

## **Direction under s. 41(1) of the *Privacy and Personal Information Protection Act 1998* in relation to life status checks for the NSW Digital Identity Pilot**

As Acting Privacy Commissioner appointed under Part 4, Division 1 of the *Privacy and Personal Information Protection Act 1998* (PIIP Act), I, Sonia Minutillo, hereby direct, pursuant to s. 41(1) of the PIIP Act that:

### **1. Overview**

- 1.1. This Direction is made under s. 41 of the PIIP Act. It should be read in conjunction with the PIIP Act.

### **2. Interpretation**

- 2.1. In this Direction:

“Department” means the NSW Department of Customer Service;

“ID Support” means the business unit established within the Department as an identity remediation service for affected individuals, public sector agencies and private sector entities;

“Information Protection Principle” or “IPP” means the Information Protection Principles in Part 2, Division 1 of the PIIP Act;

“Life status” means whether an individual is alive or dead;

“Personal information” has the same meaning as it does in s. 4 of the PIIP Act;

“Public sector agency” has the same meaning as within s. 3 of the PIIP Act;

“Queensland Registry” means the Queensland Registry of Births, Deaths and Marriages; and

“Service NSW” has the same meaning as within Part 2 of the *Government Sector Employment Act 2013*.

### **3. Application**

- 3.1. Unless otherwise stated, this Direction applies to ID Support and Service NSW to the extent set out in this Direction.

### **4. Background**

#### The NSW Digital Identity

- 4.1. The NSW Digital Identity (NSW DI) is a voluntary and reusable digital identity that will enable individuals to safely and securely verify their name and date of birth.
- 4.2. It will be the first evidence of identity (Eoi) specifically designed to be transacted in the digital environment and will have robust privacy and security features that will uplift the digital resilience for the people of NSW.
- 4.3. The NSW DI is an important measure to reduce the risk of identity-related offences that are increasing year-on-year as people increasingly transact in the digital environment.
- 4.4. For the reasons set out in clauses 4.1 to 4.3, the NSW DI presents a strong public benefit. It will safeguard the integrity of individuals’ identities and protect individuals from financial harm, emotional harm and the time and cost associated with restoring their identity. It will also protect organisations from the financial, reputational and legal harm that can arise from relying on a compromised identity in the course of their activities.
- 4.5. The NSW DI has the potential to realise a range of economy-wide benefits for NSW, including:

- 4.5.1. help to reduce the administrative burden on NSW public sector agencies from manual identity proofing and servicing of individuals,
- 4.5.2. help to reduce the cost associated with grant fraud, and
- 4.5.3. help to reduce the direct and indirect cost associated with identity crime and fraud.

#### Piloting the NSW DI

- 4.6. The Department and Service NSW will conduct a pilot for the NSW DI to ensure it is ready for scale up once legislation is in place.
- 4.7. The NSW DI requires identity verification to identity proofing level 3 (IP3), which includes a biometric match and an Australian Death Check (called a life status check for the purpose of this Direction).
- 4.8. This will provide a high level of confidence that the individual seeking a NSW DI is who they say they are.
- 4.9. To achieve IP3, Service NSW will be required to conduct a life status check to ensure the identities of deceased individuals are not being used to fraudulently create a NSW DI.
- 4.10. To meet the program roadmap, Service NSW will need to be ready to conduct life status checks from February 2025.

#### ID Support as broker for NSW life status checks

- 4.11. ID Support is currently the NSW broker for life status checks on behalf of its customers, including public sector agencies, in response to personal data compromises only ([ID Support NSW Privacy Code of Practice - identity remediation services](#)). It does not currently provide life status checks on behalf of Service NSW for the purpose of identity verification for the NSW DI.
- 4.12. In relation to clause 4.11, ID Support undertakes life status checks in response to a personal data compromise via the Australian Death Check, which is accessed through the Queensland Registry of Births, Deaths and Marriages (Queensland Registry).
- 4.13. This direction will enable ID Support to conduct life status checks on behalf of Service NSW for the purpose of identity verification for the NSW DI.

#### Handling of personal information

- 4.14. The process for ID Support to conduct life status checks on behalf of Service NSW for identity verification for the NSW DI is:
  - 4.14.1. Service NSW collects personal information relating to an individual seeking to establish a NSW DI. Wherever possible, this information is collected directly from the relevant individual,
  - 4.14.2. Service NSW discloses the personal information to ID Support for the purpose of conducting the life status check,
  - 4.14.3. ID Support discloses the personal information to the Queensland Registry for the purpose of conducting the life status check,
  - 4.14.4. in response to the life status check, the Queensland Registry discloses to ID Support the name and date of death of individuals that match the personal information that is the subject of the life status check,
  - 4.14.5. ID Support discloses the results of the life status check to Service NSW, and

- 4.14.6. Service NSW uses the life status check to verify the identity to IP3 in order to establish a NSW DI, or to determine that the identity cannot be verified to IP3 and decline to establish a NSW DI, subject to further inquiries.
- 4.15. When a life status check is conducted, there are two ways in which personal information relating to a deceased individual may be collected, disclosed and/or used:
  - 4.15.1. the personal information provided by an individual to Service NSW for the purpose of verifying the individual's identity for a NSW DI belongs to a deceased individual, or
  - 4.15.2. the individual that provided personal information to Service NSW for the purpose of verifying their identity for a NSW DI has provided personal information that matches the personal information of a different deceased individual (for example, a deceased individual who shares a name and date of birth with the individual providing the information).
- 4.16. In the situations described at clause 4.15 the deceased individual was not able to consent to the collection, use or disclosure of their personal information.
- 4.17. Where a life status check discloses that an identity document may relate to a deceased individual, Service NSW will be able to prevent a NSW DI from being established using inaccurate or incorrect information, or fraudulently.

**5. Public Interest**

- 5.1. Due to the public benefit of the NSW DI outlined at clauses 4.1 to 4.5, it is in the public interest to ensure that the Department and Service NSW can pilot the NSW DI to ensure it is ready for scale up once legislation is in place.
- 5.2. The modification of the IPPs is limited to the circumstances described at clause 4.15, where a life status check returns results relating to a deceased individual.
- 5.3. The collection of information by ID Support relating to a deceased individual and the subsequent disclosure to Service NSW will:
  - 5.3.1. prevent the deceased individual's identity and personal information being used incorrectly, inaccurately, or potentially fraudulently, and
  - 5.3.2. assist to verify an individual's identity to IP3, ensuring a high level of confidence that the individual is who they say they are and building early public trust in the NSW DI.
- 5.4. The modification of the IPPs is time limited (see clause 9) to allow for the passage of legislation to enable ID Support to undertake life status checks for public sector agencies for fraud prevention purposes.
- 5.5. The public interest in permitting the collection and disclosure of information for the purpose of conducting a life status check for the NSW DI pilot program outweighs the public interest in ID Support or Service NSW with IPPs 9 and 18.

**6. Exemption or modification to IPPs**

- 6.1. This Direction exempts or modifies the Information Privacy Principles (IPPs) as they apply to ID Support and Service NSW to the extent described below.

IPP	Exemption or Modification Sought to IPPs
Section 8 (IPP 1) Collection of Personal Information for lawful purposes	No exemption from or modification to the IPP.

IPP	Exemption or Modification Sought to IPPs
<p><b>Section 9 (IPP 2)</b> Collection of Personal Information directly from individual</p>	<p>ID Support is not required to comply with IPP 2 for the collection of information to determine an individual's life status. Service NSW is not required to comply with IPP 2 for the collection of information to determine an individual's life status.</p>
<p><b>Section 10 (IPP 3)</b> Requirements when collecting Personal Information</p>	<p>No exemption from or modification to the IPP.</p>
<p><b>Section 11 (IPP 4)</b> Other requirements relating to collection of Personal Information</p>	<p>No exemption from or modification to the IPP.</p>
<p><b>Section 12 (IPP 5)</b> Retention and security of Personal Information</p>	<p>No exemption from or modification to the IPP.</p>
<p><b>Section 13 (IPP 6)</b> Information about Personal Information held by agencies</p>	<p>No exemption from or modification to the IPP.</p>
<p><b>Section 14 (IPP 7)</b> Access to Personal Information held by agencies</p>	<p>No exemption from or modification to the IPP.</p>
<p><b>Section 15 (IPP 8)</b> Alteration of Personal Information</p>	<p>No exemption from or modification to the IPP.</p>
<p><b>Section 16 (IPP 9)</b> Agency must check accuracy of Personal Information before use</p>	<p>No exemption from or modification to the IPP.</p>
<p><b>Section 17 (IPP 10)</b> Limits on use of Personal Information</p>	<p>No exemption from or modification to the IPP.</p>

IPP	Exemption or Modification Sought to IPPs
<p><b>Section 18 (IPP 11)</b> Limits on disclosure of Personal Information</p>	<p>Service NSW is not required to comply with IPP 11 when disclosing information to ID Support if the disclosure is for the purpose of determining an individual's life status.</p> <p>ID Support is not required to comply with IPP 11 when disclosing personal information to the Queensland Registry to determine an individual's life status.</p> <p>ID Support is not required to comply with IPP 11 when disclosing to Service NSW an individual's life status.</p>
<p><b>Section 19 (IPP 12)</b> Special restrictions on disclosure of Personal Information</p>	<p>No exemption from or modification to the IPP.</p>

**7. Breach**

7.1. If ID Support or Service NSW collects or discloses personal information other than in accordance with the purposes set out in clause 4 of this Direction, it must notify the NSW Privacy Commissioner within 48 hours of confirmation that such a contravention has occurred.

**8. Reporting and auditing**

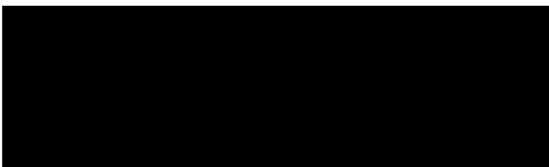
8.1. ID Support will report to the Privacy Commissioner within 6 months of the conclusion of this Direction on compliance with this Direction, including any complaints received by ID Support from the public regarding the collection and/or disclosure of personal information under this Direction (with details); and

8.2. Service NSW will report to the Privacy Commissioner within 6 months of the conclusion of this Direction on compliance with this Direction, including any complaints received by Service NSW from the public regarding the collection and/or disclosure of personal information under this Direction (with details).

**9. Duration**

9.1. This Direction has effect for a period of 12 months from the date made, or until legislative amendments are made that supersede this Direction (whichever is earliest).

Signed by me on 13 February 2025.



Sonia Minutillo  
NSW Acting Privacy Commissioner