make a complaint under the HRIP Act if I think my privacy (health information) has been breached?

START HERE:



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