

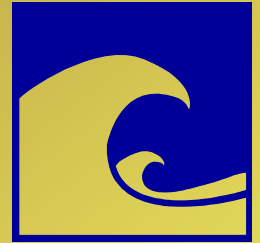
# **Anonymous travel options in Public Transport Ticketing Systems – application of privacy principles – Australian experience**

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University of New South Wales**

**Asian Privacy Scholars Network 5th International Conference  
13-14 December 2016, University of Auckland**



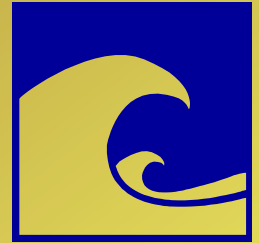
# Contents

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- Privacy Issues in e-ticketing systems
- Complaint under NSW privacy law

# Privacy Issues in e-ticketing systems

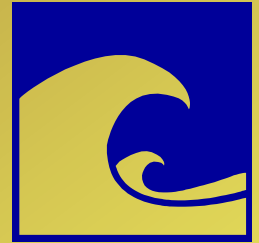
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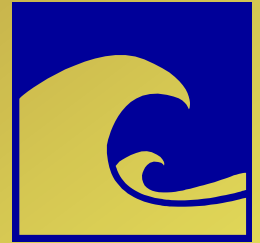
- Routine collection of travel movement information from e-tickets (cards)
- Personal information when linked to cardholder details
- In some cases registration of cards is mandatory so no anonymous travel option
- Rules about access to travel movement information inc. by third parties (law enforcement etc.)

# Complaint under NSW privacy law

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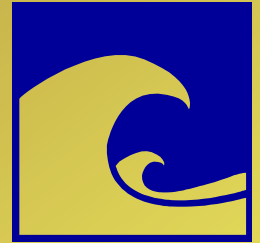
- NSW Civil and Administrative Tribunal (NCAT) – 2016 case ongoing CNS v TfNSW
- Case brought under the Privacy and Personal Information Protection Act 1998 (PPIP Act)
- Alleging breach of Information Protection Principle 1 – routine collection of travel movement information about concession card holders not ‘reasonably necessary’



# NSW privacy law

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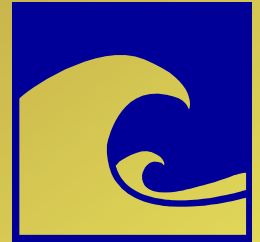
- PPIP Act has no principle favouring ‘anonymity’ where practicable
- Unlike NSW health privacy law (HRIP Act 2002), and Australian Commonwealth (federal) law - Privacy Act 1988
- Collection principle, as in many privacy laws, acts as a partial surrogate for an anonymity requirement



# Remedy sought

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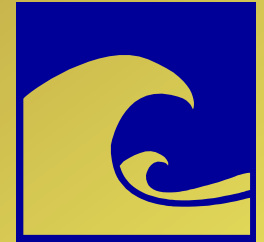
- In effect a ‘representative’ complaint on behalf of all holders of ‘senior’ concession Gold Opal Cards
- Seeking ‘systemic change’ - orders under PPIP Act s.55 to force TfNSW to offer an anonymous travel option – as is available to full fare adult cardholders and some youth/child concession cardholders



# CNS v TfNSW – timeline

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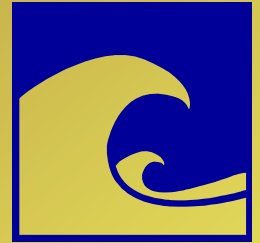
- Complaint lodged by individual ‘CNS’ with TfNSW November 2015 – dismissed
- Internal Review under PPIP Act Pt 5 requested February 2016, completed April 2016 – dismissed
- Application to Tribunal (NCAT) April 2016
- Case conference 5 July
- Submissions – August – September 2016



## CNS v TfNSW – timeline (2)

- Hearing (different Senior member) October 2016 – full day – new arguments introduced by TfNSW
- Further submissions November 2016....
- Directions hearing scheduled for February 2017

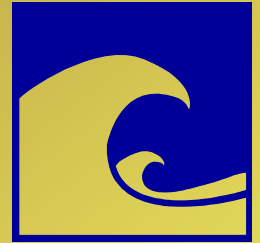




# CNS submissions

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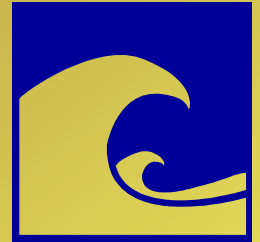
- For collection of travel movement information to be ‘reasonably necessary’ TfNSW has to show:
  - Extent of ‘problem’ balanced against privacy detriment?
  - What alternatives considered and why not viable?
  - Why ‘seniors’ treated differently from other concession card holders?



# CNS evidence

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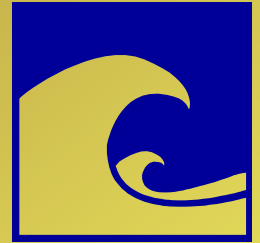
- Correspondence with TfNSW about this complaint
- Evidence of NSW government's intentions in relation to the use of Opal travel data
- Relevant views expressed by the NSW Privacy Commissioner
- Evidence of shared concern by other people in NSW



## CNS evidence (2)

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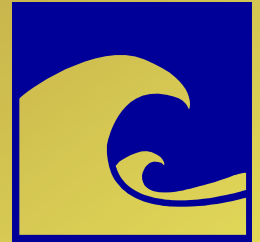
- Evidence of relevant policy and practice in other jurisdictions
- Relevant views expressed by privacy regulators in other jurisdictions
- Relevant case law (from NSW and other jurisdictions)
- Relevant commentary including from law reform commissions, parliamentary inquiries and academics



# TfNSW submissions

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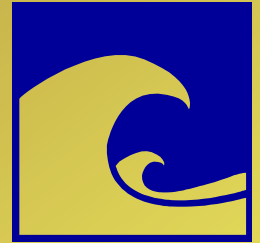
- Collection reasonably necessary for efficient operation of ticketing and protection of public revenue
- Evidence of lost revenue due to abuse of concession entitlements
- Travel movement information not ‘personal information’ – new threshold argument introduced for first time at October 2016 hearing



# Points of contention

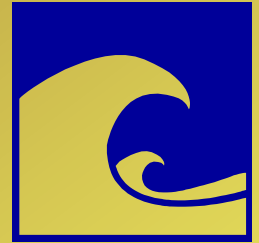
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- TfNSW confusing the issue by suggesting objection is to collection of *any* personal information – CNS clear only objection is to routine collection of travel movement information
- Where does ‘reasonably necessary’ sit on spectrum from ‘convenient’ to ‘essential’?
- Extent of privacy detriment – TfNSW argues little use of identifiable movement data and sufficient safeguards – CNS argues routine surveillance is a major detriment even if not accessed



# New grounds for dismissal

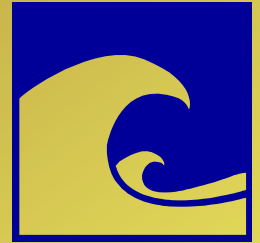
- At October Hearing, TfNSW raised a new ‘threshold’ issue
- Claiming that travel movement information is not ‘personal information’ because held in separate database without personal identifiers
- If so, then IPPs don’t apply so no basis for complaint
- Documented this argument in December – a month later than agreed timetable



# Role of Privacy Commissioner

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- NSW Privacy Commissioner has a statutory discretion to intervene both in Internal Review and Tribunal proceedings
- Made only minor (and late) interventions in Internal Review in this case
- Indicated intention to intervene in Tribunal but pulled out at last minute before Hearing
- CSN hopes to interest the Commissioner in re-engaging now that new arguments raised by TfNSW which have wide implications for working of the Privacy laws



# Any questions?

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