



Submissions of the Privacy Commissioner

Case Number: 2025/00329094
Division: Administrative and Equal Opportunity
Appellant: Port Stephen Council
Respondent: Telina Webb

A. INTRODUCTION

1. The Appellant seeks an internal appeal of the decision made by the NSW Civil and Administrative Tribunal's (Tribunal) on 1 August 2025 in *Webb v Port Stephens Council* [2025] NSWCATAD 191.
2. The Privacy Commissioner appeared in proceedings before the Tribunal under section 55(6) of the *Privacy and Personal Information Protection Act 1998* (NSW) (PIIP Act).¹ These written submissions are filed by the Privacy Commissioner in accordance with the Tribunal's orders made on 25 February 2026.

B. SCOPE OF SUBMISSION

3. The Privacy Commissioner has responsibility to champion and promote the privacy rights of the people of NSW in relation to both personal and health information.
4. These submissions address general principles regarding the scope of the Tribunal's jurisdiction as it relates to the nature of the conduct raised in an internal review application.

C. SUBMISSIONS ON JURISDICTION

5. In the Tribunal below, the Appellant made submissions as to why the Appellant's conduct, in connection with an application for information under the *Government Information (Public Access) Act 2009* (GIPA Application) that the Respondent made to it on 8 May 2024, did not contravene sections 10 and 12 of the PIPP Act (Information Protection Principles 3 and 5) and sought orders from the Tribunal that the Appellant

¹ The status of the Privacy Commissioner under section 55(6) was enunciated in *Ormonde v NSW National Parks & Wildlife Service (No 2)* [2004] NSWADT 253, [12] – [13].

did not engage in conduct that breached any provision of the PPIP Act. Now that the Tribunal has made findings against the Appellant, the Appellant contends, for the first time, that the Tribunal never had jurisdiction to make those findings with respect to sections 10 and 12 in the first place.

6. In determining the scope of its jurisdiction to review alleged contraventions of the PPIP Act, a Tribunal must consider the conduct that was at issue in the application for internal review under section 53 of the PPIP Act. The parameters of the Tribunal's jurisdiction to administratively review a public sector agency's possible contravention of IPPs under the PPIP Act are set by the Tribunal's reasonable construction of the conduct at issue in the internal review application.² In this context, "*conduct*" refers to the action by the agency or circumstances involving the agency that might amount to a possible contravention of an information protection principle under the PPIP Act.³
7. "The PPIP Act is beneficial legislation, and should be interpreted broadly so that people can obtain the maximum benefit from the rights they are afforded."⁴ The Tribunal may have jurisdiction to administratively review a public sector agency's decision on an internal review application regardless of whether the applicant for internal review accurately identifies the relevant information protection principle, code or public register provision.⁵ That is, the application must only raise "*conduct on the part of the agency which might reasonably be able to be seen to have something to do with the information protection principles and their application*"⁶ and be "*fairly read, as connecting the action or circumstances of concern to a principle, whether or not the principle itself is actually specified by the application*"⁷ for the conduct to then be subject to administrative review.
8. In the circumstances of the instant proceeding, the only "*conduct*" of the Appellant at issue in the Respondent's application for internal appeal was the allegation that the Appellant *uploaded* and *shared* the Respondent's personal information. Consistent

² *NZ v Department of Housing* [2005] NSWADT 234, [10]; *CYL v YZA* [2017] NSWCATAP 105, [58]. See section 55(1) of the PPIP Act, which limits the grounds upon which an applicant may seek review in the Tribunal to "*the conduct that was the subject of the application under section 53*" and section 52(2) of the PPIP Act, which provides that 'conduct' includes 'alleged conduct'.

³ *CYL v YZA* [2017] NSWCATAP 105, [58].

⁴ *GA & Ors v Department of Education & Training and NSW Police* [2004] (GD) [2004] NSWADTAP 18 at [48].

⁵ *GL v Department of Education & Training* [2003] NSWADT 166, [26]; *JD v Department of Health* [2004] NSWADT 7, [26] and *GA v NSW Police* (GD) [2005] NSWADTAP 38, [15].

⁶ *NZ v Department of Housing* [2005] NSWADT 234, [10].

⁷ *CYL v YZA* [2017] NSWCATAP 105, [58].

with the submissions the Privacy Commissioner made to the Tribunal below, this conduct enlivens only sections 17 and 18 of the PPIP Act (IPPs 10 and 11).

9. The judgment of The Tribunal below does not express the Tribunal's view as to the reasonable construction of the scope of the conduct at issue in the application for internal review. To the extent the Tribunal misapprehended that scope, that misapprehension may be attributable to the submissions of the Appellant that were before it, which engaged with the Respondent's submissions regarding contraventions of sections 10 and 12 of the PIPP Act. Nevertheless, the Privacy Commissioner submits that on the face of the Appellant's internal review application it was not open to the Tribunal to find that the internal review application made allegations surrounding contraventions of sections 10 or 12, as there is no reasonable nexus between the conduct that was the subject of the Respondent's application for internal review and sections 10 and 12 of the PIPP Act. In those circumstances, and in the interests of a just, quick and cheap resolution of these proceedings, it is open to the Appeal Panel to now hold that the Tribunal below did not have jurisdiction to find contraventions of sections 10 and 12 of the PIPP Act.⁸

10. The Privacy Commissioner acknowledges the unfortunate circumstances of these proceedings, caused by the Appellant's failure to raise the jurisdictional issue it now seeks to rely upon before the Tribunal below. Despite that failure, the scope of the Tribunal's jurisdiction cannot be expanded through implicit agreement or the actions of the parties. See *AQK v Commissioner of Police, NSW Police Force* [2014] NSWCATAD 55 at [10] and [12], and in particular at [12]:

"...While the Tribunal welcomes the Respondent's practicality ... a party is not able to confer jurisdiction on the Tribunal in the interests of expediency, no matter how logical that course may seem to the parties, and indeed to the Tribunal".⁹

See also *Agrinova Pty Ltd v Chief Commissioner of State Revenue* [2025] NSWCATAP 86 at [25]:

⁸ Section 3(d), *Civil and Administrative Tribunal Act 2013*

⁹ More recently applied in *DQF v Secretary, Department of Communities and Justice* [2021] NSWCATAD 351, [30].

“The parties cannot consent to jurisdiction where there is none: Commissioner of Taxes v Tangentyere Council Inc (1992) 2 NTLR 76 at 79; Thomson Australian Holdings Pty Ltd v Trade Practices Commission (1981) 148 CLR 150 at 163; [1981] HCA 48.”

11. The PPIP Act requires that the “agency first, be given an opportunity to review the conduct of concern” as “it would be wrong to allow proceedings in the Tribunal to be changed in scope so as to allow the applicant to put in issue new items of conduct or new bodies of information if they were not able to be identified (by the agency considering the complaint reasonably) at the initial stage.”¹⁰ Limiting the Tribunal’s jurisdiction to the conduct at issue in the application for internal review ensures that the Tribunal does not make findings against the agency in which the agency did not, first, have the opportunity to consider. To do so would risk the Tribunal making findings on an incomplete evidentiary record and the Tribunal being burdened with “ever expanding or amended applications for review that bore no or little resemblance to the original application for an internal review”.¹¹

D. CONCLUSION

12. In circumstances where the parties made submissions to the Tribunal as to the application of sections 10 and 12 of the PIPP Act without raising any objection as to the Tribunal's jurisdiction, it is understandable that Tribunal made findings as to the application of those sections. Nevertheless, in circumstances where, as here, there is no reasonable nexus between the conduct that was the subject of the Respondent’s application for internal review and sections 10 and 12 of the PIPP Act, the Tribunal lacked jurisdiction to make findings as to any breach of those sections.

¹⁰ *OD v Department of Education and Training (GD)* [2005] NSWADTAP 74, [13].

¹¹ *GA & Ors v Department of Education & Training and NSW Police* [2004] NSWADT 2, [22] and recently applied in *EJX v University of Newcastle* [2023] NSWCATAD 228, [49] and *EJE v Registrar of Births Deaths & Marriages* [2023] NSWCATAD 48, [29].



Sonia Minutillo

Privacy Commissioner

Signed in my capacity as a solicitor

employed in the Information and Privacy Commission NSW

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