



information
and privacy
commission
new south wales

Information and Privacy Advisory Committee Membership and Charter

Updated December 2023



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1. Establishment of the Information and Privacy Advisory Committee (IPAC) and Appointments

The IPAC:

- is established to provide ongoing strategic advice to government, and to facilitate knowledge sharing and collaboration across government, industry and academia
- is chaired by the NSW Information Commissioner and will advise the IPC, the Minister for Customer Service and Digital Government, Minister for Emergency Services, and Minister for Youth Justice and the Attorney General
- draws together expertise that can address the unique challenges faced by government and the community in the digital age where technology, service delivery and consumer expectations are changing rapidly.

Appointment process

Responsibility for the legislation establishing the IPAC (the *Privacy and Personal Information Protection Act 1998* (PPIP Act)), and therefore the appointments, is shared between the Minister for Customer Service and Digital Government, Minister for Emergency Services, and Minister for Youth Justice and the Attorney General.

The IPAC consists of the IPC CEO and Information Commissioner as Chairperson, the Privacy Commissioner and other committee members from both the public and private sectors.

Current IPAC members are listed in current member appointment document, available via the IPC website.

2. Background

With the creation of the Information and Privacy Commission (IPC) on 1 January 2011 by the merger of the Office of the Information Commissioner with Privacy NSW, a new single office was established to administer legislation about privacy and access to Government information in New South Wales.

The NSW Law Reform Commission, in its 2009 Report number 125 entitled *The Offices of the Information and Privacy Commissioners*, noted that the creation of a single office would help ensure that agencies and individuals receive consistent information and advice; would allow for coordinated training and assistance to be provided to agencies; and would help reduce 'referral fatigue' by providing a single point of contact.

The NSW Law Reform Commission also recommended the establishment of an IPAC. The PPIP Act was accordingly amended by the NSW Parliament to specify the composition of the IPAC, its functions and its procedures. The IPAC replaces the former Privacy Advisory Committee, broadening its focus to include information access matters and changing the nature of the membership.

3. Aims and objectives

The IPAC is an advisory body to the Information Commissioner and the Privacy Commissioner. It is not an operational governance body to the Commissioners and the IPC.

4. Terms of reference

1. To advise on matters relevant to the functions of the Information Commissioner and the Privacy Commissioner
2. To advise the Minister on such matters as may be referred to it by the Minister.¹

The NSW Attorney General and the Minister for Customer Service and Digital Government, Minister for Emergency Services, and Minister for Youth Justice are jointly responsible for the IPAC. References to “the Minister(s)” in these terms of reference and in this charter should be interpreted as referring to both the Attorney General and the Minister.

Functions of the Information Commissioner²

- a) to promote public awareness and understanding of this Act and to promote the object of this Act,
- b) to provide information, advice, assistance and training to agencies and the public on any matters relevant to this Act,
- c) to assist agencies in connection with the exercise of their functions under this Act, including by providing services to assist with the lodgement, handling, and processing of access applications,
- d) to issue guidelines and other publications for the assistance of agencies in connection with their functions under this Act,
- e) to issue guidelines and other publications for the assistance of the public in connection with their rights under this Act (including rights of review),
- f) to review decisions of agencies pursuant to Part 5,
- g) to monitor, audit and report on the exercise by agencies of their functions under, and compliance with, this Act,
- h) to make reports and provide recommendations to the Minister about proposals for legislative and administrative changes to further the object of this Act.

Functions of the Privacy Commissioner³

- a) to promote the adoption of, and monitor compliance with, the information protection principles,
- b) to prepare and publish guidelines relating to the protection of personal information and other privacy matters, and to promote the adoption of such guidelines,
- c) to initiate and recommend the making of privacy codes of practice,
- d) to provide assistance to public sector agencies in adopting and complying with the information protection principles and privacy codes of practice,
- e) to provide assistance to public sector agencies in preparing and implementing privacy management plans in accordance with section 33,

¹ *Privacy and Personal Information Protection Act 1998* (NSW) s 61.

² *Government Information (Public Access) Act 2009* (NSW) s 17.

³ *Privacy and Personal Information Protection Act 1998* (NSW) s 36; the Privacy Commissioner also has similar functions under s 58 of the HRIP Act with respect to the protection of health information

- f) to conduct research, and collect and collate information, about any matter relating to the protection of personal information and the privacy of individuals,
- g) to provide advice on matters relating to the protection of personal information and the privacy of individuals,
- h) to make public statements about any matter relating to the privacy of individuals generally,
- i) to conduct education programs, and to disseminate information, for the purpose of promoting the protection of the privacy of individuals,
- j) to prepare and publish reports and recommendations about any matter (including developments in technology) that concerns the need for, or the desirability of, legislative, administrative or other action in the interest of the privacy of individuals,
- k) to receive, investigate and conciliate complaints about privacy related matters (including conduct to which Part 5 applies),
- l) to conduct such inquiries, and make such investigations, into privacy related matters as the Privacy Commissioner thinks appropriate
- m) to investigate, monitor, audit and report on a public sector agency's compliance with the requirements related to the mandatory notification of an eligible data breach
- n) make and publish written reports in relation to a function of the Privacy Commissioner
- o) direct the head of a public sector agency to provide access to premises occupied or used by the agency for the purpose of monitoring and reporting on the agency's compliance with requirements related to the mandatory notification of an eligible data breach and observe systems, policies and/or practices.

In addition to the functions set out above, both Commissioners have the function under section 10 of the *Digital Restart Fund Act 2020* of providing advice to the Minister as to the effect that a project may have on access to government information under the GIPA Act and the protection of personal information under the PPIP Act or health information under the *Health Records and Information Privacy Act 2002* (HRIP Act).

5. Business rules

General procedure and the conduct of business of the IPAC

The procedure for the calling of meetings of the IPAC and for the conduct of business at those meetings, is to be determined by the Information Commissioner.⁴

Chair

The Information Commissioner is the Chair of the IPAC. The Information Commissioner will nominate a member of the IPC Executive to deputise in her absence.

Membership and tenure (appointed members)

Members are appointed by the Governor in Council for the period stated in the instrument of appointment, for a term of office no longer than three years. A member may be re-appointed at the expiry of their term, The Ministers may also revoke appointments at any time.

Deputy membership and tenure

Deputy members are appointed by the Ministers for the period stated in the instrument of appointment, and act for a nominated member in their absence. The Ministers may also revoke appointments at any time.

⁴ *Privacy and Personal Information Protection Act 1998* (NSW) clause 8 Schedule 2

Resignations

Resignation is to be to the Ministers by letter⁵.

The IPC is available to assist in the process where necessary.

Attendance and quorum

All members will be invited to attend meetings.

Deputy members assume all functions of the member when formally acting in their absence.

A quorum will consist of five members.

Attendance at meetings may be via tele/videoconference if required and in consultation with the Chair.

Members and deputy members are asked to inform the Chair if they are unable to attend meetings.

Members who do not attend four meetings in succession, without the leave of the Chair, will have their membership appointment reviewed by the Ministers or their nominated representatives.

Participation and confidentiality

Members and deputy members are asked to contribute to the IPAC via attendance at meetings, review and comment on papers, and respond to matters circulated out of session by the Chair.

Members and deputy members are asked to attend meetings as scheduled and respond to requests from the Chair in a timely manner.

Decisions and actions taken by the IPAC are not confidential, unless otherwise stated by the Chair.

Records of meetings which reflect decisions and actions to be taken by the IPAC are public documents and will be published on the IPC website once approved by members.

Members and deputy members may report back to various constituents and individuals on IPAC discussions and decisions, and canvass opinions on various issues where the IPAC believes this is appropriate.

IPAC members may find that individuals and agencies raise issues directly with them concerning IPAC matters. Members are requested to refer these matters to the Chair for consultation with the IPAC, and this will be a standing item on the meeting agenda.

From time to time, the Information Commissioner or Privacy Commissioner may invite members to participate in events, such as Right to Know Week and Privacy Awareness Week. Members and deputy members are requested to restrict public comment in their IPAC representative capacity to such events or otherwise to consult with the Chair.

Secretariat

The IPC provides the secretariat to the IPAC.

Reports on activities and advice to the Ministers

The Information Commissioner will report on the activities of the IPAC in each Annual Report of the IPC.

The Information Commissioner may provide reports and advice to the Ministers from time to time.

Where the IPAC has considered matters referred to it by the Ministers, advice will be provided to the Ministers by the Information Commissioner. The Chair will provide members with an opportunity to review the written advice prior to submission.

⁵ *Privacy and Personal Information Protection Act 1998* (NSW) clause 5, Schedule 2

Meetings

The IPAC will meet quarterly, for approximately two hours at each meeting. Extraordinary meetings will be held as required.

Meetings will be held at the offices of the IPC unless otherwise advised.

Agenda and meeting papers

The secretariat will circulate the agenda and supporting meeting papers after approval by the Chair, at least one week before the meeting. The secretariat is responsible for recording and maintaining meeting records, and will circulate them after approval by the Chair within 15 working days of the meeting.

Members may nominate items for the agenda via the Chair.

The standing agenda items will include:

- Minutes of previous meetings
- Statement of conflict of interests by members
- Reports from the Information and Privacy Commissioners on matters for advice

Remuneration

A member (other than a member who is an officer of a public sector agency) is entitled to be paid such remuneration for attending meetings and transacting the business of the IPAC as the Ministers may from time to time determine in respect of the member.⁶

In 2022 Members' remuneration was established at \$2000.00 per annum.⁷

Members may be reimbursed for legitimate expenses incurred while carrying out their duties, such as travel to attend IPAC meetings. Travel arrangements must comply with NSW Treasury and Finance Circular [OFS-2014-07: Official Travel within Australia and Overseas](#).⁸

Review of the IPAC Charter

The IPAC Charter will be reviewed every two years, in consultation with the IPAC, at the first meeting of each calendar year, two years following the last review.

⁶ Remuneration is established in accordance with [M2012-18 Classification and Remuneration Framework for NSW Government Boards and Committees](#) and the [Classification and Remuneration Framework for NSW Government Boards and Committees Policy and Guidelines](#).

⁷ [NSW Government Boards and Committees Classification and Remuneration Table](#)

⁸ [M2013-06 NSW Government Board and Committee Guidelines](#)

6. Appendix: Extracts from relevant legislation

Privacy and Personal Information Protection Act 1998

Part 7 Information and Privacy Advisory Committee

60 Establishment of Information and Privacy Advisory Committee

- (1) There is established by this Act an Information and Privacy Advisory Committee.
- (2) The Committee is to consist of the Information Commissioner, the Privacy Commissioner, and the following part-time members appointed by the Governor:
 - (a) 2 persons who are senior officers of public sector agencies and who are nominated by the Minister in consultation with such other Ministers as the Minister considers appropriate,
 - (b) 2 persons (not being officers of public sector agencies) who are nominated by the Minister and who, in the opinion of the Minister, have special knowledge of or interest in matters affecting access to government information,
 - (c) 2 persons (not being officers of public sector agencies) who are nominated by the Minister and who, in the opinion of the Minister, have special knowledge of or interest in matters affecting the privacy of persons.
- (3) The Information Commissioner is to be the Chairperson of the Committee and is to preside at meetings of the Committee.
- (4) Schedule 2 contains provisions relating to the members and procedure of the Committee.

61 Functions of Information and Privacy Advisory Committee

The Information and Privacy Advisory Committee has the following functions:

- (a) to advise on matters relevant to the functions of the Information Commissioner and the Privacy Commissioner,
- (b) to advise the Minister on such matters as may be referred to it by the Minister.

Schedule 2 Provisions relating to members and procedure of Information and Privacy Advisory Committee

(Section 60 (4))

1 Definition

In this Schedule:

member means a member of the Information and Privacy Advisory Committee other than the Information Commissioner or the Privacy Commissioner.

2 Deputies of members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) (Repealed)
- (3) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is taken to be the member.

(4) A deputy while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

3 Term of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

4 Remuneration of members

A member (other than a member who is an officer of a public sector agency) is entitled to be paid such remuneration (including travelling and subsistence allowances) for attending meetings and transacting the business of the Committee as the Minister may from time to time determine in respect of the member.

5 Vacancy in office of members

(1) The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by letter addressed to the Minister, or
- (d) is removed from office by the Minister under this clause, or
- (e) is absent from 4 consecutive meetings of the Information and Privacy Advisory Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Committee for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

6 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Effect of certain other Acts

(1) Parts 4 and 6 of the Government Sector Employment Act 2013 do not apply to or in respect of the appointment of a member.

(2) If, by or under any Act, provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office, the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

8 General procedure

The procedure for the calling of meetings of the Information and Privacy Advisory Committee and for the conduct of business at those meetings, is to be as determined by the Information Commissioner.

Government Information (Public Access) Act 2009

17 Role of Information Commissioner

The Information Commissioner has the following functions in connection with the operation of this Act:

- (a) to promote public awareness and understanding of this Act and to promote the object of this Act,
- (b) to provide information, advice, assistance and training to agencies and the public on any matters relevant to this Act,
- (c) to assist agencies in connection with the exercise of their functions under this Act, including by providing services to assist with the lodgement, handling and processing of access applications,
- (d) to issue guidelines and other publications for the assistance of agencies in connection with their functions under this Act,
- (e) to issue guidelines and other publications for the assistance of the public in connection with their rights under this Act (including rights of review),
- (f) to review decisions of agencies pursuant to Part 5,
- (g) to monitor, audit and report on the exercise by agencies of their functions under, and compliance with, this Act,
- (h) to make reports and provide recommendations to the Minister about proposals for legislative and administrative changes to further the object of this Act.

Government Information (Information Commissioner) Act 2009

14 General functions

The Commissioner has such functions as may be conferred or imposed on the Commissioner by or under this or any other Act.

Privacy and Personal Information Protection Act 1998

36 General functions

- (1) The Privacy Commissioner has such functions as are conferred or imposed on the Commissioner by or under this or any other Act.
- (2) In particular, the Privacy Commissioner has the following functions:
 - (a) to promote the adoption of, and monitor compliance with, the information protection principles,

- (b) to prepare and publish guidelines relating to the protection of personal information and other privacy matters, and to promote the adoption of such guidelines,
 - (c) to initiate and recommend the making of privacy codes of practice,
 - (d) to provide assistance to public sector agencies in adopting and complying with the information protection principles and privacy codes of practice,
 - (e) to provide assistance to public sector agencies in preparing and implementing privacy management plans in accordance with section 33,
 - (f) to conduct research, and collect and collate information, about any matter relating to the protection of personal information and the privacy of individuals,
 - (g) to provide advice on matters relating to the protection of personal information and the privacy of individuals,
 - (h) to make public statements about any matter relating to the privacy of individuals generally,
 - (i) to conduct education programs, and to disseminate information, for the purpose of promoting the protection of the privacy of individuals,
 - (j) to prepare and publish reports and recommendations about any matter (including developments in technology) that concerns the need for, or the desirability of, legislative, administrative or other action in the interest of the privacy of individuals,
 - (k) to receive, investigate and conciliate complaints about privacy related matters (including conduct to which Part 5 applies),
 - (l) to conduct such inquiries, and make such investigations, into privacy related matters as the Privacy Commissioner thinks appropriate.
- (3) The Privacy Commissioner must consult with the Information Commissioner before preparing any guidelines concerning the information protection principle set out in section 18 (Limits on disclosure of personal information).

59Y Privacy Commissioner may make directions and recommendations

- (1) This section applies if there are reasonable grounds for the Privacy Commissioner to believe there has been an eligible data breach of a public sector agency (a **suspected breach**).
- (2) The Privacy Commissioner may, by written notice given to the head of the public sector agency, direct the head of the agency to—
- (a) prepare a statement that includes the following—
 - (i) the name and contact details of the agency,
 - (ii) a description of the suspected breach,
 - (iii) the kind of information involved in the suspected breach,
 - (iv) recommendations about the steps a notifiable individual should take in response to the breach,
 - (v) information, specified by the Privacy Commissioner, that relates to the suspected breach, and
 - (b) give a copy of the statement to the Privacy Commissioner.

(3) The Privacy Commissioner may recommend the head of the public sector agency notify notifiable individuals under section 59N(1), or publish a notification under section 59N(2), as if the suspected breach were an eligible data breach.

Note—

See section 59R in relation to the collection, use and disclosure of information by public sector agencies for the purpose of confirming particular details of a notifiable individual.

(4) Before making a direction or recommendation, the Privacy Commissioner must invite the head of the agency to make a submission to the Privacy Commissioner within a specified period.

(5) In deciding whether to make a direction or recommendation, the Privacy Commissioner must have regard to the following—

- (a) advice, if any, given to the Privacy Commissioner by a law enforcement agency,
- (b) a submission, if any, made by the head of the agency within the period specified by the Privacy Commissioner in response to the invitation under subsection (4),
- (c) other matters the Privacy Commissioner considers relevant.

(6) Subsection (5)(a) does not limit the advice to which the Privacy Commissioner may have regard.

(7) If the Privacy Commissioner is aware there are reasonable grounds to believe the access, disclosure or loss that constituted the suspected breach involved 1 or more other public sector agencies, a direction may also require the statement specified in subsection (2)(a) to include the name and contact details of the other agencies.

(8) In this section—

notifiable individual means a person who, if the suspected breach were an eligible data breach—

- (a) would be notified under section 59N(1), or
- (b) may be notified by operation of section 59N(2).

59Z Investigation and monitoring

Without limiting sections 38 and 39, the Privacy Commissioner may investigate, monitor, audit and report on the exercise of a function of 1 or more public sector agencies, including the systems, policies and practices of an agency, that relate to this Part.

59ZA Access to premises to observe systems, policies and procedures

(1) The Privacy Commissioner may, by written notice given to the head of a public sector agency, direct the head of the agency to provide access to premises occupied or used by the agency on the day and at the time stated in the notice for the purpose of monitoring and reporting on the agency's compliance with this Part.

(2) The head of the agency must comply with the notice.

(3) If the Privacy Commissioner gives a direction under subsection (1), the Privacy Commissioner may—

- (a) enter the premises on the day and at the time stated in the notice, and
- (b) observe a demonstration of the agency's data handling systems, policies and procedures, and
- (c) inspect the following—

(i) a document that is part of the agency's data handling policies and procedures,

(ii) another document shown to the Privacy Commissioner by the agency.

(4) The head of the agency or an officer or employee of the agency is not required to comply with an information protection principle, a Health Privacy Principle, a privacy code of practice or a health privacy code of practice if the head of the agency, officer or employee produces a document for inspection by the Privacy Commissioner under this section.

(5) In this section—

premises does not include residential premises.

59ZB Reports

The Privacy Commissioner may make a written report in relation to a function of the Privacy Commissioner under this Part.

59ZC Process applying before publication of particular reports

(1) This section applies if the Privacy Commissioner considers there are grounds for making an adverse comment in a report about—

- (a) a person, or
- (b) a public sector agency, or
- (c) both a person and a public sector agency.

(2) As far as it is practicable before making an adverse comment in a report, the Privacy Commissioner must—

- (a) inform the person or the head of the public sector agency, or both, of the substance of the grounds for the adverse comment, and
- (b) if the grounds for adverse comment are about a person employed or engaged by a public sector agency—inform the public sector agency that employs or engages the person, and
- (c) give the person or the head of the agency informed the opportunity to make a submission to the Privacy Commissioner.

(3) The Privacy Commissioner may do the following—

- (a) publish the report,
- (b) give a copy of the report to the Minister,
- (c) give a copy of the report to the head of the agency.

(4) Before publishing a report that makes an adverse comment about a public sector agency, the Privacy Commissioner must—

- (a) inform the Minister responsible for the agency that the Privacy Commissioner proposes to publish the report, and
- (b) if requested by the Minister—consult the Minister.

Health Records and Information Privacy Act 2002

58 Functions of Privacy Commissioner

The Privacy Commissioner has the following functions—

- (a) to promote the adoption of, and monitor compliance with, the Health Privacy Principles and the provisions of Part 4,
- (b) to prepare and publish guidelines relating to the protection of health information and other privacy matters, and to promote the adoption of such guidelines,
- (c) to provide assistance to organisations in adopting and complying with the Health Privacy Principles and the provisions of Part 4,
- (d) to conduct research, and collect and collate information, about any matter relating to the protection of health information and the privacy of individuals,
- (e) to provide advice on matters relating to the protection of health information and the privacy of individuals,
- (f) to receive, investigate and conciliate complaints about alleged contraventions of the Health Privacy Principles, the provisions of Part 4 or any health privacy code of practice,
- (g) such other functions as are conferred by this Act.

Digital Restart Fund Act 2020

10 Requirement for Minister to obtain advice

Before approving the payment of money under section 9(a), the Minister must obtain and have regard to advice from the Information Commissioner and the Privacy Commissioner as to the effect, if any, that the project may have on—

- (a) access to government information under the *Government Information (Public Access) Act 2009*, and
- (b) the protection of personal information under the *Privacy and Personal Information Protection Act 1998* or health information under the *Health Records and Information Privacy Act 2002*.

Document information

Identifier/Title:	Information and Privacy Advisory Committee Membership and Charter
Business Unit:	Legal Counsel & Regulatory Advice
Author:	IPC
Approver:	Information Commissioner
Date of Effect:	2013
Next Review Date:	September 2025
EDRMS File Reference:	D21/006071/DJ
Key Words:	Information access, privacy, advisory committee

Document History

Version	Date	Reason for amendment
1.0	September 2013	First approved version
2.0	September 2020	Update and CEO review and approval
2.1	March 2021	Inclusion of appointment process and committee members
2.2	September 2022	Update and changes to member remuneration and legislation
2.3	December 2023	Update membership provisions