

Confidential

14 October 2025

Our ref: PSC25001

NSW Civil and Administrative Tribunal
Level 10, John Maddison Tower
86-90 Goulburn Street
SYDNEY NSW 2000

Hand

Dear Registrar,

**Port Stephens Council v Telina Webb | Appeal of NCAT Proceedings
no. 2025/0011655 | Privacy and Personal Information Protection
Act 1998**

- 1 We **enclose**, for filing in accordance with Order 3 of the Orders made by the Tribunal on 12 September 2025:
 - 1.1 Appellant's bundle of evidence (including transcript of original hearing); and
 - 1.2 Appellant's written submissions in support of the appeal.
- 2 If you would like to discuss this matter further, please contact Nathan Sloan.

Yours Sincerely,



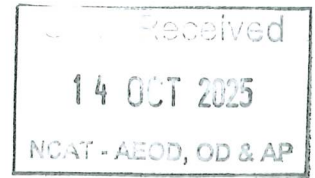
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NSW CIVIL & ADMINISTRATIVE TRIBUNAL
APPEAL PANEL
2025/00329094

PORT STEPHENS COUNCIL
Appellant

TELINA WEBB
Respondent

THE COUNCIL'S SUBMISSIONS ON THE APPEAL

What this appeal is about

1. Over the last 15 years, the Respondent, a former resident of Port Stephens, lodged over 140 applications for access to information with the Council.¹
2. To assist in managing those applications (and applications from others), the Council uploaded information into a program promoted by the Information and Privacy Commission (the **GIPA Tool**).
3. In October 2024, the Respondent became aware that her personal information had been uploaded onto, and remained on, the GIPA Tool. She sought a review under the *Privacy and Personal Information Protection Act 1998* (**Privacy Act**).
4. The Tribunal below held that the Council breached two information protection principles (**IPP**) in the Privacy Act:
 - a. IPP 3 (s 10) for failing to provide a collection notice; and
 - b. IPP 5 (s 12) for failing to delete information from the GIPA Tool when it was no longer necessary to keep the information on that tool.

¹ *Port Stephens Council v Webb* [2021] NSWCATAD 180, [37]; see since that decision *Webb v Port Stephens Council* [2025] NSWCATAD 30 and *Webb v Port Stephens Council* [2023] NSWCATAP 133.

5. Each finding was affected by error:
 - a. The Tribunal below misconstrued s 12(a) of the Privacy Act to the effect that the keeping of information in one program/location can be a breach even where the same information is legitimately held elsewhere (Ground 4).
 - b. In determining that the holding of the information in the GIPA Tool was no longer necessary, the Tribunal not only misapplied the *State Records Act 1998 (SR Act)* (Ground 5), but its conclusion that the SR Act was subject to the Privacy Act was contrary to the plain words of s 21(7) of the former (Ground 6).
 - c. Both findings hinged upon what the Tribunal referred to as an absence of evidence or submissions to contradict the allegations. That reflected either:
 - i. the placing of a persuasive onus on the Council in proceedings where there is no onus of proof (Ground 1); or
 - ii. the drawing of an inference pursuant to *Jones v Dunkel* that was not already available (Ground 2), nor articulated in the reasons (Ground 3).
6. The Tribunal went on to hold that there were systemic issues at the Council. It did so without such allegations arising on either party's case, nor the Tribunal identifying to the Council that it was considering making findings about systemic issues. That was a denial of procedural fairness (Ground 7).
7. Having found two breaches of the Privacy Act, the Tribunal awarded the Respondent \$3,000 in compensation. That order:
 - a. was for distress caused to the Respondent by having to bring the proceedings (Ground 9),² which concerned conduct that went beyond (but included) that which was found in breach of the Privacy Act (Ground 8);³ and
 - b. included an amount of \$500 for costs despite there being no power to award costs as compensation (Ground 10).

² Judgment (J) [110]

³ J [108].

Ground 4: Did the Tribunal, in applying s 12(a) of the GIPA Act, ask itself the wrong question of whether it was necessary for the Council to keep the subject information in a particular tool or program, rather than simply whether it was necessary for the Council to keep the information?

J [88]

8. The critical error made by the Tribunal is encapsulated in Ground 4.
9. The Tribunal below found that there was a breach of the provision where information was held on a particular program (the GIPA Tool) for longer than was necessary for it to be held on that program.⁴
10. That was in circumstances where the Tribunal had evidence before it,⁵ and recorded in its decision,⁶ that Council also held the information elsewhere.
11. The Tribunal did not ask itself whether the holding of the information in those other locations, or generally, was for longer than was necessary. It simply considered whether it was necessary for Council to continue to hold the information on the GIPA tool.
12. That was to ask the wrong question.
13. The Tribunal should have asked simply whether it was necessary for the Council to continue to hold the information.
14. Section 12(a) of the Privacy Act provides that:

“A public sector agency that holds personal information must ensure—

 - (a) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, ...”
15. On its plain terms, the section is concerned with the holding of information by an agency *generally*.
16. It is not in terms concerned with:
 - a. where information is kept; and
 - b. whether it is kept in a single location for longer than it is necessary for it to be kept in that location.

⁴ J [88].

⁵ Transcript p 28 L1242-1250, and 39 L1284-1287.

⁶ J [88].

17. That is reinforced by the immediate statutory context. Subsections 12(c) and (d) require an agency to ensure, again in general terms:
 - “(c) that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and
 - (d) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.”
18. Those provisions impose an obligation on the agency to ensure that information is protected, and unauthorised use prevented, but not in any one particular way. An agency has a broad discretion to choose where it puts the information that it holds so long as it adopts reasonable security safeguards.
19. In short, an agency can hold the information for as long as it is necessary, in whatever location it pleases, so long as it takes such reasonable safeguards, and (where information is given to another) does everything reasonably within its power to prevent unauthorised use or disclosure.
20. The approach taken by the Tribunal impinges on that broad discretion. It introduces a limitation that is not contained in the plain words.
21. Instead, it requires the reading of the underlined words into the provision:

“that the information is kept in any one particular form or location for no longer than is necessary for the purposes for which the information may lawfully be used, ...”
22. That is impermissible: *Taylor v The Owners – Strata Plan No 11564* (2014) 253 CLR 531, [39].

Ground 1: Did the Tribunal incorrectly approach the question of whether the Council breached information protection principle (IPP) 3 and IPP 5 on the basis that the Council bore an onus of proof?

J [79] and [88]

23. The Tribunal’s ultimate reasoning for finding a breach of IPP 3 and IPP 5 was:
 - a. “In the absence of any submissions made to or evidence of the Respondent placed before the Tribunal to the contrary I am satisfied, based on the material before the

Tribunal, that the Conduct of Concern (and thus the Respondent) breached IPP 3”.⁷

b. “In the absence of any substantive submissions or compelling evidence from the Respondent on either: (a) how specifically the SRA prevents it from deleting the Applicant Personal Information from the GIPA Tool; or (b) otherwise, why it is still necessary for the Respondent to keep the Applicant Personal Information (which is presumably a duplicate of that personal information already held by the Respondent elsewhere) in the GIPA Tool for the purpose for which it may lawfully be used, I am satisfied that the keeping of the Applicant Personal Information in the GIPA Tool in these circumstances is in breach of IPPs 5(a) and (b)”.⁸

24. Both reflect a line of reasoning that because the Council had not put forward persuasive evidence or submissions on a particular point, the Tribunal was satisfied that there was a breach.
25. That in effect placed an onus on the Council to disprove the Respondent's case.
26. There is no burden of proof in administrative review proceedings: *McDonald v Director-General of Social Security* (1984) 1 FCR 354, 358.
27. Instead, if there is uncertainty in the determination of a fact in issue, it is to be decided against the applicant: *KP v Narrandera Shire Council* (GD) [2011] NSWADTAP 15, [26]-[31].
28. The Tribunal inverted that approach.
29. That inversion was central to the ultimate findings at J[79] and [88]. It was a vitiating error in respect of both IPP 3 and 5.

Ground 2: did the Tribunal, in finding that the Council breached IPP 3 and IPP 5, draw an inference in accordance with the principles in *Jones v Dunkel* that was not available, or that it was otherwise not entitled to draw?

J [52], [79] and [88]

30. The Tribunal's inversion of the onus appears to have been drawn from several statements of principle earlier in its reasons.

⁷ J [79].

⁸ J [88].

31. Those included:
- a. The Applicant bore the burden of “Adducing some evidence to suggest that appropriate measures were not taken to protect and/or delete their personal information”;⁹
 - b. “this burden is not high because the knowledge of ... if the personal information in question has been deleted or is still held by the agency... and, if so, why it is being held are primarily known by the Respondent”;¹⁰
 - c. “Common sense dictates that the party which has relevant information in their possession should put that information before the Tribunal”;¹¹
 - d. “Further, if the facts are mostly within the knowledge of one party to an issue, a failure by that party to produce evidence as to those facts may lead to an unfavourable inference being drawn by the Tribunal”.¹²
32. The last two statements loosely reflect the principles in *Blatch v Archer* [1774] EngR 2 and *Jones v Dunkel* (1959) 101 CLR 298.¹³
33. Neither, however, can make up for an absence of evidence.
34. Merely because Council has not adduced persuasive evidence does not mean that a determinative inference should be drawn against it. “The reasoning cannot make up for absence of proof: before there can be greater confidence in an inference unfavourable to a party, the inference must already be available on the evidence”: *Morley v Australian Securities and Investments Commission* (2010) 274 ALR 205; [2010] NSWCA 331, [634].
35. The Tribunal’s reasons at [79] and [88] beg the question of what inference was drawn by the Tribunal. That is relevant to Ground 3 below.
36. In respect of IPP 5, the Tribunal below had before it evidence that:
- a. Council had ceased using the GIPA tool in 2022;¹⁴
 - b. Council retained information because of its construction of its obligations under the SR Act;¹⁵

⁹ J [52].

¹⁰ J [52].

¹¹ J [52].

¹² J [52].

¹³ J [52].

¹⁴ Affidavit of Holly Jamadar dated 13 June 2025 [11].

¹⁵ Transcript, p 38 L1247-1249.

- c. Once a record is deleted from the GIPA Tool, it was non-retrievable.¹⁶
37. That evidence, considered together (particularly (b) and (c)), does not give rise to an inference that there was no need for Council to continue to hold the information.
38. To the extent the Tribunal drew an inference, it was one which was not available.
39. That is an error of law: *SMA Motors Pty Ltd (t/as Autos Auctions) v Smith* [2022] NSWCATAP 282, [43]; *Savoy v Insurance and Care NSW* [2020] NSWSC 133, [64].

Ground 3: Did the Tribunal fail to give adequate reasons for its finding of a breach of IPP 3 and IPP 5?

J [52], [74]-[79], [84]-[89]

40. A failure to give adequate reasons is an error of law: *Campbelltown City Council v Vegan* [2006] NSWCA 284, [130]
41. In considering a ground of a failure to give adequate reasons, the Appeal Panel's function is not to determine the optimal level of detail required but rather the minimum acceptable standard: *NSW Land and Housing Corporation v Orr* (2019) 100 NSWLR 578; [2019] NSWCA 231,[66].
42. The primary obligation to give reasons is to address the principal contested issues: *Segal v Waverley Council* (2005) 64 NSWLR 177; [2005] NSWCA 310, [99(a)(b)].
43. Adequate reasons typically require disclosure of:
- a. the decision maker's conclusion on a significant factual or evidential dispute that is a necessary step to the final conclusion: *DL v The Queen* (2018) 266 CLR 1, [33];
 - b. the decision maker's reasoning on critical points in contest between the parties: *Pollard v RRR Corporation Pty Ltd* [2009] NSWCA 110, at [58] (**Pollard**);
 - c. where there is documentary material arguably supporting a party's case, that material must be considered in the judge's reasons in a satisfactory way: *Pollard*, at [63].

¹⁶ Transcript, p 38 L1249-1250.

44. For each of the findings of a breach of an information protection principle, the reasoning exposed in the decision is limited. It equates to no 'submission or evidence, therefore I am satisfied'.¹⁷
45. That does not set out the critical points necessary to find a breach. In the case of Information Protection Principle 3, the steps necessary to find a breach are to ask the questions:
 - a. What steps did the Council take?
 - b. Were those steps reasonable in the circumstances?
46. In respect of IPP 5, the steps are greater:
 - a. How long was the information kept?
 - b. How long was it necessary to keep the information?
 - c. Was the information kept for longer than was necessary?
47. The reasons do not disclose the Tribunal's determination of each of those issues.
48. To the extent that the Tribunal's decision appears to have been based upon the drawing of inferences, the Tribunal failed to identify:
 - a. what inferences it found were available on the evidence; and
 - b. how it was applying the *Jones v Dunkel* principle in respect of those inferences.
49. Each of those matters were critical components of the reasoning that the Tribunal was required to carry out, and in respect of [47] appears to have carried out.
50. The reasoning on those critical matters was not disclosed. That is a failure to provide adequate reasons for a breach of both IPP 3 and IPP 5.

¹⁷ See [23] above.

Ground 5: Did the Tribunal misconstrue the Council's obligations under the *State Records Act 1998* (SR Act) in circumstances where it failed to find:

- a. **that the disposal of a State Record is a criminal offence: s 21(1)(a); and**
- b. **the only relevant exception to that is that records may be disposed after a minimum of 5 years?**

J [85]-[88]

51. The SR Act was relied upon by the Council in evidence,¹⁸ and oral submissions,¹⁹ as the reason why it was necessary for the Council to continue to hold the Respondent's personal information on the GIPA Tool.
52. The Tribunal was not satisfied how specifically the SR Act prevented the Council from deleting the Respondent's personal information.²⁰ That involved a misapplication of the SR Act.
53. The SR Act prohibits the deletion of State records. Section 21(1)(a) of that Act states:
“ (1) A person must not—
(a) abandon or dispose of a State record
...
Maximum penalty—100 penalty units.”
54. A State record is defined relevantly as a
“... record made or received by a person ...
(a) in the course of exercising official functions in a public office, or
(b) for a purpose of a public office, or
(c) for the use of a public office.”
55. A Council is a public office.²¹
56. The Tribunal below held that the information was used for the very purpose for which it was collected.²² That is, for processing the Respondent's access applications.²³

¹⁸ Transcript p38 L1247-1250.

¹⁹ Transcript, pp 56-57.

²⁰ J[88].

²¹ SR Act, s 3.

²² J[90].

²³ J[90].

57. The information was therefore a State record. It attracted the prohibition in s 21(1)(a).
58. There are limited exceptions to that prohibition. The relevant one, s 21(2)(c), permits destruction with the authority of the State Records Authority (the **Authority**).
59. The Authority has relevantly authorised the destruction of records:
 - a. “relating to recurring or protracted requests for or decisions regarding access to or alteration of information under relevant legislation, e.g. Freedom of Information (FOI), GIPAA...”
 - b. a minimum of 10 years after the action completed.²⁴
60. The respondent had submitted over 140 applications for access to information with the Council over many years.²⁵ That is recurring and protracted. The applications continued into 2024.²⁶
61. Council was prohibited from deleting the Respondent’s information. The Tribunal erred in not holding otherwise.

Ground 6: Did the Tribunal err in holding that IPP 5 prevailed over the Council’s obligations under the SR Act in circumstances where s 21(7) of the SR Act has the opposite effect?

J [85]-[87]

62. The Tribunal below dealt with the conflict between the Privacy Act and the SR Act by referring to a decision of the Appeal Panel in *NSW Self Insurance Corporation v EEH* [2023] NSWCATAP 181.²⁷
63. The Appeal Panel doubted that the SR Act took precedence over the Privacy Act, because the SR Act was enacted first.²⁸ It did not determine the question.
64. The SR Act was enacted on 2 June 1998 and came into force on 1 January 1999.²⁹
65. The Privacy Act was enacted on 30 November 1998 but came into force on 1 July 2000.³⁰

²⁴ State Records Authority NSW, General Retention and Disposal Authority Administrative Records GA28 (6 March 2025).

²⁵ See footnote 1.

²⁶ *Webb v Port Stephens Council* [2025] NSWCATAD 30.

²⁷ J[87]

²⁸ *NSW Self Insurance Corporation v EEH* [2023] NSWCATAP 181, [88].

²⁹ *NSW Self Insurance Corporation v EEH* [2023] NSWCATAP 181, [88].

³⁰ *NSW Self Insurance Corporation v EEH* [2023] NSWCATAP 181, [88].

66. The appellant in that case relied upon s 21(6) of the SR Act:
- (6) This section prevails over a provision of any other Act enacted before the commencement of this section.
67. The Appeal Panel does not appear to have been taken to the next subsection, s 21(7):
- “(7) An Act enacted after the commencement of this section is not to be interpreted as prevailing over or otherwise altering the effect or operation of this section except in so far as that Act provides expressly for that Act to have effect despite this section.”
68. Read together, both express a clear legislative intention that irrespective of whether a statute commenced before or after the SR Act, the SR Act will take precedence.
69. The Privacy Act does not contain a provision to the contrary.
70. There is no clearly apparent contrariety,³¹ nor irreconcilable conflict,³² that could produce an implied repeal of s 21(a) of the SR Act. The language of “necessary” in s 12(a) of the Privacy Act is sufficient to accommodate compliance with the SR Act.
71. What was necessary needed it be determined in the context of the legal obligation not to dispose of the record.
72. To the extent the Tribunal dealt with this by determining that IPP 5 took precedence over the SR Act, it was in error.

Ground 7: Did the Tribunal fail to afford the Council procedural fairness?

J [89], [90], [99]-[106]

73. The Tribunal made serious adverse findings about systemic issues at the Council.³³
74. There was no submission to that effect in the Respondent’s written submissions.³⁴ Nor was it raised in oral submissions.³⁵ The Respondent’s relevant submissions below were focussed on the breaches concerning her, not other persons.³⁶
75. The identification of systemic issues emanated from the Tribunal.

³¹ *Universal Property Group Pty Ltd v Blacktown City Council* [2020] NSWCA 106, [8].

³² *Eaton v Industrial Relations Commission of New South Wales* [2012] NSWCA 30, [161].

³³ *J* [89], [90], [99]-[106].

³⁴ The Respondent made some complaints about the conduct of Council officers in respect of GIPA applications and proceedings (Webb submissions (**WS**), [61]-[72], none of which were referred to by the Tribunal below.

³⁵ Transcript, p 62-65.

³⁶ *WS* [116]-[178].

76. The Council was not given any forewarning by the Tribunal that adverse findings about systemic issues could be made; nor that the Tribunal was looking into such issues.
77. The first systemic issue identified at J[106] was the Council's argument that it did not collect the Respondent's personal information. Putting to one side whether a party running a technical legal argument about the meaning of collection identifies a systemic problem, the exchange between the Tribunal below and Council's solicitor on the point was limited:
- a. the Tribunal identified that it was struggling with the argument that the provision of information was not solicited when Council has a form requiring the input of certain information with a GIPA application;³⁷
 - b. Council's solicitor clarified the position;³⁸
 - c. the Tribunal acknowledged the submission.³⁹
78. The Tribunal did not then, nor afterwards, indicate that, if it decided the point against the Council, it might regard it as a systemic problem.
79. A similar exchange occurred in respect of what the Tribunal identified as another systemic issue, being the failure to consider when to delete information from the GIPA Tool.⁴⁰
80. The Tribunal was not put on notice by the Respondent's submissions, nor by the Tribunal, that particular issues could be held to be systemic.
81. That is a failure to afford procedural fairness. There will be a denial of procedural fairness:
- a. where a court determines a matter on a basis that was not in issue or argued in the proceedings; or
 - b. where information is used by a decision-maker in a way that could not reasonably be expected by one party and that party is not given an opportunity to respond to that use.

Billyard Ave Developments Pty Limited v The Council of the City of Sydney [2025] NSWLEC 22, [76].

³⁷ Transcript, p 21-22 L682-5.

³⁸ Transcript, p 22 L686-702.

³⁹ Transcript, p 22 L689, 695, 697, 700, 702.

⁴⁰ J[106]; see Transcript, p 56-8 L1861-1919.

82. Having formed a view that there might have been systemic issues, it was incumbent upon the Tribunal below to give the Council an opportunity to respond.
83. In not doing so, it failed to afford the Council procedural fairness.
84. That deprived the Council of an opportunity to make submissions or adduce evidence of the precautions and steps it takes more generally. It can be inferred that the Tribunal would have approached that material with an open mind such that the Council was denied a realistic possibility of a different outcome: *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321, [15].
85. Not only was the error material in that sense, but it affects the final orders made below. The Tribunal went on to conclude that “orders relating to systemic issues and ancillary orders are appropriate”.⁴¹

Ground 8: In assessing damages, did the Tribunal ask itself the wrong question of whether the Conduct of Concern (which included conduct that was found not to be a breach of an IPP) caused the alleged damage, as opposed to that conduct which was found to be a breach of an IPP?

J[108]-[109]

86. The Tribunal below awarded the Respondent \$2,500 in respect of distress.
87. Section 55(2)(a) of the Privacy Act confers power on the Tribunal to make:
“an order requiring the public sector agency to pay to the applicant damages not exceeding \$40,000 by way of compensation for any loss or damage suffered because of the conduct,”
88. The language confines the nature and circumstances of an award:
- a. the award is of ‘damages’;
 - b. damages are by way of compensation for loss or damage;
 - c. such loss or damage must be suffered “because of” the conduct.
89. The reference to conduct can only be to the conduct found to be in breach of the Privacy Act. The issue of the appropriate remedy in s 55(2) only arises once there is a finding of breach: *GR v Department of Housing* [2004] NSWADTAP 26, [37], [40], [41].

⁴¹ J[106].

90. The question required by s 55(1)(a) is whether the contravention of the Privacy Act caused loss or damage.
91. That was not the question asked by the Tribunal below. Instead, the Tribunal asked itself whether the alleged conduct, including (but not only) that for which there was a breach of the Privacy Act, caused the Respondent distress.
92. That was reflected in:
- a. the Tribunal's finding that the distress was caused by "the Conduct of Concern and the Respondent's breaches of IPPs 3 and 5";⁴²
 - b. its subsequent reference in assessing quantum to the damage "caused by the Conduct of Concern".⁴³
93. The Conduct of Concern was broader than the breach. It included "the disclosing, using and continuing to hold certain of the Applicant's personal information in order for the Respondent to use a tool".⁴⁴ That comprised allegations of breaches of IPPs 10 and 11,⁴⁵ as well as another part of IPP 5.⁴⁶
94. The Council was found not to have breached those other parts.⁴⁷ They nonetheless figured in the Tribunal's assessment of damages.
95. The Tribunal did not attempt to distinguish in its reasons between what parts of the Conduct of Concern caused the distress. It simply asked the question globally. That was the wrong question.

Ground 9: In assessing damages, did the Tribunal ask itself the wrong question of whether the bringing of the proceedings caused the alleged damage, as opposed to that conduct which was found to be a breach of an IPP?

J [110]

96. The Tribunal found that Ms Webb "was caused distress and aggravation due to having to make the External Review Application".⁴⁸ That misstates the issue under s 55.

⁴² J [108] (emphasis added).

⁴³ J[109].

⁴⁴ J[2].

⁴⁵ J[45].

⁴⁶ J[80].

⁴⁷ J[83], [90]-[91], [96]-[97].

⁴⁸ J [110].

97. The compensation must be for damage “because of” the infringing conduct, not the proceedings.
98. The latter suffers from the problem of remoteness in circumstances where it is the consequence of a voluntary act to commence proceedings: *Hunt Leather Pty Ltd v Transport for NSW (No 4)* [2024] NSWSC 140, [102].
99. Remoteness being inextricably tied to causation, the Council was denied the realistic possibility of a different outcome. That vitiates the award.

Ground 10: Did the Tribunal misconstrue the meaning of ‘damages’ in s 55(2)(a) of the PPIP Act to include the costs of bringing the proceedings?

J [108], [110]

100. The award of damages includes a \$500 component representing the Respondent’s expenses to have the Respondent comply with its existing privacy obligations”.⁴⁹ Those expenses were described as “filing fees, travel, printing and copying costs and the like”.⁵⁰
101. They are the Respondent’s legal costs: *Cachia v Hanes* (1994) 179 CLR 403, [10]-[17].
102. It well established that a party cannot claim its costs of proceedings as damages in the very action in which those costs were incurred: *Cockburn v Edwards* (1881) 18 Ch D 449, 459, and 462; *Quartz Hill Consolidated Gold Mining Co v Eyre* (1883) 11 QBD 674; *Gray v Sirtex Medical Limited* (2011) 276 ALR 267; [2011] FCAFC 40, [15].
103. There is nothing in the Privacy Act to suggest that the legislature determined to depart from the common law.
104. The statute points to the contrary result.
105. Section 55 of the Privacy Act confers jurisdiction on the Tribunal. It does so by stating that a person may apply for a review under the *Administrative Decisions Review Act 1997*.

⁴⁹ J [110].

⁵⁰ J [108].

106. At the time of its enactment under that Act,⁵¹ and under that Act's successor,⁵² the administrative review jurisdiction of the relevant Tribunal was a no-costs one.
107. "The legislature having determined that costs shall not be recoverable in proceedings of the character now in question, it would be contrary to the principles which these cases exemplify if they were included in the damages and thus were made recoverable by a side wind": *Anderson v Bowles* (1951) 84 CLR 310, 323.
108. The award of \$500 is untenable.

Disposition

109. The appeal should be upheld.
110. If the Council is correct in respect of Ground 4, there is no utility in the remittal of the claim regarding IPP 5. The entire premise of the Respondent's claim was the holding of information on the GIPA Tool.
111. The issue of a breach of IPP 3 is a confined matter about the issuing of a notice. In the interests of the just, quick, and cheap resolution of the proceedings, the Council seeks that issue be determined by the Appeal Panel.
112. If the matter is to be remitted, it should only be in respect of IPP 3 and to a differently constituted Tribunal.

13 October 2025



Matthew Harker
Greenway Chambers

⁵¹ *Administrative Decisions Tribunal Act 1997*, s 88.

⁵² *Civil and Administrative Tribunal Act 2013*, s 60.