

Direction under s41(1) of the *Privacy and Personal Information Protection Act 1998* in relation to Service NSW and icare’s joint payments project

As Acting Privacy Commissioner appointed under Part 4, Division 1 of the *Privacy and Personal Information Protection Act 1998* (**‘PPIP Act’**), I, Sonia Minutillo, hereby direct, pursuant to s41(1) of the PPIP Act that:

1 Overview

1.1 This is a direction made under section 41(1) of the PPIP Act and should be read in conjunction with that Act.

2 Interpretation

2.1 In this Direction, the following words have the respective meanings:

“Claims Service Provider” or “CSP” means a third-party service provider engaged on behalf of the NI/TMF to manage workers compensation claims.

“Customers” means the individuals who have at any time been provided with a service by Service NSW.

“Eligible workers” means injured workers with a workers compensation claim who have been identified by icare as being eligible for payments under a proactive payments program.

“icare” means Insurance and Care NSW, the corporation established under the *State Insurance and Care and Governance Act 2015* with the corporate name of Insurance and Care NSW.

“Indexation Proactive Payments Project” is defined in clause 4.4 below.

“IPP” means the Information Protection Principle set out in the section of the PPIP Act with the corresponding number.

“SNSW/icare payments project” is defined in clause 4.8, below.

“MyServiceNSW” means an online platform which securely connects customers with NSW Government services.

“Personal information” has the same meaning as in section 4 of the PPIP Act.

“PIAWE” means pre-injury average weekly earnings as defined in schedule 3, clause 2 of the *Workers Compensation Act 1987*.

“POI” means proof of identity.

“PPIP Act” means the *Privacy and Personal Information Act 1998*.

“Primary direction” means the Public Interest Direction issued by the Privacy Commissioner on 15 September 2022.

“Service NSW” means the Service NSW division of the Government Service whose CEO has the functions conferred by the *Service NSW (One-stop Access to Government Services) Act 2013*.

“SNSW Act” means the *Service NSW (One-stop Access to Government Services) Act 2013*.

“Treasury Managed Fund” or “TMF” means the self-insurance fund established by section 11 of the *NSW Self-Insurance Corporation Act 2004* to insure NSW government agency risk.

“Workers Compensation Nominal Insurer” or “NI” has the same meaning as in section 154A of the *Workers Compensation Act 1987*.

“Workers Compensation Legislation” means the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

3 Background

- 3.1 Service NSW is a public sector executive agency related to the Department of Customer Service, under schedule 1 of the *Government Sector Employment Act 2013*.
- 3.2 Service NSW provides government services to customers on behalf of, inter alia, government agencies. icare is a government agency for the purposes of the SNSW Act.
- 3.3 icare NSW is a statutory body representing the Crown established under the *State Insurance and Care Governance Act 2015* and a government agency within the meaning of the SNSW Act.
- 3.4 icare acts for the Workers Compensation Nominal Insurer (“NI”) to provide workers compensation to NSW employees. icare also provides services and monitors the performance of insurance and compensation schemes in respect of which it provides services, including the Treasury Managed Fund (“TMF”). The TMF is the self-insurance scheme for government agencies. The TMF provides indemnity to government agencies that are members, known as TMF agencies.

4 Objectives of this Direction

- 4.1 In 2020, icare announced the PIAWE Review and Remediation program to address potential errors with pre-injury average weekly earnings calculations, which are used to inform the amount of weekly compensation entitlements under workers compensation legislation. This incorporated the PIAWE Proactive Payments program, which was the basis of a previous direction issued for Service NSW and icare in September 2022 (“primary direction”).
- 4.2 In 2022, during the course of the PIAWE Review and Remediation program, icare identified a historical issue in relation to the application of indexation to weekly benefits for some injured workers potentially impacting claims from October 2012 to October 2019. Whilst these claims were in the population of claims included in the PIAWE Review and Remediation program, they are a cohort of this population which have not been previously remediated through that program, nor data matched under the primary direction.
- 4.3 Under NSW Workers Compensation Legislation, an injured worker who is receiving weekly benefits is potentially entitled to an indexed adjustment to their benefit each

April and October. The indexation amount is calculated on the Australia's National Statistical Agency (ABS) Wage Price Index which is published each quarter.

- 4.4 icare is now undertaking the Indexation Proactive Payments Project which aims to make payments to a cohort of workers who meet certain criteria to compensate for potential indexation errors without requiring a formal assessment. The relevant criteria are:
 - 4.4.1 The possible financial impact is greater than \$100, and less than \$5000.
 - 4.4.2 The injured worker has not previously been remediated through the PIAWE or Theoret review and remediation projects.
 - 4.4.3 The injured worker did not receive the PIAWE proactive payments email.
 - 4.4.4 The injured worker has not previously received a settlement or payment of compensation for Work Injury Damages and Commutation claims.
- 4.5 To allow icare to proactively make payments to remediate eligible injured workers, icare needs access to their current contact details to ensure they are aware of their entitlements.
- 4.6 As the cohort of claims date back to 2012, icare only holds email addresses for a proportion of eligible workers, approximately 45% of the cohort, and there are no alternative viable means of contact available for those for whom email addresses are not held.
- 4.7 icare, on behalf of the NI and TMF, proposes to engage Service NSW by way of an agreement under the *Service NSW (One-stop Access to Government Services) Act 2013* ("**SNSW Act**") to assist with the Indexation Proactive Payments Project ("**SNSW/icare payments project**"). In a similar fashion to that described in the primary direction, Service NSW will exercise customer service functions, including contacting eligible workers and making payments through a digital pathway.
- 4.8 The SNSW/icare payments project leverages the existing technical capabilities developed by SNSW for the purposes of the PIAWE Proactive Payments Project, with the core principles of maintaining a customer-centric approach and ensuring the right outcomes for injured workers.
- 4.9 This Direction is sought to enable Service NSW to data match information provided by icare using existing MyServiceNSW account details to obtain an eligible worker's email address and then to contact the eligible worker by email to notify them of their eligibility for an Indexation Proactive Payment.
- 4.10 This Direction is also sought to allow icare and Service NSW to rely on the current email contact details of customers held by Service NSW which are located through the data matching process without taking further steps to ensure the contact details are accurate and up to date.
- 4.11 The Privacy Commissioner has been advised that the proposed use of Service NSW customer details for the purposes of the SNSW/icare payments project does not align with the two primary purposes for which personal information has been collected by Service NSW from its customers and is unlikely to comprise a directly related purpose. This Direction is sought to authorise the proposed use of Service NSW customer information for the purposes of the SNSW/icare payments project.

5 Process

- 5.1 Service NSW and icare propose to enter into an agreement pursuant to section 8 of the SNSW Act to allow the CEO of Service NSW to exercise certain non-statutory customer service functions on behalf of icare, in connection with the SNSW/icare payments project. The customer service functions to be exercised are as follows:
- 5.1.1 Notifying eligible workers and providing information about the joint payments project;
 - 5.1.2 Receiving claims for payments and making payments; and
 - 5.1.3 Functions ancillary to the making of payments.
- 5.2 The function of making payments to injured workers is a “customer service function” within the meaning of sections 5(c), and/or (d) and (h) of the SNSW Act.
- 5.3 The SNSW/icare payments project involves icare disclosing to Service NSW personal information regarding eligible workers pursuant to section 14(4)(d) of the SNSW Act to enable payments to be made to them. Similarly, pursuant to section 14(1)(a) and (c) of the SNSW Act, Service NSW will disclose information to icare in relation to payments made by them to eligible workers who apply for a proactive payment.
- 5.4 The following additional information will also be disclosed by icare to SNSW for the purpose of making payments and claims administration but will not be used for data matching:
- Date of injury
 - Proactive payment amount
 - Claimant payment amount
 - Claimant tax withheld
 - Claim provider
 - First weekly payment date
 - Last weekly payment date
- 5.5 For those eligible workers whose email addresses are held by icare (‘Data Set A’), Service NSW will actively be notifying them of their eligibility for a proactive payment and these workers will be prompted to apply for the payment through a digital pathway on a Service NSW webpage by providing proof of identity (“**POI**”), bank details and tax file numbers.
- 5.6 For those eligible workers whose email addresses are not held by icare (‘Data Set B’), Service NSW will engage a third-party service provider Billigence Pty Limited (ABN 11 125 506 069) (Billigence) to undertake a data matching process to enable email addresses to be ascertained in order to facilitate payments to as many eligible workers as possible.
- 5.7 In addition, failed delivery attempts for Data Set A (anticipated to be approximately 7%) will then also be subject to the data matching process to further increase the contact rate.

5.8 The third-party service provider Billigence, will be matching up to 5 data points of personal information disclosed by icare. This information will be matched with an individual's existing MyServiceNSW account information to obtain email contact details not held by icare.

5.9 The primary data points which will be used in the data matching process are as follows:

- Claimant last name
- Claimant first name
- Claimant DOB

5.10 The data matching process may also incorporate two or more of the following secondary data points, where available:

- Claimant mobile phone number
- Claimant home phone number

5.11 An outline of how information will be disclosed, collected, and used as part of the data matching process is set out below:

- i. icare securely discloses the primary and secondary data points identified above to Service NSW pursuant to section 14(4)(a) of the SNSW Act;
- ii. Service NSW collects the information provided by icare;
- iii. Service NSW, together with (tbc Billigence), uses existing MyServiceNSW account details to match the identified data points provided by icare;
- iv. Where there is 'Very High', 'High' and 'Moderate-High' confidence matching, the match will be verified (see 5.11 below for further explanation);
- v. If there is a 'Moderate', 'Low' or 'Very Low' confidence match or where the DOB does not match, the record will be rejected and contact with that individual will not proceed;
- vi. If there are duplicate accounts identified against one identity, Service NSW may undertake a manual review process and a decision will be made as to whether and how contact with that individual will proceed in line with the principle above of establishing at least a Moderate-High level of confidence of a match;
- vii. Service NSW will share all verified matches with icare in either excel or .csv format via Kiteworks file sharing software;
- viii. icare will then securely transfer the additional information for all verified claimants to Service NSW for contacting (authorised by section 14(4)(a) of the SNSW Act);
- ix. Service NSW then contacts the eligible individual using the email address registered to their MyServiceNSW Account to notify them of the details of the Indexation Proactive Payment, along with a link to the Service NSW digital application. This email will include the individual's full name, claim

number, gross payment amount and general information about the Indexation Proactive Payments Project.

- x. Service NSW discloses to icare information confirming which eligible workers have been contacted, paid and where relevant, their TFNs. This disclosure is supported by section 14(1)(a) of the SNSW Act.

5.12 In summary, the Billigence data matching and confidence methodology referred to in 5.11 (iv) provides that a 'Very High' confidence match will occur where there is a match of the three primary data points identified in 5.9 above and one or two secondary data points identified in 5.10 above. A 'High' confidence match will occur when there is match of the three primary data points or of a transposed first and last name, together with DOB and two secondary data points. A 'Moderate-High' data match will occur where there is a match of transposed first and last name together with DOB and a secondary data point.

5.13 Once successfully contacted, eligible workers may choose to opt into a process to receive payments processed by Service NSW after successfully completing a POI process review. Eligible workers will be required to supply bank account details to allow Service NSW to make the payment. Service NSW will also provide support through its contact centre network for additional recipient enquiries, validation of payment process and assistance with POI checks.

6 Public Interest

6.1 This Direction has been made to permit the use of personal information held by Service NSW, specifically MyServiceNSW account details and dates of birth, to data match information provided by icare to obtain an eligible worker's email address for the purpose of contacting the eligible worker by email to notify them of their eligibility for an Indexation Proactive Payment and facilitate payments.

6.2 The engagement of Service NSW by icare for the purposes of the SNSW/icare payments project leverages Service NSW technology, digital products, customer data base, and brand trust to facilitate and streamline the making of proactive payments to a large cohort of individuals.

6.3 It is in the public interest to ensure injured workers receive their full entitlements under Workers Compensation legislation. icare also has an obligation to ensure these payments are made as quickly as possible.

6.4 The SNSW/icare payments project is the second joint initiative that will be managed by Service NSW and icare. The first joint initiative was for the PIAWE Proactive Payments Project which was the basis for the primary direction relating to Service NSW and icare made by the Privacy Commissioner in September 2022. The primary direction was made on similar terms.

6.5 The PIAWE Proactive Payments Project saw a 51.4% response rate, with a 48.6% successful application rate. Without this collaboration and the data matching process able to be undertaken as authorised by the primary direction, icare anticipated, based on historical outcomes, that the response rate would have been around 12-15%.

6.6 The program saw one instance of fraud, whereby an ex-spouse of an eligible worker claimed a payment on behalf of the worker. This item was unrelated to the data

matching process. In addition, there was one false positive outcome for an individual who had identical details to another party. The issue was resolved with the customer and reported to the IPC under the Primary Direction. These were managed with no loss, which was evidence of the effective controls in place. The SNSW/icare payments project will be leveraging similar capabilities and lean on the success of the previous program.

- 6.7 This Direction will facilitate better targeting of communications with eligible workers by use of email addresses, especially when sent from Service NSW, a well-recognised and respected government brand. Attempts to contact eligible workers in the past through other means, including post and media campaigns, have had a low response rate. Service NSW is likely to have email addresses for a number of eligible workers for which icare holds no current contact details.
- 6.8 It is submitted that the impact of the direction on an individual's privacy rights is limited. The modification of the IPPs is for a limited duration and for the limited purposes of the Indexation Proactive Payments Project. Ultimately, the customers concerned stand to benefit as they will be notified of their eligibility for proactive payments of workers compensation entitlements which they might otherwise have been unaware of. It is submitted that this benefit outweighs the public interest in requiring Service NSW to comply with the relevant IPPs for the purposes of the project.
- 6.9 It is further submitted that the modification of IPP 9 (s. 16 of the PPIP Act), to enable email addresses registered to MyServiceNSW to be taken to be relevant, accurate, up to date, complete and not misleading is in the public interest, having regard to the purposes of this direction, as it will minimise the impact on a customer's privacy by avoiding the need to make further enquiries.
- 6.10 The public interest in modifying IPP 10 (s. 17 of the PPIP Act) to permit the use of certain personal information held by Service NSW for the purposes of proactive payments programs, which might not otherwise be authorised, is to ensure that all reasonable attempts are made to contact and notify eligible workers who may have been underpaid workers compensation entitlements, so that as many of the eligible workers as possible are paid. It also simplifies the process for facilitating payments, so they are made in a timely manner following Service NSW contacting them about the joint payments project.
- 6.11 The proposed use of personal information is beneficial to the individuals concerned as it will allow them to be notified of money that is owing to them and to facilitate payments being made to them.
- 6.12 The public interest in permitting the use of information held by Service NSW for the purposes of the joint payments project outweighs the public interest in Service NSW complying with IPPs 9 and 10.

7 Information Exchange Agreement

- 7.1 Service NSW proposes to enter into an information exchange agreement with icare documenting the roles and responsibilities of each party, including information governance agreements, data security arrangements, data retention, access protocols, reporting requirements (including the reporting of breaches), and audit requirements.
- 7.2 Service NSW will also enter into an information management agreement with the third-party service provider, Billigence, which governs confidentiality and access protocols.

8 Breach

8.1 If Service NSW uses or discloses personal information held by it other than in accordance with this Direction, Service NSW must notify the NSW Privacy Commissioner within 48 hours of confirmation that such a contravention has occurred.

8.2 If Service NSW becomes aware of tax file numbers being used or disclosed other than for the purposes of the joint payments project (as authorised by the taxation law) then Service NSW must notify the Commonwealth Information Commissioner that a breach of the *Privacy (Tax File Number) Rule 2015* (Cth) has occurred.

9 Reporting and Auditing

9.1 Service NSW will report to the NSW Privacy Commissioner on compliance with this Direction, including the following matters:

- 9.1.1 Confirmation by Service NSW regarding the correctness of the use of information in connection with this Direction;
- 9.1.2 Details of any complaints received from the public regarding the use and/or disclosure of personal information under this Direction;
- 9.1.3 Subject to the clauses under [8] above, any data breaches arising from this Direction involving personal information, or where Service NSW has a reasonable belief that a data breach may have occurred; and
- 9.1.4 The result of all audits conducted in accordance with clause [9.2] below.

9.2 Service NSW will appoint an auditor, independent of the agencies concerned, within 6 months of the conclusion of this Direction to assess compliance with this Direction. This compliance audit will assess the security of systems and processes protecting the use and disclosure of personal information regarding this Direction. This compliance audit may include information provided by other parties, so long as these other parties are confirmed by the auditor to be independent of the agencies concerned.

10 Duration

10.1 This Direction has effect for a period of 12 months from the date made.

11 Modification of the Information Protection Principles

- 11.1 The application of the information protection principles under Division 1, Part 2 of the PPIP Act to Service NSW and icare are modified to the extent described below.
- 11.2 IPP 9: Notwithstanding section 16 of the PPIP Act, the personal information Service NSW holds about a customer in a MyServiceNSW account is taken to be relevant, accurate, up to date, complete, and not misleading, when used for the purposes outlined in this Direction, but section 16 otherwise applies.
- 11.3 IPP 10: Notwithstanding section 17 of the PPIP Act, Service NSW may use personal information it holds about a customer in a MyServiceNSW account for the purposes outlined in this Direction, and such use is taken to be a use for the purpose for which it was collected, but section 17 otherwise applies.

Signed by me on 20/9/2023



Sonia Minutillo
A/Privacy Commissioner