NSW Trustee
and Guardian

NSW GOVERNMENT

Privacy Management Plan

August 2026

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1. Privacy Management Plan Overview

1.1 Purpose

This Privacy Management Plan (PMP) explains how NSW Trustee and Guardian manages personal, health and sensitive information. This PMP also meets our obligations to comply with:

- *Privacy and Personal Information Protection Act 1998* (PPIP Act)
- *Health Records and Information Privacy Act 2002* (HRIP Act)

The PMP explains who you should contact about questions on the information collected and retained by NSW Trustee and Guardian, how to access and amend your stored information and what to do if you are concerned about how NSW Trustee and Guardian has managed this type of information. The Principles contained in the PPIP Act and/or the HRIP Act are legal obligations which NSW public sector agencies must abide by when they collect, store, use or disclose information. However, exemptions may apply to information held by NSW Trustee and Guardian in certain circumstances. The PMP also provides guidance to NSW Trustee and Guardian's staff about how to deal with personal, health and sensitive information. Please refer to Appendix A for more information about NSW's privacy laws.

1.2 What the Plan covers

This PMP includes requirements outlined in section 33(2) of the PPIP Act including:

- information about how NSW Trustee and Guardian develops policies and practices in line with the state's information and privacy acts
- how NSW Trustee and Guardian disseminates these policies and practices within the organisation and trains its staff in their use
- NSW Trustee and Guardian's internal review procedures
- anything else NSW Trustee and Guardian considers relevant to the plan in relation to privacy and the personal, health and sensitive information it holds.

When preparing this PMP, NSW Trustee and Guardian has referred to resources from the Information and Privacy Commissioner (IPC). These include the resources about privacy management plans and the "Guide: Privacy and people with decision making disabilities", where applicable. These resources are available on the IPC website.

In addition to this PMP, NSW Trustee and Guardian has a process in place for managing a data or information breach affecting a person's personal information.

2. About NSW Trustee and Guardian

2.1 NSW Trustee and Guardian's responsibilities

Our purpose is to support the rights, welfare and interests of the people of NSW. We do this by working with people to plan ahead and to make decisions about their lives. NSW Trustee and Guardian is an agency within the Communities and Justice Portfolio that supports the Chief Executive Officer and the Public Guardian to carry out the statutory functions of the NSW Trustee, the Public Guardian and the Commissioner of Dormant Funds. NSW Trustee can be appointed to act as:

- executor or administrator of deceased estates
- trustee
- financial manager
- agent or attorney
- collector of estates
- guardian or receiver of estates of minors
- receiver of any property

NSW Trustee and Guardian also provides information, authorisation, direction and support to private financial managers.

The Public Guardian can be appointed when there is no one else who is able to act as the person's guardian. The *Guardianship Act 1987*, also authorises the Public Guardian to provide information to private and enduring guardians.

NSW Trustee and Guardian also:

- prepares planning ahead documents – Wills, Powers of Attorney, and Enduring Guardianship Appointments
- provides secure long-term storage of planning ahead documents.

NSW Trustee and Guardian is also authorised to act as trustee, agent and manager of property under other legislation including:

- *Civil Procedure Act 2005* enables the Court to appoint NSW Trustee and Guardian to act as trustee
- *Civil Liability Act 2002* to hold victim support payments owed by an offender and offender damages trust funds
- *Conveyancing Act 1919* to sell real estate and divide the proceeds as ordered
- *Criminal Assets Recovery Act 1990* and the *Confiscation of Proceeds of Crime Act 1989* to manage restrained or forfeited assets.

The CEO of NSW Trustee and Guardian is also the Commissioner of Dormant Funds under the *Dormant Funds Act 1942*: s4.

2.2 Policy and procedures

NSW Trustee and Guardian develops policies and procedures that impact personal, health and sensitive information by:

- examining changes in the legislative, policy or operational environment for their impacts on NSW Trustee and Guardian
- conducting regular reviews of policies and procedures
- considering the implications of changes to policies and systems for any procedural changes needed
- consulting with relevant bodies to reflect the impact of changes or reviews on NSW Trustee and Guardian's customers.

NSW Trustee and Guardian is an agency within the Stronger Communities Cluster. NSW Trustee and Guardian is covered by some policies and procedures of the Department of Communities and Justice (DCJ) that may be modified by NSW Trustee and Guardian's Corporate Policy Directive. NSW Trustee and Guardian has developed some standalone policies and procedures.

As at the date of this PMP, NSW Trustee and Guardian's Privacy policies, available on the NSW Trustee and Guardian website, includes the following:

- NSW Trustee and Guardian's Privacy Policy
- This PMP
- Access to Information, Privacy and Confidentiality Policy
- NSW Trustee and Guardian Data Breach Response Plan.

Hard copies of the above policies may also be requested by contacting the Information and Privacy Officer at informationofficer@tag.nsw.gov.au.

2.3 Promoting the PMP

NSW Trustee and Guardian promotes the principles of the PMP through its executive team, staff and public awareness. These are outlined in further detail below.

2.3.1 Executive team

NSW Trustee and Guardian's executive team is committed to transparency and accountability in respect of NSW Trustee and Guardian's compliance with the PPIP Act and the HRIP Act.

The executive team reinforces transparency and compliance with these Acts by:

- endorsing the PMP and making it publicly available on its website
- identifying and addressing privacy issues when implementing new systems
- providing guidance to staff about the intersection of PPIP, HRIP Acts and the key legislative framework that guides our roles
- promoting the importance of sound privacy management practices to staff.

2.3.2 NSW Trustee and Guardian staff

NSW Trustee and Guardian staff have access to and are aware of this PMP. Staff members manage personal, health and sensitive information in their work and seek guidance if required.

NSW Trustee and Guardian makes its staff members aware of their privacy obligations by:

- publishing the PMP on its website and the intranet
- including the PMP in induction packs and making customised on-line training mandatory
- including privacy and health information discussions in staff meetings and where relevant, complex case coordination discussions.

When staff members have questions about how to manage personal, health and sensitive information under the PMP, they may consult their Senior Manager, Manager or equivalent for advice. In some cases, the NSW Trustee and Guardian's Information and Privacy Officer may be able to assist.

2.3.3 Public awareness

The PMP explains to customers how NSW Trustee and Guardian manages personal, health and sensitive information. Given the breadth of NSW Trustee and Guardian's customer base the PMP is easy to access on NSW Trustee and Guardian's website and easy to understand.

NSW Trustee and Guardian makes this PMP publicly available as open access information under the *Government Information (Public Access) Act 2009* (GIPA Act) as required.

NSW Trustee and Guardian promotes public awareness of its PMP by:

- writing the PMP in plain English
- publishing the PMP on its website
- providing copies of the PMP free of charge on request
- translating the PMP into other languages or other formats if required
- referring to the PMP in its privacy notices
- telling people about the PMP when answering questions about how NSW Trustee and Guardian manages personal, health and sensitive information.

3. What is personal information?

NSW Trustee and Guardian collects and receives customers' personal information in a variety of ways to perform our services and functions.

When we use the term "personal information" we use the term according to the definition in section 4 of the PPIP Act as it relates to our functions, as follows:

> *information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.*

This means personal information about our customers, staff, people in the community and any other stakeholder we deal with.

The PPIP Act excludes certain types of information from the definition such as information about people who have been deceased for more than 30 years, information about a person's suitability for public sector employment and information contained in a publicly available

publication. Some information will remain exempt in respect of NSWTG's functions exercised in our capacity as executor, administrator or trustee, please see 11.3.5 for further information.

Health information is defined in section 6 of the HRIP Act as:

> *(a) personal information that is information or an opinion about —*
>
> *(i)..the physical or mental health or a disability (at any time) of an individual, or*
>
> *(ii)..an individual's express wishes about the future provision of health services to him or her, or*
>
> *(iii)..a health service provided, or to be provided, to an individual, or*
>
> *(b)..other personal information collected to provide, or in providing, a health service, or*
>
> *(c) other personal information about an individual collected in connection with the donation, or intended donation, of an individual's body parts, organs or body substances, or*
>
> *(d)..other personal information that is genetic information about an individual arising from a health service provided to the individual in a form that is or could be predictive of the health (at any time) of the individual or of a genetic relative of the individual, or*
>
> *(e)..healthcare identifiers,*
>
> *but does not include health information, or a class of health information or health information contained in a class of documents, that is prescribed as exempt health information for the purposes of this Act generally or for the purposes of specified provisions of this Act.*

Sensitive information is personal information that includes information or an opinion about an individual's: racial or ethnic origin; political opinions or associations; religious or philosophical beliefs; trade union membership or associations; sexual orientation or practices; criminal record; health or genetic information; some aspects of biometric information. Generally, sensitive information has a higher level of privacy protection than other personal information.

4. How NSW Trustee and Guardian collects personal and health information

NSW Trustee and Guardian collects personal, health and sensitive information in a wide range of circumstances as described in this Part 4.

The collection of personal information may be through the following methods:

- in writing, in a letter, email or facsimile
- NSW Trustee and Guardian's website enquiry form
- on the phone
- a request to complete an NSW Trustee and Guardian form
- providing a document (or copy of a document) to NSW Trustee and Guardian (such as a Will)
- in person with NSW Trustee and Guardian staff or at an NSW Trustee and Guardian event
- documents or appointments that authorise NSW Trustee and Guardian to act (such as a guardianship order, reasons for decision) or are related to that authority (such as a letter or document from the NSW Civil and Administrative Tribunal).

NSW Trustee and Guardian aims to tell customers and its staff how it will manage their personal information when they seek our assistance. This includes:

- being notified at the time of communicating with NSW Trustee and Guardian or providing information (in writing, verbally or in person) that information is being collected and how it will be used
- being notified of collection through a privacy collection notice on a form
- being notified via an automated privacy collection notice
- reviewing the NSW Trustee and Guardian Privacy Policy on the NSW Trustee and Guardian website
- reviewing the NSW Trustee and Guardian Access to Information, Privacy and Confidentiality Policy.

Additional information on how NSW Trustee and Guardian collects person, health and sensitive information is outlined in the NSW Trustee and Guardian's Privacy Policy and included in all external staff email signatures.

NSW Trustee and Guardian does not generally give out details of personal or health information it receives.

In some instances, NSW Trustee and Guardian may be authorised to disclose sensitive or health information, in order to carry out its statutory function, or in the event of a serious and imminent threat to the life, health and safety of the individual or in order to help find a missing person. NSW Trustee and Guardian aims to collect personal information directly from the customer. NSW Trustee and Guardian also ensures that wherever possible, the collection of personal information is relevant, not excessive and is not an unreasonable intrusion.

Examples of the way we take action to ensure the collection of personal information is relevant include:

- providing an online training module with a section on collection principles
- organising individualised training, e.g. client services officers, to ensure file notes are relevant and excessive amounts of information are not collected during correspondence with customers.

However, when we become involved in someone's life, we often receive and collect personal and sensitive information about the person, their family, carers or service providers and sometimes, friends. On occasion, information may be provided to NSW Trustee and Guardian in an unsolicited way (that is, it is provided without us asking for that information). We may also collect personal information from third parties or publicly available sources in order to perform our services and functions.

This section explains the ways in which NSW Trustee and Guardian collects personal, health and sensitive information during its business activities. In this section, a reference to personal information is also a reference to health information.

4.1 Where we are appointed as executor or administrator of deceased estates

NSW Trustee and Guardian collects personal information about an estate and to establish the identity of beneficiaries and anyone with a claim on a deceased estate, including creditors. For a claimant this would include any information to validate the claim against the estate. For beneficiaries this includes 100-point identity check and bank account details to enable distribution of the estate. Where there is no Will and we are appointed as administrator, personal genealogical information is collected to validate the entitlement. Where there are concerns about a beneficiary's capacity, NSW Trustee and Guardian may collect personal, health and sensitive information to ascertain their capacity to manage the entitlement and give a legal discharge for the funds.

4.2 Where we are appointed as trustee

Depending on the nature and terms of the trust, NSW Trustee and Guardian collects personal information to validate a beneficiary's entitlement and assess claims against the trust. Where NSW Trustee and Guardian is asked to review the terms of a trust which was established due to incapacity of the beneficiary, we collect health information to ascertain their capacity to manage the entitlement and give a legal discharge for the funds.

4.3 Where we are appointed as financial manager

When appointed as the financial manager, we need to collect information about the individual to make sound financial decisions and to carry out our statutory functions. Where possible, we collect personal information from the person for whom the financial management order relates. However, this is often not possible or practical.

At times we may seek the views of other people involved with the person under the financial management order, and we would retain this as information as well.

We are authorised to make substitute decisions for all aspects of a client's estate covered by the financial management order. Where the person subject to the financial management order has financial responsibilities to others, such as family members, we need to collect enough information about these relationships and the family members to assess the expenditure required.

As we make substitute decisions and carry out our statutory functions, we are authorised to collect any information about the individual's finances from other organisations such as Centrelink, banks, utilities, service providers, etc.

If an individual under a financial management order is also a National Disability Insurance Scheme (NDIS) participant, we ask for details of their current NDIS plan to ensure there are no duplicate payments from the person's personal funds for services and items covered by the plan.

When necessary we are authorised to collect personal information from and about third parties by Clause 11 of the Privacy Code of Practice (General) (2003).

4.4 Where a private financial manager is appointed

When a private financial manager is appointed, we provide authorities and directions in relation to specific financial actions and review the accounts. To do this we collect details about the private manager to verify the identity of the individual as well as information about the personal circumstances of the person for whom they are making financial decisions.

4.5 Where we are appointed as guardian

Where possible, we collect personal information from the person for whom the guardianship order was made. For a variety of reasons that may not be possible, including the person may not know or be able to communicate the information required, we need to collect information about the person the guardianship order is for to enable us to make decisions required for them. The information we may collect could relate to both health, personal and sensitive information. Some of this information may be provided by family, health professionals, service providers and others. As guardians make substitute decisions, depending on the functions in the order appointing the Public Guardian, we collect information about their health, personal relationships, accommodation needs, wishes and views. At times we may also seek the views of other people involved with the person under the guardianship order, and we would retain this as information as well. The decisions that may be required relate to the various functions the Public Guardian can be appointed for, such as services, health care, access, accommodation, medical or dental consent and restrictive practices. We may also collect sensitive information such as religious views, ethnic or racial origin for the purpose of making decisions.

To ensure the decisions made are relevant and effective, we collect personal information about close supporters and family members of the person for whom we are appointed to make decisions. Some information is contained in reports about the individual's medical or other needs. Where we are given personal information about actions of a third party that impacts the individual's life, section 101 of the *Guardianship Act 1987* enables us to record this opinion without informing the third party.

When necessary the Public Guardian can collect personal information from and about third parties under clause 11 of the Privacy Code of Practice (General) (2003).

4.6 Where a private guardian is appointed

As outlined in the *Guardianship Act 1987* the Public Guardian is considered a party to all guardianship proceedings, regardless of our participation in the process. This means the NSW Civil and Administrative Tribunal will inform the Public Guardian of all private appointments. The information we receive can be used by the Public Guardian to inform the new private guardian of the services and resources available from our Guardian Support Unit. If a private or enduring guardian requires specific support, we collect enough personal information to provide information.

If someone has an enquiry that cannot be answered straight away, a staff member may need to take the person's name and telephone number so someone can respond.

4.7 Where we are a party to a NCAT hearing

Under the *Guardianship Act 1987*, NSW Trustee and Guardian is a statutory party to each hearing at the NSW Civil and Administrative Tribunal (NCAT) for a financial management or guardianship application or review of an order. That means the applicant provides a copy of the application and any supporting documentation to NSW Trustee and Guardian at the same it is submitted to NCAT. The application and supporting documentation may include personal information to help inform the Tribunal's decision about the persons' decision-making capacity. The information is sent to and stored by NSW Trustee and Guardian until an order is made. If an order is made, or continued, the documentation is added to the relevant customer's file, and this may include information relating to previous applications that have been dismissed. If an order is not made, the information is disposed of according to the Functional Retention and Disposal Authority: FA371.

4.8 When we prepare planning ahead documents

Planning ahead documents include Wills, Powers of Attorney and Enduring Guardian Appointments. To draft these documents to reflect the wishes of the customer, NSW Trustee and Guardian collects personal information to ensure the documents accurately portray the circumstances and instructions of the individual. NSW Trustee and Guardian also validates the identity of the individual having the documents created through photo identification. These documents do not belong to NSW Trustee and Guardian but to the customer who commissioned the documents. Personal information and other information relevant to the drafting of these documents is stored in NSW Trustee and Guardian's computer systems. NSW Trustee and Guardian may also contact customers to ask them to participate in a survey about their experience with us. Customers can withdraw their consent at any time, and their personal information will no longer be used for this purpose.

4.9 When we provide long term storage of planning ahead documents

NSW Trustee and Guardian stores planning ahead documents on behalf of customers. To maintain the security of these documents, we collect personal information to verify the identity and authority of anyone seeking to access these documents.

4.10 Enquiries

NSW Trustee and Guardian handles enquiries from customers and stakeholders about its services, operations and legislative framework in which it operates.

These enquiries are made by customers:

- over the phone and via videoconferencing, including voicemail messages
- inbound telephone calls are recorded between customers and client service staff, unless customers request that the calls are not recorded
- in writing (e-mail, letter, online form)
- in person (at NSW Trustee and Guardian offices, during visits and at events).

NSW Trustee and Guardian collects the personal information required to ensure responses are effective and enquiries are recorded for trend identification. They do not contain unnecessary personal and/or health information.

If someone writes to NSW Trustee and Guardian, a full copy of whatever is sent is kept in its electronic document management system. However, if someone calls over the phone and the call is not being recorded but gives a lot of background information, NSW Trustee and Guardian may not record all the personal information if it is not relevant to the enquiry.

The provision of any personal information during enquiries is entirely voluntary and personal information may be provided that is unsolicited. NSW Trustee and Guardian recognises that some people may wish to remain anonymous, however, clear information regarding the

consequences of remaining anonymous must be provided. For example, NSW Trustee and Guardian may be limited in considering personal factors or respond in the absence of enough information about the matter. In these cases, it is up to the person who contacted NSW Trustee and Guardian to decide if they want to continue with the enquiry or not.

NSW Trustee and Guardian's telephones will display the number of the person who called, except for private/silent numbers. Inbound telephone calls may be recorded for staff coaching and training purposes and these are stored for a period of time as required by NSW Trustee and Guardian and in compliance with relevant legislative obligations. Customers can ask for their call not to be recorded. Guardianship calls are not electronically recorded.

4.11 NSW Trustee and Guardian staff and recruitment

NSW Trustee and Guardian collects personal and/or health information from its staff members as part of the recruitment process. NSW Trustee and Guardian will never ask for more personal information than is required for that purpose.

4.11.1 Staff

Throughout a person's employment, NSW Trustee and Guardian collects staff information, including personal and/or health information, where it is needed for employment-related purposes. This may include information required to manage leave, support workplace health and safety, and ensure NSW Trustee and Guardian operates with transparency and integrity.

In the exercise of its functions NSW Trustee and Guardian collects and manages personal information about its staff including but not limited to:

- documents related to the recruitment process
- contact details including address
- medical conditions and illnesses
- next of kin and their contact details
- education
- training, performance and development information
- family and care arrangements
- secondary employment
- conflicts of interest
- financial information for payroll and superannuation purposes
- records of gender, ethnicity and disability of employees for equal opportunity reporting purposes
- evidence of required vaccination(s), including vaccination certificates
- employment history.

Information collected by NSW Trustee and Guardian is retained, to the extent necessary and managed securely within the payroll and human resources systems. These are currently managed by DCJ. The privacy framework for DCJ is available here.

NSW Trustee and Guardian also stores some staff records securely in our TRIM system. These records include documents relating to staff Workplace Health and Safety, Conflict of Interest, Secondary employment performance and conduct matters.

When a GIPA Act request is made to NSW Trustee and Guardian and the documentation includes personal information about a staff member, that staff member's personal information may be redacted to protect their privacy. A staff member's name, title, work email address and work phone number are not considered personal information under the PPIP Act.

4.11.2 Recruitment

When someone applies for a role or roles at NSW Trustee and Guardian, they send us personal information, including their name, contact details and work history. NSW Trustee and Guardian gives this information to the hiring manager and selection panel for that particular role (as stated in the job advertisement) in electronic or hard copy files. The hiring manager and selection panel do not use this personal information except for the purposes of the

recruitment process. Interview panels may include persons not employed by NSW Trustee and Guardian. The Talent team store this information securely. NSW Trustee and Guardian retains information relating to successful applicants and talent pools while they are active. The unsuccessful applicants are notified of the outcome of their application. Unsuccessful applications are kept for two years in Success Factors and then disposed of in line with the *State Records Act 1988 (NSW).*

It is important that information is stored in the correct system, and not outside of Success Factors, such as in personal drives.

Successful applicants fill out online onboarding forms via SuccessFactors to commence employment at NSW Trustee and Guardian. These online forms are integrated in MyWorkZone and directly uploaded to MWZ once completed, to be used for employment purposes, such as payroll and setting up personnel files.

A police check is completed prior to an offer of employment being made. Other forms require further personal, health and sensitive information, such as the applicant's bank account details, tax file number, emergency contacts and any disabilities that may impact their work.

These forms are sent to the Government Shared Services at the Department of Customer Service (DCS) to be used for employment purposes, such as payroll and setting up personnel files. Staff are encouraged to provide sensitive personal information, such as racial and cultural information to collect data about the wider NSW public sector by completing the online onboarding forms in SuccessFactors. Disclosing this information is voluntary.

The personal information collected will not be disclosed to a third party other than in accordance with the *Privacy and Personal Information Protection Act 1998 or Government Information (Public Access) Act 2009*.

4.12 Visitors and members of the public

When members of the public visit NSW Trustee and Guardian locations, WEP customer appointments are recorded in the branch diary via Outlook and likewise for pre-arranged contractors who are attending to carry out maintenance works at sites. A visitor's books is kept at the O'Connell Street location to record the names of people who enter the office beyond the public area.

NSW Trustee and Guardian collects this information for workplace health and safety purposes.

The information collected includes the name and phone number of the visitor. The purpose for collection is for a head count in case of an evacuation, or to retrieve a security pass that has not been returned.

The book is a 12-month diary, and is discarded at the end of each year, with a new book commencing on 1 January each year.

4.13 Communications and stakeholder engagement

4.13.1 Subscriber, mailing and contact lists

NSW Trustee and Guardian retains mailing and contact lists that contain personal information. No personal information is collected without consent and those who provide their information are advised how it is managed by the NSW Trustee and Guardian.

The information collected includes names, email addresses and in some cases, agency type. NSW Trustee and Guardian relies on people to provide accurate personal information and our team are careful to enter the information correctly.

Data is collected for the following contact lists:

- Community stakeholders - to contact non-government organisations and other members of the community
- Service providers - to communicate with authorised visitors and professionals
- Key stakeholders - other organisations with whom we collaborate.

All lists are discrete and used solely for the purpose intended. NSW Trustee and Guardian does not disclose individual email addresses when sending out bulk emails.

NSW Trustee and Guardian does not destroy these lists; they are kept as long as they remain current. Individual entries are deleted upon request or if an error message is received in response to one of NSW Trustee and Guardian communications.

4.13.2 Community education

When NSW Trustee and Guardian delivers in-person community education, sometimes registration details of attendees are collected online, such as name and location.

These details are securely stored electronically for this purpose.

NSW Trustee and Guardian asks for feedback from community education participants and this is anonymous. NSW Trustee and Guardian uses this feedback to improve its sessions and materials. NSW Trustee and Guardian may publish collated feedback and comments without identifying individuals.

NSW Trustee and Guardian may collect general information such as the number of visitors to a stall, questions visitors asked, what resources were provided and general demographic information such as gender.

Depending on the event, NSW Trustee and Guardian may intentionally or unintentionally collect health information or sensitive personal information about someone. For example, if NSW Trustee and Guardian participates in a session designed for people with disabilities or people from a particular cultural or racial background, it could be deduced that someone has or is likely to have a disability or has a particular cultural or racial background.

4.13.3 Planning ahead days

NSW Trustee and Guardian holds planning ahead days to complete Wills, powers of attorney and/or enduring guardianship documents. See section 4.8 above.

All these documents contain and depend upon personal information being accurately reflected to enable the person's instructions to be fulfilled. The personal information is contained within the document, apart for the contact details which are used to make and confirm the appointment. Personal information and other information relevant to the drafting of these documents is stored in NSW Trustee and Guardian's computer systems.

4.13.4 Customer feedback

NSW Trustee and Guardian may seek feedback from customers about the services that we provide to them, and the way that we provide those services via a survey. Customers can withdraw their consent at any time and their personal information will no longer be used for this purpose.

4.13.5 Website publishing, photography, filming and media

NSW Trustee and Guardian maintains the website at https://www.nsw.gov.au/departments-and-agencies/trustee-guardian. The website is used to promote services, community understanding of the need to plan ahead, the importance of a professional executor and provide information on financial management and guardianship services. NSW Trustee and Guardian does not publish personal or health information on the website.

NSW Trustee and Guardian may take photos of events that it holds or participates in and use the images for promotional purposes. NSW Trustee and Guardian asks event participants to advise if they do not want their photo taken or do not wish to be in a video and we respect their wishes. will

NSW Trustee and Guardian stores photos and footage electronically on its computer network.

5. How information is managed by NSW Trustee and Guardian

This section describes how NSW Trustee and Guardian uses, discloses and stores personal, health and sensitive information in alignment with its main types of services and functions.

5.1 Use of personal information

NSW Trustee and Guardian uses the personal, health and sensitive information it collects to:

- manage an individual's financial and legal affairs
- make personal, health and lifestyle decision as per the functions of the guardianship order e.g. accommodation, services, health care, and access decisions, provide consent to medical and dental treatment
- administer a deceased estate
- administer a trust
- oversight the financial management decisions made by a private financial manager in line with a financial management order
- for purposes related to the operation of NSW Trustee and Guardian and to advise the Executive and staff of NSW Trustee and Guardian on recurring trends and issues
- to contact customers for quality assurance purposes
- collate submissions on trends and issues for customers to respond to Inquiries and reviews
- carry out our statutory functions.

NSW Trustee and Guardian makes every effort to ensure personal information is accurate before using it. For example, NSW Trustee and Guardian checks contact details to make sure the information is correct and asks people to spell their names where necessary.

Personal information of NSW Trustee and Guardian staff is used by management, via relevant reporting lines, specific to the staff member. The information may also be forwarded and disclosed to Payroll at DCJ or to other people management service providers supporting NSW Trustee and Guardian. Unless otherwise stated, the personal information collected by NSW Trustee and Guardian about its staff is used only for workforce management.

Under the NSW *Health Records and Information Privacy Act 2002* (HRIP Act), you also have a right to access health information about you from NSW health service providers, public sector agencies and some private sector organisations that hold health information.

If you want to access your own health or personal information, you should contact the holder of the information first and ask them how you can do this. In an NSW public hospital, requests to access health information should be sent to the Medical Records Department.

5.2 Disclosure of information

5.2.1 Executor or administrator of deceased estates

As executor or administrator of a deceased estate, NSW Trustee and Guardian is governed by general trustee law in respect to the release of information and restricted in the information it can release about the deceased and beneficiaries. This includes personal information. Once NSW Trustee and Guardian has been appointed it is authorised to collect all information about the estate. Rules relating to privacy, confidentiality and trust law govern what NSW Trustee and Guardian can or cannot disclose about an estate, a trust or beneficiaries.

NSW Trustee and Guardian provides financial statements to beneficiaries on activities within their estate or trust. Where a beneficiary has questions or is seeking information about the administration of that particular estate/trust they should contact their client service officer.

Information may be disclosed where there is litigation and a subpoena is issued or the court makes orders requiring disclosure of information. Beneficiaries can choose to share information among themselves.

5.2.2 Financial manager

NSW Trustee and Guardian has a responsibility to only disclose personal information about a person under financial management that is necessary to collect assets, liabilities and legal issues to manage an individual's financial affairs. NSW Trustee and Guardian informs service providers, for the purpose of entering into contracts for service and having invoices directed to

us for payment. Further, where there is a possible welfare support entitlement, NSW Trustee and Guardian is required to supply relevant information to the Department of Human Services (Centrelink) to assess the support available. The fact that an individual has a financial management order in place is confidential information and great care is taken to maintain their privacy (section 101, *Guardianship Act 1987*).

Where an individual under financial management is applying to participate in the NDIS or have their package reviewed, NSW Trustee and Guardian supplies expenditure information to the individual to inform the assessment of costs for reasonable and necessary supports.

5.2.3 Guardian

When the Public Guardian is appointed to make decisions on behalf of an individual they stand in the shoes of the person. The Public Guardian discloses personal, health and sensitive information to relevant medical practitioners, carers and service providers to ensure the level of care and support is appropriate for the person. Where necessary, the Public Guardian has a responsibility to only disclose personal information about a person under guardianship that is necessary to make decisions and have actions carried out for an individual. The fact that an individual has a guardianship order in place is confidential information and great care is taken to maintain their privacy (section 101, *Guardianship Act 1987*).

Where personal information is held about third parties who impact an individual's life, this information can be used for a legal process such as a hearing at NCAT, for a review of a decision, or where relevant to the guardianship matter.

Private and enduring guardian details are not shared. They are only used for the distribution of information through the relevant newsletter and to provide general information relevant to guardianship.

5.2.4 Trustee

As trustee of any trust, NSW Trustee and Guardian is governed by general trustee law in respect to the release of information and restricted in the information it can release about the deceased and beneficiaries. This includes personal information. Once NSW Trustee and Guardian has been appointed it is authorised to collect all information about the trust. Rules relating to privacy, confidentiality and trust law govern what NSW Trustee and Guardian can or cannot disclose about a trust or beneficiaries. Beneficiaries can choose to share information among themselves.

NSW Trustee and Guardian provides financial statements to beneficiaries on activities within their estate or trust. Where a beneficiary has questions or is seeking information about the administration of that particular estate/trust they should contact their client service officer.

5.2.5 Attorney

Any information collected in our role of Attorney belongs to and remains information of the individual for whom we perform this role. When the power of attorney is activated, NSW Trustee and Guardian performs the functions as requested, in-line with the appointment and individual's requests. The power of attorney can be revoked at any time while the individual has capacity.

5.2.6 Information sharing with other agencies

Depending on the function performed and the needs of the individual, NSW Trustee and Guardian may need to share information with other agencies.

The information shared is very specific to the function, the customer, the circumstances and the agency.

NSW Trustee and Guardian may be required to supply your personal information to the Australian Taxation Office, Centrelink, the Privacy Commissioner, NSW Ombudsman and the Auditor General, in response to a Ministerial representation or otherwise as required by law.

NSW Trustee and Guardian provides relevant information with My Aged Care, to ensure the correct level of care package is accessible for people eligible for care where we are appointed guardian or financial manager.

Memoranda of Understanding are used to securely share limited and necessary personal information, including as follows:

- Housing in DCJ to maintain a client's position on priority list for community housing
- Corrective Services to coordinate financial needs to reduce the risk of vulnerability and recidivism
- Justice Health to deliver trust account and hospital fee services to patients at the Forensic Hospital where NSW Trustee and Guardian is a customer's financial manager
- Ageing and Disability Commissioner outlining how the two agencies share relevant information with each other and refer clients between the two agencies to address issues that protect customers from the risk of abuse
- Revenue NSW (formerly State Debt Recovery Office) to match key data cells to identify and verify the validity of outstanding fines recorded against individuals for whom we are financial manager. This enables action to be taken to deal with any fines that could be caused through lack of capacity to understand or cause undue hardship
- Registries of Births Deaths and Marriages (states and territories) where required to ensure life event records from those other states and territories relating to NSW Trustee and Guardians customers can be shared, typically in connection with administration of estates.

5.2.7 Confidential information

NSW Trustee and Guardian may collect information in circumstances where the person providing the information requests it be kept confidential. NSW Trustee and Guardian will consider such requests to keep information confidential, having regard to its fiduciary duties, statutory obligations and other legislative requirements.

Customers should be aware that information may be required to be disclosed:

- in accordance with an application under the GIPA Act, noting that NSWTG in relation to its functions as executor, administrator or trustee is excluded from the application of GIPA Act.
- in circumstances where it is relied upon in reasons for decision in response to a request made under s 49 of the *Administrative Decisions Review Act 1997*
- in relation to court or tribunal proceedings,
- otherwise in accordance with other lawful reason.

6. Storage and security of information

NSW Trustee and Guardian stores personal, health and sensitive information electronically and as hard copy files.

NSW Trustee and Guardian records details of each customer interaction on relevant databases and stores electronic copies of written enquiries. Lawful access to these databases is restricted to NSW Trustee and Guardian staff and authorised staff in DCJ to manage these databases and investigate unlawful activities.

Where staff members visit a customer or work offsite, any personal or health information is directly accessed from or added to the secure database.

Sometimes, staff members take hard copy files off-site to attend court, tribunal, brief external counsel. NSW Trustee and Guardian staff members do not leave files unattended and do not let anyone else access them.

6.1 Systems, databases and information management

NSW Trustee and Guardian currently has a service agreement with DCJ for the provision of certain shared services and support. All information shared with DCJ is kept securely for the purpose of providing the specific support required.

All of NSW Trustee and Guardian's electronic information is stored securely. The system aligns to the NSW Cyber Security Policy.

NSW Trustee and Guardian will consider and apply privacy compliance advice when developing and implementing new information management systems and software to ensure any new system complies with the PPIP Act and HRIP Act and will take reasonable steps to address any issues identified.

6.2 Case management databases and systems

Information collected as part of the providing services, support and making decisions for customers is held on the relevant NSW Trustee and Guardian customer management systems. Access is provided to the level required to perform the function that is needed.

The databases are held on secure servers with an annual attestation that aligns with the NSW Cyber Security Policy.

6.3 Physical security

Hard copy files are located in NSW Trustee and Guardian offices. NSW Trustee and Guardian staff have key card access to the offices. Visitors cannot enter without permission. NSW Trustee and Guardian's offices are secured.

When not being used, hard copy files are stored within the key card access areas of offices. The removal of hard copy files from the office only occurs in cases when hard copies are necessary to conduct activities, and as required to minimise security breaches. Secure printing is used by NSW Trustee and Guardian.

NSW Trustee and Guardian staff members have unique user accounts and passwords to access our computer systems. The information security policy makes it clear that staff do not give out passwords to anyone or let anyone else use their computer login.

Older hard copy files are archived in a secure storage facility in compliance with the *State Records Act 1998*. For sensitive documents that need to be destroyed, NSW Trustee and Guardian uses locked bins from which the documents are securely destroyed.

Original wills and other sensitive documents belonging to customers are stored securely in an offsite facility where they can be accessed quickly when needed by customers or to commence management of matters.

6.4 Private sector companies, government agencies and contractors

NSW Trustee and Guardian may use private sector companies, contractors, or other government agencies for services. If these organisations or individuals have or are likely to have access to personal information, NSW Trustee and Guardian ensures that personal, health and sensitive information is managed in line with the PPIP Act, HRIP Act and information security policies. NSW Trustee and Guardian might do this by:

- asking for evidence of their information handling processes
- inserting a privacy clause into contracts.

NSW Trustee and Guardian also considers how a private sector company, agency or contractor can manage personal or health information they may have access to before engaging with them.

An external entity that may manage or collect personal information on behalf of NSW Trustee and Guardian includes:

- DCJ in providing certain shared services
- a secure shredding company to carry out the destruction of sensitive documents

- a marketing company that manages NSW Trustee and Guardian's mailing lists and newsletters
- temporary staff procured from government contract providers
- event management companies to host events and manage registrations
- internal auditors
- independent contractors
- Organisations briefed with obtaining genealogy information where it cannot be obtained by internal staff
- external legal service providers
- tradespeople carrying out work for customers
- IT contractors
- a company that provides inbound document management services.

7. How to access and revise your information

In general, everyone has the right to access the personal and/or health information NSW Trustee and Guardian holds about them, unless there is a lawful reason, they cannot access their information. They also have the right to amend their own personal and/or health information NSW Trustee and Guardian holds, for example, updating their contact details.

NSW Trustee and Guardian is generally required to provide you with access to the personal and/or health information it holds and allow you to amend this information without excessive delay or expense. The only times this may not be possible is where the information has been collected in relation to trust or deceased estate functions.

There is no fee to access or amend your personal and/or health information. An exception arises in the case of estates and trusts where, depending on the request, the law provides that if a beneficiary asks for accounts or for information, the executor, administrator or trustee is entitled to be paid by the beneficiary the cost of supplying the accounts or information and if they choose, may require payment in advance.1

This section explains how to request access to your own information via an informal or formal application under the PPIP Act and GIPA Act.

7.1 Informal application

Under section 14 of the PPIP Act, a public sector agency that holds personal information must provide individuals with access to the information without excessive delay or expense.

As per section 19(3) of the HRIP, this principle also applies to all health information that is collected.

Information may also be released informally under the GIPA Act, as outlined in section 8 of the Act.

To access or amend your personal and/or health information, simply contact NSW Trustee and Guardian with your request. To ensure your request is received by the correct staff member or team managing your information, please follow these guidelines:

- Enquiries - contact NSW Trustee and Guardian's main enquiry line – 1300 109 290
- Service related - contact the customer service team or guardian handling the matter
- Staff information - speak with People and Performance team member
- Lodge an informal application request via the weblink.

A staff member will ask you to verify your identity.

NSW Trustee and Guardian aims to respond to informal requests within twenty working days. After making your request, you will be informed if your request is likely to take longer than expected.

[1] For more information, *Ottley v Gilby* (1845) 8 Beav 602 at 604; 50 ER 237 at 238; *Re Bosworth* (1889) 58 LJ (Ch) 432 at 433; *Sleiman v Alwan* [2009] NSWSC 484 at [19].

A staff member will contact you to advise you of the outcome of the request. The advice about your request should match the mode in which you made the request, for example if the request was via email, you will receive an email in response. In some cases, particularly if it is sensitive information, you may be asked to make a formal application.

Information must be made available unless there is an overriding public interest against disclosure. To determine if there is an overriding public interest against disclosure, the public interest test needs to be applied to the information.

After applying the public interest test, we will determine whether the information:

- may be made available in full,
- may be made available with deletions and redactions and/or
- cannot be made publicly available because there is an overriding public interest against disclosure.

If you are not happy with the outcome of your informal request, you can submit a formal application.

7.2 Formal application

You can make a formal application to access information under the GIPA Act at any time, without first making an informal request.

An application must be made in writing. Address your formal application to the Information and Privacy Officer by e-mail or post, or lodge via the weblink.

If lodging your application via email, please send it to: informationofficer@tag.nsw.gov.au

The application should:

- State that it is an access application made under the GIPA Act
- Include payment of the $30 application fee
- Include your name and a postal or email address
- Explain in clear terms, the information you are applying for so the agency can identify the information.

NSW Trustee and Guardian acknowledges formal applications within six working days and provides a notice of decision within 20 working days. NSW Trustee and Guardian will contact you if your request is likely to take longer than expected.

Under the GIPA Act, an applicant has the right to request an internal review and also has external review rights with IPC and NCAT.

7.3 Accessing or amending another person's information

The PPIP Act and the HRIP Act gives people the right to access their own information; the Acts generally do not give people the right to access someone else's information.

However, section 26 under the PPIP Act allows a person to give consent to NSW Trustee and Guardian to disclose his or her personal information to someone else that would not normally have access to it. Customers need to have capacity to give informed consent for others to access their information.

Likewise, under section 7 and section 8 of the HRIP Act, an 'authorised person' can act on behalf of someone else. The Health Privacy Principles (HPPs) also contain information regarding other reasons NSW Trustee and Guardian may be authorised to disclose health information, such as in the event of a serious and imminent threat to the life, health and safety of the individual or in order to help find a missing person.

If none of the above scenarios are relevant, a third party can consider making an application for access to government information under the GIPA Act, which may also include personal information. It is noted that NSWTG is exempted from GIPA in relation to its functions as executor, administrator and trustee.

8. Internal review rights

8.1 Internal review – PIPP Act and HRIP Act

Customers have the right to seek an internal review under the PPIP Act if they think that we have breached the PPIP Act or HRIP Act relating to their own personal or health information.

This process is the same under both Acts although the alleged conduct is assessed against different standards (the IPPs and the HPPs).

A privacy complaint may come under:

- the PPIP Act, section 53, if it relates to personal information and the Information Protection Principles (IPPs); or
- the HRIP Act, section 21, if it relates to health information and the Health Privacy Principles (HPPs).

Customers cannot seek an internal review for a breach of someone else's privacy unless they are authorised representatives of the other person.

Customers must apply for an internal review within six months from when they first become aware of the breach. We may also consider a late application for internal review.

8.1.1 Internal review process – PPIP Act and HRIP Act

You can request an internal review by filling out the internal review form available on the IPC website and sending it to our Information and Privacy Officer by email, fax or post or at our office along with any relevant information.

The Information and Privacy Officer will conduct the internal review unless the internal review is about the conduct of the Information and Privacy Officer. In this case NSW Trustee and Guardian will appoint another staff member who is suitably qualified to conduct the internal review.

NSW Trustee and Guardian aims to:

- acknowledge receipt of an internal review within five working days
- complete an internal review within 60 calendar days.

The Information and Privacy Officer will inform you of the progress of the internal review, particularly if it is likely to take longer than first expected.

The Information and Privacy Officer will respond to you in writing within 14 calendar days of deciding the internal review. This is a requirement under Section 53 (8) of the PPIP Act.

The outcome of a review can be:

(a) take no further action on the matter,

(b) make a formal apology to the applicant,

(c) take such remedial action as it thinks appropriate (e.g. the payment of monetary compensation to the applicant),

(d) provide undertakings that the conduct will not occur again,

(e) implement administrative measures to ensure that the conduct will not occur again.

If you disagree with the outcome of the internal review or are not notified of an outcome within 60 calendar days, you have the right to seek an external review.

There are rules set out in Part 5 of the PPIP Act which apply to internal reviews under the PPIP Act and the HRIP Act.

An internal review must be done by someone different to the person responsible for the conduct or decision complained about. The person who conducts the internal review must be a suitably qualified employee of the agency. The NSW Privacy Commissioner has a role in oversighting the internal review process and may make submissions on internal reviews.

8.1.2 Privacy Commissioner's role in internal reviews

NSW Trustee and Guardian must notify the Privacy Commissioner an internal review is being conducted and also inform the Privacy Commissioner of the findings of the review and of the action proposed to be taken by NSW Trustee and Guardian in relation to the matter.

The Privacy Commissioner is entitled to make submissions to the agency with his or her view on the matter. The Privacy Commissioner may undertake the review itself if they request.

8.2 Internal review processes – GIPA Act

Customers who are aggrieved by a reviewable decision are entitled to ask for an internal review. This includes the access applicant and any third-party objectors. It may also include other people who would be affected by the agency's decision.

8.2.1 Internal review process – GIPA Act

The customer must lodge an application for internal review within 20 business days of the decision date. NSW Trustee and Guardian can accept an internal review out of time, however, is not required to do so.

A fee of $40 applies, however, NSW Trustee and Guardian has discretion to waive, reduce or refund a fee payable or paid under the GIPA Act in any case that the agency thinks appropriate.

An officer, who is not less senior than the person who made the original decision, must carry out the review.

You can request an internal review by emailing the Information and Privacy Officer at informationofficer@tag.nsw.gov.au

8.2.2 Information Commissioner and NCAT's role in internal reviews

If you are the person who applied for access to the information, you do not have to have an internal review of the decision before asking the Information Commissioner to review it.

An internal review is not required before asking NCAT to review a decision if you are the original access applicant. However, if you are not the original access applicant (i.e. you are a third party), you must seek an internal review before applying for review by the Information Commissioner unless an internal review is not available to you.

9. External review rights

9.1 External review – PPIP Act and HRIP Act

If you are unhappy with the outcome of the internal review conducted by NSW Trustee and Guardian or do not receive an outcome within 60 days, you have the right to seek an external review by NCAT.

You have 28 calendar days from the date of the internal review decision to seek an external review under Section 53 of the *Administrative Decisions Review Act 1997 (NSW)*.

To request an external review, you must apply directly to the NCAT, which has the power to make binding decisions on an external review.

To apply for an external review or to obtain more information about seeking an external review, including current forms and fees, please contact the NCAT:

Website: https://www.ncat.nsw.gov.au/

Phone: (02) 1300 006 228

Visit/post: Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney NSW 2000

The NCAT cannot give legal advice, however, the NCAT website has general information about the process it follows and legal representation.

9.2 External review – GIPA Act

There are two review options:

- external review by the Privacy Commissioner; or
- external review by the NCAT.

9.2.1 Information Commissioner role in external reviews

If you are dissatisfied with NSW Trustee and Guardian's decision about releasing information, you can apply to the Information Commissioner to review the decision.

Both the person applying for government information and a person who objects to the release of that information can apply to have the agency decision reviewed by the Information Commissioner.

If you are the person applying for access to information, you do not have to have an internal of the decision review by the agency before asking the Information Commissioner to review it.

If you are not the person applying for the information (i.e. you are a third party), you must seek an internal review before applying for review by the Information Commissioner, unless that option is not available to you.

You have 40 working days from the time the decision is given to you, to ask for a review by the Information Commissioner.

To request a review, fill in the "GIPA reviews and Complaints" form on the IPC website.

9.2.2 NCAT role in external reviews

If you disagree with the outcome of the internal review conducted by NSW Trustee and Guardian, you also have the right to seek an external review by the NCAT.

If you are the person applying for access to information, you do not have to have an internal review of the decision before asking the NCAT to review it. However, if you are not the original access applicant (i.e. you are a third party), you must seek an internal review before applying for review by NCAT, unless an internal review is not available to you.

To request an external review, you must apply directly to the NCAT, which has the power to make binding decisions on an external review.

You do not have to have the decision reviewed by the Information Commissioner before applying for review by NCAT.

You have 40 working days from being given the decision to apply to NCAT for review. However, if you have applied for review by the Information Commissioner, you have 20 working days from being notified of the Information Commission's review outcome to apply to NCAT.

To apply for an external review or to obtain more information about seeking an external review, including current forms and fees, please contact the NCAT:

Website: https://www.ncat.nsw.gov.au/

Phone: (02) 1300 006 228

Visit/post: Level 9, John Maddison Tower, 86-90 Goulburn Street, Sydney NSW 2000

The NCAT cannot give legal advice, however the NCAT website has general information about the process it follows and legal representation.

10. Other ways to resolve privacy concerns

NSW Trustee and Guardian welcomes the opportunity to discuss any privacy issues you may have. You are encouraged to try to resolve privacy issues with NSW Trustee and Guardian informally before lodging an internal review.

You can raise your concerns with NSW Trustee and Guardian by:

- contacting the Information and Privacy Officer
- contacting the Director Strategy People and Governance
- using NSW Trustee and Guardian's complaint process.

Please keep in mind that you have six months from when you first became aware of the conduct of the agency, whether it was a decision made, action taken or inaction, to seek an internal review. This six-month time frame continues to apply even if attempts are being made to resolve privacy concerns informally. If the conduct occurred outside that timeframe, follow NSW Trustee and Guardian's usual complaint handling procedures detailed in the Complaints Policy.

10.1.1 Contacting NSW Trustee and Guardian

For further information about this PMP, the personal, health and sensitive information NSW Trustee and Guardian holds, or any other concerns, please contact NSW Trustee and Guardian.

NSW Trustee and Guardian's Information and Privacy Officer can be contacted at informationofficer@tag.nsw.gov.au. You may contact the Information and Privacy Officer for information regarding:

- how NSW Trustee and Guardian manages personal, health and sensitive information
- requests for access to and amendment of personal or health information
- guidance on broad privacy issues and compliance
- requests to conduct internal reviews about possible breaches of the PPIP Act and HRIP Act (unless the subject of the review is the conduct of the Information Officer).

11. Complaint to the Privacy Commissioner

Under section 45 of the PPIP Act, a person may make a privacy complaint about an Agency directly to the Privacy Commissioner as follows:

- The complaint may be in writing or verbal, but the Privacy Commissioner may require a verbal complaint to be put in writing
- The complaint must be made within 6 months (or such later time as the Privacy Commissioner may allow) from the time the complainant first became aware of the matter that is the subject of the complaint.

Further information about making a complaint to the Privacy Commissioner may be found on the IPC website or by contacting IPC on the details below.

Email: ipcinfo@ipc.nsw.gov.au
Phone: 1800 472 679
Address: Level 15, McKell Building, 2-24 Rawson Place, Haymarket NSW 2000
Postal address: GPO Box 7011, Sydney NSW 2001

12. Public interest disclosures

Public officials can report suspected wrongdoing, which includes breaches of the GIPA Act, to their manager or a NSWTG Disclosure Officer. The process for making a public interest disclosure is set out in the DCJ Public Interest Disclosures Policy to be read in conjunction with the NSWTG Corporate Policy Directive.

All reports of suspected wrongdoing are assessed and dealt with in accordance with the *Public Interest Disclosures Act 2022* (PID Act 2022). The PID Act 2022 provides protections for public officials from detrimental action. In accordance with Section 64 of the PID Act 2022, when a report is assessed as a PID, agencies are required to keep the reporter's identity confidential. Their identity may only be disclosed in accordance with the confidentiality guideline in the PID Act 2022.

13. Media enquiries

All media enquiries are to be referred to Marketing and Communications Team in NSW Trustee and Guardian at: media@tag.nsw.gov.au.

NSW Trustee and Guardian does not provide personal and/or health information to the media in response to their enquiries. It is important to note that customers who have a guardianship or financial management order cannot be publicly identified by NSW Trustee and Guardian as being under an order2. This not only limits what NSW Trustee and Guardian can provide but also limits the media's reporting to protect the identity of an individual being linked to having a substitute decision-maker in these circumstances.

14. Appendices

14.1 About NSW's privacy laws

This section contains a general summary of how NSW Trustee and Guardian must manage personal and health information under the PPIP Act, the HRIP Act and other relevant laws. For more information, please refer directly to the relevant law or contact NSW Trustee and Guardian or visit the website.

14.2 The PPIP Act and personal information

The PPIP Act sets out how NSW Trustee and Guardian must manage personal information.

14.2.1 About personal information

Personal information is defined in s 4 of the PPIP Act and is essentially any information or opinions about a person where that person's identity is apparent or can be reasonably ascertained. Personal information can include a person's name and address, details about their family life, their sexual preferences, financial information, fingerprints and photos.

There are some kinds of information that are not personal information, such as:

- information about someone who has been dead for more than 30 years
- information about someone that is contained in a publicly available publication or
- information or an opinion about a person's suitability for employment as a public sector official.

Health information is generally excluded here as it is covered by the HRIP Act.

14.3 Information protection principles (IPPs)

Part 2, Division 1 of the PPIP Act contains Information Protection Principles (IPPs) with which NSW Trustee and Guardian must comply. Below is an overview of the principles as they apply to NSW Trustee and Guardian.

14.3.1 Collection

1. NSW Trustee and Guardian collects personal information only for a lawful purpose that is directly related to NSW Trustee and Guardian's functions and activities.
2. NSW Trustee and Guardian collects personal information directly from the person concerned where possible. It is authorised to collect information from other sources where required.
3. NSW Trustee and Guardian informs people where practical and appropriate why their personal information is being collected, what it will be used for, and to whom it will be disclosed. NSW Trustee and Guardian will tell people how they can access and amend their personal information and any possible consequences if they decide not to give their personal information to us.
4. NSW Trustee and Guardian ensures personal information is relevant, accurate, is not excessive and does not unreasonably intrude into the personal affairs of people.

[3] The Public Guardian has an exemption for Principles 4 – 8 where they are appointed as the guardian for the person and stands in the shoes of that individual. These exemptions are only used when required and authorised by the Guardianship Order.

14.3.2 Access and accuracy

5. NSW Trustee and Guardian stores personal information securely, keeps it no longer than necessary and destroys it appropriately, while complying with the *State Records Act 1998*. Personal information is protected from unauthorised access, use, or disclosure.

14.3.3 Use

6. NSW Trustee and Guardian is transparent about any personal information that is stored, what it is used for and the right to access and amend it.
7. NSW Trustee and Guardian allows people to access their own personal information via the GIPAA process without unreasonable delay or expense.
8. NSW Trustee and Guardian allows people to update, correct, or amend their personal information where necessary.
9. NSW Trustee and Guardian makes sure that personal information is relevant and accurate before using it.

14.3.4 Disclosures

10. NSW Trustee and Guardian only uses personal information for the purpose it was collected unless the person consents to the information being used for an unrelated purpose.

14.3.5 Exemptions

Part 2, Division 3 of the PPIP Act contains exemptions that allow NSW Trustee and Guardian to not comply with IPPs in certain situations. Some examples include:

- NSW Trustee and Guardian is not required to comply with IPPs 2-3, 6-8, or 10-12 if NSW Trustee and Guardian is lawfully authorised or required not to do so.
- NSW Trustee and Guardian is not required to comply with IPP 2 where the information concerned is collected in relation to court or tribunal proceedings.

NSW Trustee and Guardian uses the exemptions where they are relevant to the work or functions of NSW Trustee and Guardian. Where an exemption is used, NSW Trustee and Guardian aims to be clear about the reasons for using it. The *Guardianship Act 1987* (s101) relates to customers who have a guardianship or financial management order. This provision prohibits the release of any information used in connection with administering or implementing an order made, except when required to execute the function or by law. This includes the name of a person under the order or that there is an order in place.

Privacy codes of practice and public interest directions can modify the IPPs for any NSW public sector agency. These are available on Information and Privacy Commission website.

The Privacy Code of Practice (General) 2003 Part 4 allows NSW Trustee and Guardian to collect personal information to enable it to make best interest decisions from and about third parties where necessary.

There are public interest directions that may allow NSW Trustee and Guardian:

- to make a complaint directly to the Privacy Commissioner
- not to comply with IPPs 2-3, 6-8, 10-12 if it is necessary for us to properly conduct investigations
- to be exempt from the IPPs when transferring enquiries to another NSW public sector agency
- to disclose personal information collected for research purposes.

As at the date of this PMP, there is no current public interest direction in place that impacts NSW Trustee and Guardian.

14.4 Offences

Offences can be found in Part 8 of the PPIP Act.

It is an offence for NSW Trustee and Guardian to:

- intentionally disclose or use personal information accessed as a part of our work for an unauthorised purpose
- offer to supply personal information that has been disclosed unlawfully
- hinder the Privacy Commissioner or a staff member from doing their job.

14.5 Response to data breaches

Part 6A of the *Privacy and Personal Information Protection Act 1998* (PPIP Act) establishes the NSW Mandatory Notification of Data Breach (MNDB) scheme. The MNDB Scheme requires every NSW public sector agency bound by the PPIP Act to notify the Privacy Commissioner and affected individuals of data breaches involving personal or health information that are likely to result in serious harm.

A data breach might occur where there is unauthorised access, disclosure or loss of information (or where the loss is likely to result in unauthorised access or disclosure) and where the risk of serious harm cannot be mitigated.

The MNDB scheme requires agencies to have regard to any guidelines issued by the Privacy Commissioner when assessing a data breach.

The NSW Trustee and Guardian Data Breach Response Plan, sets out the responsibilities and processes for managing data breaches. Our Corporate Policy Directive also outlines how the DCJ Data Breach Policy applies to all staff.

We require data breaches to be promptly notified by all employees to the relevant Director or Public Guardian, and the Information and Privacy Officer.

14.6 Public Registers

The PPIP Act also governs how NSW public sector agencies should manage personal information contained in public registers (Part 6 – Public Registers).

NSW Trustee and Guardian neither holds nor maintains any public registers, so currently this section of the PPIP Act does not apply.

14.7 The HRIP Act and health information

The HRIP Act sets out how NSW Trustee and Guardian must manage health information.

NSWTG deals with a considerable amount of health-related personal information, which may be relevant to its role as substitute decision maker and in supervising appointed private managers. Third parties, such as family members, may request access to health information relating to NSWTG customers.

While we proactively aim to release information informally wherever possible, as outlined in HPP 11, information will only be disclosed if it relates to a primary purpose for collection, which includes our decision-making function or a legal purpose. Being a family member is not a reason for the NSWTG to release information, where a customer may not consent to the release of their health information. However, if releasing information to family is required to support or facilitate a decision the NSWTG makes or one of the exemptions listed in HPP 11 apply, we will consider releasing it.

If a third party is unhappy with the outcome of the decision in relation to an informal release of information, they have the right to make a formal application under GIPA Act.

From time to time, we may receive requests from family members seeking NSWTG's consent to the release of medical information relating to deceased persons held by third parties, such as doctors and hospitals. It is not our role as executor/administrator to consent to the release medical information held by other. It is a matter for the holder of the records to decide whether the information should be disclosed. Under clause 11, Schedule 1 of the *HRIP Act* disclosure of health records may be made on compassionate grounds without the consent of the personal representative of the deceased's estate.

Particular care is required when disclosing information (particularly health information) to other jurisdictions, which may not be subject to the same privacy obligations. No disclosure

may be made to any person or body outside NSW or Commonwealth agencies without consent of the person or their authorised representative unless:

- that jurisdiction is bound by similar privacy laws to NSW; or
- the transfer is necessary for the performance of or in association with a contract; or
- the transfer is for the customer's benefit, yet it is impracticable to obtain consent; or
- the transfer can prevent or reduce a serious and imminent threat to health, and
- reasonable steps are taken by way of a confidentiality agreement with the recipient to ensure that the receiving agency agrees to adopt an approach consistent with NSW Privacy laws.

14.7.1 About health information

Health information is a more specific type of personal information and is defined in s6 of the HRIP Act. Health information can include information about a person's physical or mental health, such as a psychological report, blood test, an X-ray, or even information about a person's medical appointment. It can also include personal information that is collected to provide to a health service, such as a name and contact number on a medical record.

14.8 Health Privacy Principles (HPPs)

14.8.1 Collection

1. NSW Trustee and Guardian collects health information only for lawful purposes that are directly related to NSW Trustee and Guardian's functions and activities.
2. NSW Trustee and Guardian makes sure health information is relevant, accurate, and does not unreasonably intrude into the personal affairs of people.
3. Where a guardian is appointed, they stand in the shoes of the person subject to guardianship. Where a guardian requires health information to inform a decision that is authorised the health information may not be collected directly from the person concerned.
4. NSW Trustee and Guardian informs people where appropriate, why their health information is being collected, what it will be used for and where appropriate to whom it will be disclosed. NSW Trustee and Guardian will tell people how they can access and amend their health information and any possible consequences if they decide not to give their health information to NSW Trustee and Guardian.[3]

NSW Trustee and Guardian also provides training to staff, for example assigned guardians, to ensure information is collected in a way which is relevant, and not an excessive or unreasonable intrusion.

The Health Privacy Principles (HPPs) also contain reasons NSWTG may be authorised to disclose health information, such as in the event of a serious and imminent threat to the life, health and safety of the individual or in order to help find a missing person.

14.8.2 Storage

5. NSW Trustee and Guardian stores health information securely, keeps it no longer than necessary and destroys it appropriately. Health information is protected from unauthorised access, use, or disclosure.

14.8.3 Access and accuracy

6. NSW Trustee and Guardian is transparent about the health information stored about people, what the information is used for and the right to access and amend it.
7. NSW Trustee and Guardian allows people to access their own health information without unreasonable delay or expense.

[3] The Public Guardian has an exemption for Principles 4 – 8 where they are appointed as the guardian for the person and stands in the shoes of that individual. These exemptions are only used when required and authorised by the Guardianship Order.

8. NSW Trustee and Guardian allows people to update, correct, or amend their health information where necessary.
9. NSW Trustee and Guardian makes sure the health information is relevant and accurate before using it.

14.8.4 Use

10. NSW Trustee and Guardian only uses health information for the purpose it was collected for unless the person consents to the information being used for an unrelated purpose.

14.8.5 Disclosure

11. NSW Trustee and Guardian will only disclose health information with people's consent unless they were already informed of the disclosure when the health information was collected.

14.8.6 Identifiers and anonymity

12. NSW Trustee and Guardian do not use unique identifiers for health information, as they are not needed to carry out the functions of NSW Trustee and Guardian.
13. NSW Trustee and Guardian allows people to stay anonymous where it is lawful and practical.

14.8.7 Transfers and linkage

14. Where NSW Trustee and Guardian is appointed in its role of Public Guardian, health information may be transferred for the purposes of meeting health or service needs. Examples would be for access to Aged Care or NDIS packages. Where NSW Trustee and Guardian is the financial manager and health details are a criterion for qualifying for a care package the relevant health information is transferred. All these transfers are secure and only the health information necessary to meet the need is transferred.
15. NSW Trustee and Guardian does not recruit people for whom they are guardian to use a health records linkage system. Whether they are included on health registers is a matter for the individual.

14.8.8 Exemptions to the HPPs

Exemptions are located mainly in Schedule 1 of the HRIP Act and may allow NSW Trustee and Guardian to not comply with HPPs in certain situations.

For example, NSW Trustee and Guardian is not required to comply with HPPs 4-8 and 10 where NSW Trustee and Guardian is lawfully authorised, required, or permitted not to comply with them.

NSW Trustee and Guardian does not use the other exemptions unless they are directly relevant and necessary for the work of NSW Trustee and Guardian. However, if an exemption were used, NSW Trustee and Guardian aims to be clear about the reasons for using it.

Health privacy codes of practice and public interest directions can modify the HPPs for any NSW public sector agency. These are available on the Information and Privacy Commission website.

14.8.9 Offences

Offences can be found in Part 8 of the HRIP Act. It is an offence for NSW Trustee and Guardian to:

- intentionally disclose or use any health information about an individual to which the official has or had access to in the exercise of his or her official functions
- offer to supply health information that has been disclosed unlawfully
- attempt to persuade an individual to refrain from making or to withdraw an application pursuing a request for access to health information or a complaint to the Privacy Commissioner or Tribunal

- by threat, intimidation, or false representation require another person to give consent or to do, without consent, an act for which consent is required.

14.9 Other applicable laws

14.9.1 Crimes Act 1900

Access and control of data about a person cannot be released or modified unless it is authorised. Personal information is restricted data. Under the Crimes Act (s308H) it is an offence to knowingly provide unauthorised access to or modification of restricted data held in a computer.

14.9.2 Government Information (Public Access) Act 2009 (GIPA Act) and Government Information (Public Access) Regulation 2018

The GIPA Act provides a mechanism to access personal or other information. An application can be made to NSW Trustee and Guardian to access information that NSW Trustee and Guardian holds. This information may include personal and/or health information. (See Formal Application in Section 7.2)

NSWTG is exempt from the operation of GIPAA in respect of functions exercised in our capacity as executor, administrator or trustee by Section 43 and Schedule 2(4) of GIPAA.

If a person has applied for access to someone else's information, NSW Trustee and Guardian may take steps to consult with people who might have concerns regarding disclosure of their personal information. NSW Trustee and Guardian will provide notice of the decision to ensure that people who might want to object to the release of information have time to apply for a review of the decision to release information.

Generally, a formal access applicant must be granted access to information requested unless there is an "overriding public interest against disclosure". An agency is also forbidden to give open, proactive or informal access to a document if there is an overriding public interest against disclosure.

Consideration should also be given to the relevant provisions of the privacy legislation, and whether any principles would be breached by disclosure under the GIPA Act.

14.9.3 Independent Commission Against Corruption Act 1988

The *Independent Commission Against Corruption Act 1988* prevents NSW Trustee and Guardian staff from misusing information obtained in the course of doing their jobs.

14.9.4 Public Interest Disclosures Act 2022 (PID Act 2022)

The PID Act 2022 sets in place a system to encourage public officials to report wrongdoing. Disclosure Officers are responsible for receiving complaints made as public interest disclosures about government information contraventions, and or privacy contraventions as provided for under the PID Act 2022. Any member of staff who honestly, and on reasonable grounds, believes wrongdoing has occurred can communicate their concerns to a NSWTG People Manager, a Disclosure Officer, or the Senior Manager of Governance, Risk and Compliance.

The definition of personal information under the PPIP Act excludes information contained in a public interest disclosure. This means that 'personal information' received or collected under the PID Act is not subject to the IPPs or HPPs.

The PID Act 2022 requires NSW Trustee and Guardian to not disclose information that might identify or tend to identify a person who has made a public interest disclosure. This privacy management plan includes NSW Trustee and Guardian's procedures to protect the information received in relation to public interest disclosures.

15. Feedback and questions

For further information or to provide feedback, please contact the Information and Privacy Officer or view the NSW Trustee and Guardian website:

Information and Privacy Officer
NSW Trustee and Guardian
Address: Locked Bag 5115, Parramatta NSW 2124
Phone: 1300 109 290
Email: informationofficer@tag.nsw.gov.au

This PMP is available for download from the NSW Trustee and Guardian website. A copy can also be mailed out by sending a request to informationofficer@tag.nsw.gov.au.

16. Document information

Title:	Privacy Management Plan
Owner:	Director, Legal, Governance and Risk
Date:	August 2026
Next Review Date:	Bi-annually or as required