

# Agency Information Guide

May 2022

The *Government Information (Public Access) Act 2009* (GIPA Act) provides members of the public with a right of access to government information to help make that information more readily accessible to them.

We provide an Agency Information Guide (the Guide) as part of the requirements set out in the GIPA Act. The Guide provides a general description of:

- our structure and functions
- the ways in which our functions affect members of the public
- how members of the public can participate in policy formulation and provide feedback
- the kinds of information we hold
- information we make publicly available
- how people can access information we hold.

The Guide was reviewed and provided to the NSW Information and Privacy Commission in May 2022.

We review the Guide each year. Additional reviews may occur if there are any significant changes to be incorporated.

Our [Privacy Management Plan \(PMP\)](#) sets out further information about how we collect, use and disclose personal, health and sensitive information.

Please contact our Information & Privacy Officer if you have any questions or would like further information. Their contact details are provided on page 12.

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### About NSW Trustee & Guardian

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We are a statutory agency within the Stronger Communities cluster providing services that help support and protect some of the most vulnerable members of the NSW community as well as supporting people at critical moments in their life. We do this by providing independent and impartial financial management, guardianship and trustee services that support customers and help them manage their health, lifestyle and financial affairs and ensure their legacy is carried out in accordance with their wishes.

Our role as an agency is to protect, promote and support the rights, dignity, choices and wishes our customers by supporting the Chief Executive Officer and the Public Guardian to carry out the statutory functions of the NSW Trustee, Public Guardian and the Commissioner of Dormant Funds.

### Our legal framework

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Our legal framework enables, supports and governs our role and the services we provide to customers.

We are constituted under the NSW *Trustee and Guardian Act 2009*. The statutory functions of the NSW Trustee and Commissioner of Dormant Funds are carried out by the Chief Executive Officer. The statutory functions of the Public Guardian are carried out by the NSW Public Guardian.

These functions and how they are to be carried out are set out in the:

- [NSW Trustee and Guardian Act 2009](#) and [NSW Trustee and Guardian Regulation 2017](#)
- [Guardianship Act 1987](#) and [Guardianship Regulation 2016](#)
- [Dormant Funds Act 1942](#) and [Dormant Funds Regulation 2014](#).

### Fees charged to customers

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We are a self-funded government agency. Our main source of revenue is the fees, commissions and charges for managing customer assets and delivering estate administration, trusts, powers of attorney, Wills and Estate Planning and financial management services. There are no fees charged for services provided by the Public Guardian.

The authority to charge fees for our financial management, estate administration, trustee and power of attorney services is set out in the NSW Trustee and Guardian Regulation 2017. For some services the fees are set by regulation. These represent the majority of fees received. For other services, the regulations authorise the Chief Executive Officer to set the fee charged.

Our [schedule of fees](#) is available on our website.

### Our statutory functions and the services we provide

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Our services are provided as part of the functions of the NSW Trustee, Public Guardian and the Commissioner of Dormant Funds and make a difference in the lives of over 47,000 people each year.

As the NSW Trustee we can be appointed to act as executor or administrator of deceased estates, trustee, financial manager of last resort, agent or attorney.

We also provide oversight and support to members of the community appointed as financial managers and prepare Wills, Power of Attorney and Enduring Guardian documents.

Other services include managing restrained and forfeited assets and victims support payments and holding funds paid into court.

The Public Guardian can be appointed as guardian of last resort. The Public Guardian also provides information and referrals to people appointed as guardians and enduring guardians as well as providing information to the community.

As the Commissioner of Dormant Funds we make recommendations for the application of charitable funds that have become dormant.

Further information about our functions and the services we provide is set out in our [Annual Reports](#).

### Financial management

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A financial manager is a person or organisation who is legally appointed through a financial management order to make substitute financial and legal decisions for a person who does not have the capacity to make those decisions for themselves or with support.

The NSW Trustee is appointed as financial manager of last resort when there is no one available or suitable to perform that role.

We also provide oversight to members of the community appointed as financial managers.

### Guardianship

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A guardian is legally appointed to make substitute health and lifestyle decisions on behalf of a person who lacks the ability to make those decisions on their own or with support.

The Public Guardian is guardian of last resort and is only appointed if a suitable private guardian cannot be identified.

The Public Guardian also provides information and support to members of the community appointed as private or enduring guardians.

### Wills and estate planning

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Our Wills and Estate Planning services enable customers to make a Will to set out who they want to receive their assets when they die, appoint a Power of Attorney to manage their assets and financial affairs on their behalf or appoint an enduring Guardian to make health and lifestyle decisions when they are not capable of doing that themselves.

We also provide secure long-term storage of Wills, Power of Attorney and Enduring Guardian documents.

### Estate administration

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We provide estate administration services as executor and administrator. As executor we carry out the wishes of the person who made the Will.

We can be appointed as administrator by the court where:

- there is no Will
- a Will exists but no executor is appointed
- where the executor cannot act or appoints us to act in their place.

Under the *Probate and Administration Act 1898*, we are the nominal title holder of all assets of the people of New South Wales from the time of their death until grant of probate or administration. As title holder of the assets we receive and respond to legal



notices and court documents during this period.

### Power of Attorney

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Customers can appoint us as their attorney to manage their assets and financial affairs on their behalf. Customers can choose the level of assistance we provide and whether we are appointed on a short-term or ongoing basis

Customers can also appoint us as their Enduring Power of Attorney which can be activated if they lose capacity to manage their financial affairs.

### Trust administration

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We create and administer trusts for children, adults who are not able to manage their own affairs, family discretionary trusts and charitable trusts. We also administer trusts created by court orders and victims' support payments.

### Civil forfeiture

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We manage forfeiture of seized and confiscated assets as directed by the courts. Proceeds from sale of these assets, net of our fees, are paid to NSW Treasury.

### Dormant funds

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As the Commissioner of Dormant Funds we make recommendations for approval by the Attorney General of NSW for the application of charitable funds where:

- the funds have not been used for the purposes for which they were donated
- it is not practicable to use the fund for those purposes
- the purposes of the fund cannot be achieved in a reasonable time
- the purpose of fund is uncertain or cannot be ascertained.

### Common funds

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We operate two common funds that provide a range of investment options for customers. This enables us to meet customer investment needs at an acceptable market risk for their circumstances. Performance of the

common funds is measured against financial market benchmarks for the relevant investment option.

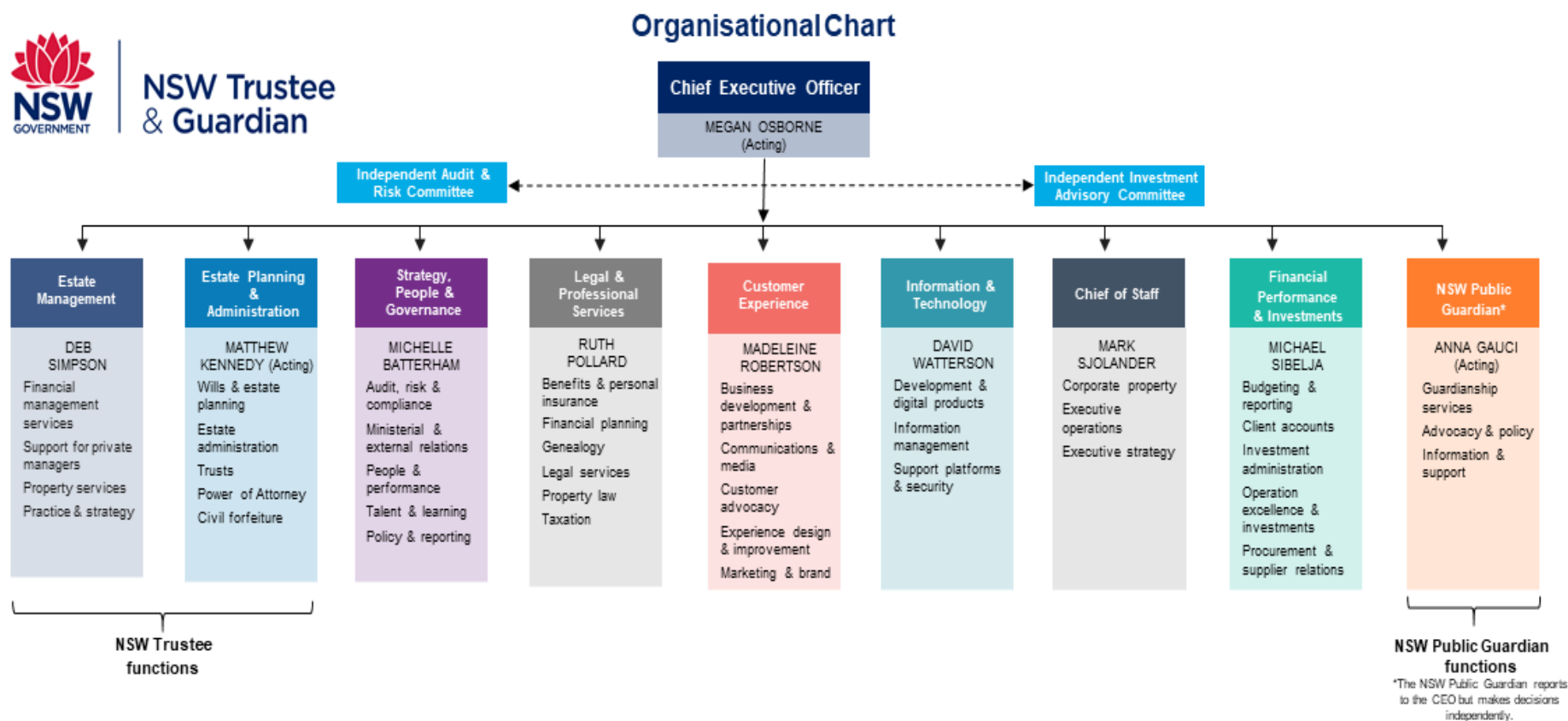
An Independent Investment Advisory Committee provides specialist investment advice to the Chief Executive Officer to assist in management and oversight of the common funds.

## Organisation structure

Our organisation structure and the functions carried out within each division are shown below.

The Public Guardian reports to the Chief Executive Officer. However, all decisions relating to people under a guardianship order made by the Public Guardian as part of their statutory function are made independently of this reporting line.

Our Audit and Risk Committee and Independent Investment Advisory Committee provide high-level advice guidance and oversight to the Chief Executive Officer.



## Impact of our functions and services

We provide a critical community service by protecting, promoting and supporting the rights, dignity, choices and wishes of some of the most vulnerable people.

Our services can assist in preventing exploitation, abuse or neglect of older people and adults with disability. They can also help prevent entry into the criminal justice system, prevent people becoming homeless and ensure that people do not have to attempt to live without appropriate accommodation and supports. Avoiding these negative outcomes can reduce the flow on affect to other government agencies and organisations, which may otherwise be relied upon to provide support and resources.

We establish what is happening in a person's life, what decisions need to be made and, where possible, ascertain the customers will and preferences.

We advocate on behalf of people under a guardianship or financial management order in relation to individual and systemic issues that impact their legal rights and entitlements. We also provide advice on relevant government policy and legislation. This includes making submissions to government inquiries and reviews.

## Our role as a decision maker

In our role as financial manager and guardian we act as a substitute decision maker for people who do not have the capability to make financial, health and lifestyle decisions on their own or with support. We make these decisions in accordance with the principles set out in the *NSW Trustee and Guardian Act* and *Guardianship Act*. Paramount in these principles is upholding the person's welfare and interests.

When we make these decisions, they have the same impact as if the person had made the decision themselves.

When making substitute decisions we consult with the customer to identify their views. We will also consult with family members and other key people in a customer's life, including service providers in regard to decision making or to understand the customer's wants and needs.

When making decisions as executor, administrator, trustee or attorney we act prudently and in the best interests of the beneficiaries in accordance with the terms of the Will, deed, court order or power of attorney.



When providing services as guardian, financial manager, executor, administrator, trustee or attorney we are acting in a fiduciary relationship with customers. This means we undertake to act for, on behalf of, or in the interests of the customer when making decisions. It also means we have additional duties and responsibilities that are greater and go beyond those in a typical transaction-based customer relationship.

## Separation of responsibility for decision making

Where customers receive multiple services or interact with us more than one way, we ensure that, where appropriate, there is separation of responsibility for decision making. For example, health and lifestyle decisions made as guardian are made independently of financial decisions made as financial manager. This separation ensures one person is not responsible for making decisions about all aspects of a person's life.



### Participation and feedback

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We provide a number of options for members of the public to participate in the formulation of our policies and the exercise of our functions.

Customers and members of the public are welcome to make suggestions or raise issues they feel are of concern to them or the community at large by writing to our Chief Executive Officer at [tagmail@tag.nsw.gov.au](mailto:tagmail@tag.nsw.gov.au) or using the contact page on our website.

We also conduct targeted consultation with customers and stakeholders about specific issues. This may include issues such as proposed changes to the fees charged to our customers.

We use feedback from customers to help understand how well we are meeting expectations, delivering services and communicating with customers. Feedback also helps us identify gaps and improvements we can make to our services. Structured feedback is obtained through a series of annual surveys.

Information about how feedback can be provided at other times is published on our website.

Feedback can also be provided through the Have Your Say page on the NSW government's website.

### Information we hold

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We hold information to enable us to carry out our statutory functions and provide services to customers. This includes personal, health and sensitive information about our customers.

This information is contained in:

- customer records
- policy documents
- documents on internal administration of the organisation
- documents concerning recruitment and selection of employees and contractors
- business planning documents.

In addition, we also maintain records of:

- decisions made on behalf of individual customers
- reviews of these decisions
- Wills, Powers of Attorney and Enduring Guardian appointment and associated records to draft documents for customers to reflect their will and preference
- correspondence with other agencies to represent customer or organisational interest through submissions
- correspondence with other agencies, members of the public, ministers and Members of Parliament
- internal working papers of the agency, including briefing papers and advice.

### How we make information available

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In general our customers and the public can access information we hold unless there is an overriding consideration against its disclosure or that information is excluded.

There are a number of ways we make the information we hold available to customers and the public. This can include open access information or in response to a request from a customer or member of the public.

We consider requests to access information we hold in our capacity as executor, administrator or trustee by applying trustee disclosure principles and law.

### Open access information

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We make the following information available on our website as part of our proactive release of information. This is referred to as open access information and includes:

- Annual Reports
- information contained in documents tabled in Parliament concerning NSW Trustee & Guardian
- policies that impact customers and members of the public
- disclosure log of access applications
- register of any government contracts with a value of more than \$150,000 (including GST)
- schedule of fees charged to customers.

We regularly review the information we hold to determine if there is anything further we can make available as open access information. Any information we identify as part of these reviews is published on our website.

At this stage, there is no open access information withheld because of an overriding public interest against disclosure. If we make a decision to withhold public access information, we will publish a record of that decision on our website.

We do not currently publish data sets on the NSW Government's open data [website](#).

### Requests to access information we hold

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Customers and members of the public can request access to information we hold that is not publicly available. This includes personal, sensitive and health information as well as information on other topics of interest. Where possible this information will be released informally. For other information a formal application to access that information can be lodged.

An informal request to access information can be made by contacting our Information & Privacy Officer at [informationofficer@tag.nsw.gov.au](mailto:informationofficer@tag.nsw.gov.au).

We may impose restrictions on the use or disclosure of information released as part of an informal request.

Formal applications to access information we hold must be in writing. Further information on how to lodge a formal access application is available on our website or by contacting our Information & Privacy Officer at [informationofficer@tag.nsw.gov.au](mailto:informationofficer@tag.nsw.gov.au) or by calling us on 02 8688 2600.

Access applications are subject to a \$30 application fee in accordance with the GIPA Act. There may also be additional processing charges for some applications.

We will not release information in response to an access application if there is an overriding public interest against the disclosure of that information or the information is exempt. Further information about these considerations is provided on page 11.

### Access to information we hold in our capacity as executor, administrator or trustee

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Customers and members of the public can request access to information we hold in our capacity as executor, administrator or trustee.

Requests to access this information are considered under the trustee disclosure principles and law. This is because Section 43 of the GIPA Act states that information we hold in our capacity as executor, administrator or trustee is excluded information and cannot be provided in response to an access application under the GIPA Act.

### **Information we will not release in response to an access application**

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We will not release the following information in response to an individual access application:

- personal information of a customer to a third party unless the customer has been deceased for 30 years or more
- personal information of employees, rather than the name and official title, unless required by a law enforcement agency or legal representative, with authorisation to receive the information.

### **Considerations against release of information**

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Section 14 of the GIPA Act sets out the public interest considerations against disclosure we take into account when we consider releasing information. These considerations include:

- responsible and effective government (eg revealing information provided to us in confidence)
- law enforcement and security (eg disclosing information that would reveal a secret police investigation)
- individual rights, judicial process and natural justice (eg revealing private health information of another person without consent or authority)
- business interests of agencies and other persons (eg revealing commercial-in-confidence provisions of a government contract)
- revealing commercial-in-confidence provisions of a government contract

- environment, culture, economy and general matters (eg revealing information where disclosure of that information would provide an unfair advantage)
- secrecy provision (eg revealing information that would contravene secrecy provisions)
- exempt documents under interstate Freedom of Information Legislation (eg revealing information that is exempt under other state or Commonwealth legislation).

### **Access to government information we do not hold**

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Where we receive an application for access to information and data that we do not hold, it may be possible to transfer that application to another agency. This can occur where the other agency agrees to the transfer and is known or reasonably expected to hold the information.

### Role of the Information & Privacy Commission NSW

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The Information and Privacy Commission NSW (IPC) is an independent statutory authority that administers legislation dealing with privacy and access to government held information in NSW.

The IPC can deal with privacy complaints and undertake external reviews of decisions we make in relation to accessing information.

The IPC's website sets out further information about how they manage privacy complaints and reviews of our decisions in relation to accessing information.

Alternatively, you can contact the IPC as follows:

Information & Privacy Commission NSW  
GPO Box 7011, Sydney NSW 2001

Phone: 1800 472 679

Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)

### Feedback and questions

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For further information or to provide feedback, please contact the Information & Privacy Office as follows:

Information & Privacy Officer  
NSW Trustee & Guardian  
Locked Bag 5115, Parramatta NSW 2124

Phone: 02 8688 2600

Email: [informationofficer@tag.nsw.gov.au](mailto:informationofficer@tag.nsw.gov.au)

Information and feedback can also be provided through the [contact form](#) on our website.