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NSW Department of Communities and Justice
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To whom it may concern

**DRAFT PRIVACY AND PERSONAL INFORMATION PROTECTION AMENDMENT
BILL 2021 – PUBLIC CONSULTATION**

I refer to the current public consultation period in relation to proposed changes to the *Privacy and Personal Information Protection Act 1998* (PIIP Act). Thank you for this opportunity.

Hunter Water Corporation (Hunter Water) is a statutory State owned corporation (SOC) established by the *Hunter Water Act 1991* and under Part 3 of the *State Owned Corporations Act 1989*. It provides water and wastewater services to a population of approximately 600,000 across Greater Newcastle and the Lower Hunter.

Currently, Hunter Water voluntarily complies with the PIIP Act and, in general, welcomes the introduction of provisions to include SOCs in the operation of the PIIP Act. Hunter Water is also generally in support of a mandatory notifiable data breach scheme, particularly one that aligns closely with the Commonwealth scheme, since Hunter Water is caught by that scheme as a Tax File Number recipient, and so welcomes the reduction of any duplication.

We wish to take this opportunity to make some comments about the way in which the draft bill amends specific sections of the PIIP Act. Those comments are outlined in the **enclosed** table.

Should you require any clarification on the matters outlined below, please contact [REDACTED] Legal Counsel (Strategic Projects) at [REDACTED].

Yours faithfully

[REDACTED]
[REDACTED]

TABLE: SCHEDULE 1 Amendment of the Privacy and Personal Information Protection Act 1998 No 133

Section	Comment
Generally	Each section should initially refer to a “public sector agency” and thereafter may refer to an “agency”. The PPIP Act has taken this approach. However, several sections in the draft bill from the outset refer to an “agency”, which is an undefined term, or inconsistently use the terms. This should be corrected. The following sections have been identified: 59(c)(3)(a), 59F(2)(a), (b) and (c), 59O(a)(ii), 59ZA(1)(a).
3 Definitions	Cyber incident could be defined. Cyber security could be defined.
20(3)	Sections 8 to 11 should not apply to SOCs until the date when they are required to comply with the IPPs, rather than the date of the commencement of Part 2, as stated in this subsection. Otherwise section 20(3) would make sections 8 to 11 retrospective in relation to SOCs.
33(2)(c1)	<p>Privacy Management Plans (PMPs) are already lengthy documents and to add another entire topic to them, which is complex, will make them unwieldy and less likely to be read.</p> <p>There is presently no requirement for a privacy policy, but there is proposed to be a requirement for a data breach policy. This is inconsistent.</p> <p>It may be better to instead have a requirement for a PMP and a requirement for a Data Breach Management Plan (DBMP), with both referencing each other.</p> <p>Alternatively, if the requirement for a data breach policy remains, then a supporting DBMP could also be required with the PMP referring to both.</p>
59A	The definitions here duplicate definitions in section 3 perhaps making them obsolete.
59C(1)(a)(i)	Insert “and” at the end of the paragraph.
59C(1)(b)(ii)	Replace “the access or disclosure of” with “the unauthorised access to or disclosure of”.
59L(1)	The requirement to immediately notify the Privacy Commissioner is too onerous. Section 26WK of the Privacy Act only requires notification “as soon as practicable”.
59L(2)(g)	Refers to “individuals affected or likely to be affected by the breach”. There is a definition of “affected individuals”, so perhaps that term should be used in this section, so that it reads “affected individuals or those likely to become affected individuals”.
59O(b)	Refers to the “public notification register” for the first time. The term is defined, but for the sake of clarity a reference to section 59ZD may be helpful.

59Q	The word “purposes” could be inserted at the end of the title of this section, such that it reads “Information sharing for notification purposes”.
59Q(1)	This section requires the insertion of “relevant” between “sharing” and “personal information”, such that it reads “for the purposes of sharing relevant information”, otherwise the sharing of any personal information would be permitted and that is too broad.
59Q(3)(a)	“an” should be replaced with “a”, such that it reads “contact details of a notifiable individual”
59U	The Privacy Act limits this exemption to “to the extent of the inconsistency” where this section does not. The Commonwealth approach is preferable.
59V(5)(c)	The words “and the way in which the agency will review the exemption” or similar could be added to the end of this subsection.
59Z	The powers of entry are much broader than those in the Privacy Act. The Commonwealth approach is preferable.
59ZA	Given the increase in employees of public sector agencies working remotely, a limit on the entry powers to prevent them being exercisable in relation to the premises or a part of premises used for residential purposes except with consent or a warrant should be considered (consistent with other NSW legislation: e.g. section 200 of the <i>Local Government Act 1993</i> and section 65G of the <i>Water Industry Competition Act 2006</i>).