

Direction under section 41(1) of the *Privacy and Personal Information Protection Act 1998* in relation to Life on Track

As Privacy Commissioner appointed under Part 4, Division 1 of the *Privacy and Personal Information Protection Act 1998* (NSW) (PIIP Act), I Elizabeth Coombs, hereby direct pursuant to section 41 of the PIIP Act that:

1. Overview

- 1.1 This is a direction made under section 41(1) of the PIIP Act. It should be read in conjunction with the PIIP Act.

2. Interpretation

- 2.1 In this Direction, the following words have the respective meanings set out below:

“**Brief Needs Screen**” means an initial screening that a Life on Track staff member conducts with a defendant using the Life on Track Brief Needs Screening Tool to identify the defendant’s main areas of need. Please refer to paragraph 6.2 below;

“**Comprehensive Assessment**” means an in-depth assessment that a Life on Track staff member conducts with a defendant using the Life on Track Comprehensive Assessment Tool to identify the defendant’s goals, strengths and criminogenic and non-criminogenic needs. Please refer to paragraph 6.3 below. This information will directly inform the development of the defendant’s Life on Track Case Management Plan;

“**DJ**” means the Department of Justice;

“**Direction**” means this direction and any Schedules;

“**GRAM screen**” means a screening process using the Group Risk Assessment Model actuarial tool, as described in paragraph 6.1 below;

“**GRAM screening officer**” means a NSW Police Force employee in a position funded by DJ, employed to conduct the GRAM screen;

“**Life on Track staff**” means a staff member participating in Life on Track, whether employed by DJ or an NGO;

“**NGO**” means a non-government organisation contracted by DJ for the purposes of delivering Life on Track;

"Personal information" has the same meaning as in section 4 of the PPIP Act;

"Police" means the New South Wales Police Force.

- 2.2 For the purposes of section 4(4)(b) of the PPIP Act, an NGO contracted to provide Life on Track is a "person engaged" by DJ. NGOs delivering Life on Track are required to comply with the PPIP Act and *Health Records and Information Privacy Act 2002* (NSW).

3. Application

- 3.1 This Direction applies to DJ and NGOs.

4. Public Interest

- 4.1 This Direction has been made to permit the collection of personal information by DJ for the purposes of Life on Track.
- 4.2 I am satisfied that the public interest in making this Direction is greater than the public interest in requiring DJ and NGOs to comply with the information protection principles contained in Pt. 2, Div. 1 of the PPIP Act.

5. Objectives of Life on Track

- 5.1 The Life on Track service, developed by DJ, aims to identify persons charged with criminal offences who are likely to re-offend, and to provide them with case management where they consent to the provision of this service. This case management includes directly assisting persons and facilitating their access to a range of community and court based programs and services that are targeted at identified areas of need specific to each person. The referral to services aims to reduce the incidence of re-offending, in accordance with the individual's case management plan.
- 5.2 A multi-disciplinary case manager will provide case management and will also prepare and provide progress reports to the court to coincide with the person's court appearances.
- 5.3 Life on Track is delivered either by DJ or an NGO(s) specific to the region in which a person will be required to appear in court.
- 5.4 A person participating in Life on Track may withdraw their consent to participate in Life on Track at any time. In such a circumstance, the person will cease to receive case management support from Life on Track. Their criminal matters will proceed through the usual court process.
- 5.5 DJ has commenced Life on Track, based only on referrals to the service, in two start-up sites covering seven Local Courts. Life on Track will continue in these two sites to enable an evaluation of the service. Based on this evaluation, DJ will decide whether and how the service will be expanded to other Local Courts.

6. Process

Life on Track involves six steps, namely:

- 6.1 *Identification and GRAM screening* – Police identify persons who have been charged by Police and required to appear in Local Courts participating in Life on Track. Persons who commit minor offences and are dealt with by way of infringement notice will not be identified by Police through this process. Personal information about the person is used by a Police employee in a position funded by DJ, the GRAM Screening Officer, to conduct a GRAM screen. The GRAM screen calculates the person's likely risk of re-offending and therefore relates to a law enforcement function of Police rather than an administrative or educative function of Police.

GRAM (Group Risk Assessment Model) is an actuarial tool to identify a person's risk of re-offending. The GRAM Screening Officer(s) screens all identified persons using the GRAM tool and personal information relating to the person from the Computerised Operational Police System (COPS) database. This personal information is not disclosed to DJ. Health information is not used or disclosed by Police for Life on Track purposes.

The GRAM Screening Officer(s) stores the GRAM scores, and the names and contact details from the COPS database, of all identified persons in a dedicated tab in the Life on Track database.

Life on Track staff at the relevant site receive an automatic email from the database alerting them to new persons of medium to high risk (excluding persons with current charges for sexual offences or prior convictions for sexual offences within the past five years). Staff from the relevant site access the GRAM tab in the database to access names, contact details and GRAM scores of the persons within the geographical area where they deliver Life on Track. A GRAM score is a numerical assessment of the risk of reoffending. No other personal information is disclosed to Life On Track staff at this stage.

- 6.2 *Brief Needs Screen* – If a person's GRAM score indicates a medium or high risk of re-offending, a Life on Track case manager will contact the person. Persons who have a low risk of reoffending as calculated by the GRAM tool, including those with no prior history of offending, will not be contacted by Life on Track.

At this stage, Life on Track staff will also accept unsolicited referrals of persons with criminal matters before Local Courts participating in Life on Track who are considered to have multiple or complex needs. Referral sources may include persons' solicitors, presiding magistrates or self-referral and the referrer must obtain the consent of the person before making the referral to Life on Track and providing the person's personal information (i.e. name and contact details). Life on Track case managers will contact persons based on information provided by referrers. The GRAM scores of these persons will have been provided to Life on Track by Police.

When contacting a person via notification from Police through GRAM screening or referral from another source, a Life on Track case manager will explain Life on Track; how any personal information will be collected, used, stored, disclosed or destroyed; and, with the person's consent (written or verbal, depending on whether the brief needs screen is being completed via telephone or in person), collect personal and health information from the person to assess their eligibility for and interest in the service.

If the person does not consent to participating in Life on Track or is not motivated to do so; if it appears the person's needs would be better addressed through another community or court based program; or if the person does not meet the Life on Track eligibility or suitability criteria, no further steps are taken. The Life on Track database, owned by DJ, stores the personal information about the person collected to this point for one year, archives it after one year and destroys it after seven years. This is to enable information about the person to remain available should the person re-offend or be re-referred to Life on Track. It reduces the requirement for persons to repeat their personal stories to service providers with each new referral.

If the person consents and is motivated to participate in Life on Track, a case manager will schedule a face-to-face appointment with the person for a comprehensive assessment.

If Life on Track has not received a GRAM score for a person from Police before this time, information about the person who have been the subject of an unsolicited referral may, at this stage, be provided to the GRAM Screening Officer in Police for the purpose of conducting a GRAM screen (see paragraph 6.1), following the provision of consent from the person. Consent may be written or verbal, depending on whether the brief needs screen is being completed via telephone or in person.

In addition to the records kept in relation to persons participating in Life on Track, some more general records may be kept regarding the rate of participation or non-participation in Life on Track; this is for statistical purposes and does not contain personal information. This information will be recorded in the Life on Track database, owned by DJ.

- 6.3 *Comprehensive Assessment* – persons who consent to further participation in Life on Track at the brief needs screen will be comprehensively assessed to determine their suitability for the service and identify their needs, strengths and goals. This will involve a Life on Track case manager meeting face-to-face with the person.

At the commencement of this appointment, the Life on Track case manager will obtain written consent from the person to enable their personal information to be collected, disclosed, stored and used for the purpose of the subsequent steps in Life on Track.

During the Life on Track assessment and service delivery process Life on Track may collect personal information about a third person where that personal information is necessary for the participation by or provision of services to a particular person in Life on Track. This information will not be disclosed to the court.

- 6.4 *Developing a Case Management Plan* - Based on the comprehensive assessment, and following the Life on Track case manager obtaining written consent from the person at the comprehensive assessment, a case management plan will be developed for the person that articulates his or her goals and the programs or services Life on Track will facilitate him or her accessing to achieve his or her goals. Programs and services identified will be specific to the needs of the person, such as rehabilitation services for drug or alcohol dependency or mental health assessment or support. The case management plan will be discussed with and agreed to by the person.
- 6.5 *Case Management Plan Implementation* – a Life on Track case manager will oversee the implementation of the case management plan, including meeting with the person to discuss treatment and progress. Meetings may include other persons if the person consents, such as family members or staff from relevant service providers. The Life on Track case manager will provide progress reports to the court regarding the person’s participation in case management and services or programs to which he or she is referred in accordance with the case management plan.
- 6.6 *Service Exit* – once the person completes the case management plan; if his or her circumstances change such that he or she is no longer eligible or suitable to participate in Life on Track; if he or she voluntarily withdraws from the service or withdraws their consent for Life on Track to use or disclose their personal information; or if he or she fails to engage with Life on Track case managers, the person will be exited from the service. Life on Track case managers may arrange for follow-up services for the person with their consent if necessary, in accordance with the person’s exit plan.

If the person is sentenced to a custodial sentence or supervision by the Community Corrections division of Corrective Services NSW, the Life on Track case manager will seek the person’s consent to transfer information regarding his or her participation in Life on Track to Corrective Services NSW. If the person does not consent to Life on Track transferring information to Corrective Services NSW, no information will be transferred.

At the conclusion of a Life on Track contract with an NGO, all original personal and health information collected by the Life on Track NGO about defendants must be returned to DJ to be dealt with by DJ under section 12 of the PPIP Act and any other relevant legal obligations of DJ. The Life on Track NGO will destroy any remaining copies of such information held by it.

7. Previous Directions

- 7.1 This Direction replaces all previous directions under the PPIP Act made in relation to Life on Track from the date of this direction.

8. Modification of Information Protection Principles

- 8.1 The application of the information protection principles under Division 1, Part 2 of the PPIP Act are modified to the extent described below.

Collection

- 8.2 Notwithstanding section 9 of the PPIP Act, DJ may collect personal information otherwise than from the individual to whom the information relates if:
- (a) The collection of the information is for the purpose of implementing the steps of Life on Track included in paragraphs 6.1, 6.2 and 6.3, in accordance with the objective of Life on Track as described at paragraph 5.1; and
 - (b) The collection of the information is reasonably necessary for that purpose.

9. Duration

- 9.1 This Direction has effect from **1 January 2016** until **30 June 2016**.

Signed by me on **18 December 2015**

Dr Elizabeth Coombs
NSW Privacy Commissioner