NSW CIVIL & ADMINISTRATIVE TRIBUNAL
APPEAL PANEL
2025/00329094

PORT STEPHENS COUNCIL
Appellant

TELINA WEBB
Respondent

THE COUNCIL'S SUPPLEMENTARY SUBMISSIONS

1. The Respondent's application for internal review referred substantively to three things:
   a. "Port Stephens Council has repeatedly and consistently uploaded my personal information to the IPC GIPA Tool";
   b. "At no time did I give my permission, nor did I consent, for Council to share my personal information with any other entity";
   c. "At no time did I give my permission, nor did I consent, for Council to share my personal information for a secondary or collateral purpose".[1]
2. The Tribunal below had no jurisdiction to go beyond that and determine complaints about a failure to provide a collection notice (s 10), nor the Council's failure to delete information (or its continuing to hold information) on the GIPA Tool (s 12).

The limits of the Tribunal's jurisdiction

3. The scope of the application for internal review sets the scope of what the Tribunal can inquire into: *CYL v YZA* [2017] NSWCATAP 105, [58].
4. That is because s 55 of the *Privacy Act* only allows a person to apply to the Tribunal for "an administrative review under the *Administrative Decisions Review Act 1997* of the conduct that was the subject of the application under section 53".[2]
5. That provision, in conjunction with s 9(1) of the *Administrative Decisions Review Act 1997*, confers jurisdiction on the Tribunal.

---

[1] Council Evidence Bundle, 100.
[2] Emphasis added.

6. That conferral is not at large. It is confined by the terms of s 55.[3] For the Tribunal to have jurisdiction, it is necessary that "enabling legislation provides that applications may be made to the Tribunal for an administrative review…".

7. Moreover, s 9(2) of the ADR Act states:

> "If enabling legislation makes provision for applications to be made to the Tribunal in respect of an administratively reviewable decision subject to certain conditions, the Tribunal has jurisdiction under the enabling legislation only if those conditions are satisfied."

8. Section 55(1) contains a condition (strictly a precondition) that the Applicant must first have made an application for internal review of the conduct: see *CGG v Commissioner of Police, NSW Police Force* [2017] NSWCATAD 29, [21].

9. Absent an application for internal review of the specific conduct, the condition is not satisfied.

10. The Tribunal only has authority to decide in relation to "the conduct that was the subject of the application under section 53": *Department of Education and Training v GA (No.3)* [2004] NSWADTAP 50, [7].

11. Aside from the plain words, there are sound reasons of construction for that course. The Privacy Act adopts a regime whereby the agency first given an opportunity to review its own conduct: *OD v Department of Education and Training (GD)* [2005] NSWADTAP 74, [13]. That opportunity would be illusory if a party could expand the scope of the reviewable conduct before the Tribunal.

Review of conduct falling within ss 10 and 12 was beyond jurisdiction

12. The critical jurisdictional question is whether the scope of the internal review application, reasonably construed, included the conduct now complained of: *KO and KP v Commissioner of Police, New South Wales Police* (GD) [2005] NSWADTAP 56, [13].

13. "There needs to be material that can be understood by the agency, fairly read, as connecting the action or circumstances of concern to a [information protection] principle, whether or not the principle itself is actually specified by the application": *CYL v YZA* [2017] NSWCATAP 105, [58].

---

[3] Critically, the underlined words in [4] above.

14. Across the three matters raised in the internal review application,[4] the Respondent sought internal review of:

    a. the uploading or the sharing of information;

    b. to a third party;

    c. for a collateral purpose;

    d. without her consent.

15. No part of that complaint concerned the failure to delete information or Council continuing to hold it (the s 12 conduct).

16. Equally, there was no complaint about a failure to provide what the Tribunal referred to below as a "collection notice" or notify of any or all the matters in s 10. The complaint pertained to the sharing of information and its purpose; it did not concern not being notified about it.

17. Both the conduct the subject of ss 10 and 12 fell outside the scope of the internal review application. The Tribunal below had no jurisdiction to review it.

18. It should not matter that the point was not taken below.

19. The Tribunal is a creature of statute. The parties cannot confer jurisdiction by agreement: *McLeish v Faure* (1979) 40 FLR 462, 467; *R v Moodie; Ex parte Mithen* (1977) 17 ALR 219, 225.

20. The issue of jurisdiction also cannot be disregarded on appeal: *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379, 393 (Dawson J). The Tribunal below exceeded its jurisdiction. That should be corrected.

21. The appeal should be upheld. As both the s 10 and s 12 complaints are beyond jurisdiction, there is no utility in a remittal. The Respondent's application for review should be dismissed.

23 February 2026

Matthew Harker
Greenway Chambers

[4] [1] above.