

# Policy: Sanctions and Closures

## Purpose

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The aim of this policy is to ensure that NSW Trustee & Guardian has a coordinated response to formal notifications of sanctions, closures and media reports relating to residential facilities and service providers. This includes establishing clear communication protocols for internal and external stakeholders and the development of a consistent approach across the organisation.

**Residential facilities** include but are not limited to Assisted Boarding Houses (ABH), Aged Care Facilities (ACF) and NDIS funded group homes.

**Service providers** may include Home Care Providers (HCP), Supported Independent Living providers or any other NDIS provider.

## Policy statement

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When NSW Trustee & Guardian receives information relating to inadequate care provided to customers, the organisation has a responsibility as the decision maker to ensure that the customer's rights are protected. Furthermore, in the event a notice is received, customers receiving care which is paid for on their behalf by NSW Trustee & Guardian can expect that the organisation will communicate with all relevant stakeholders on their behalf. This is to ensure their individual circumstances are taken into consideration and that they receive the appropriate level of care and support at their place of residence. Additionally, both the [NSW Trustee and Guardian Act 2009 \(NSW\)](#) and [Guardianship Act 1987 \(NSW\)](#) reference the responsibility of the organisation to promote customer welfare and interest and to ensure they are protected from abuse, neglect and exploitation.

When a notice is received, the organisation will undertake a customer review and develop a strategy to respond according to the type of information and level of risk. This will include consulting with the customer, their family, guardian, service provider and other government and non-government agencies as required. In doing so, the organisation will ensure that the customer's rights, dignity, choices and wishes are respected.

## Scope

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Disability Advocacy Unit  
Trustee Services  
Ministerial and External Relations Team  
Public Guardian  
Customer Experience  
Financial Planning Unit  
Office of the CEO

## Legislative context

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[NSW Trustee and Guardian Act 2009 \(NSW\)](#)

[Guardianship Act 1987 \(NSW\)](#)

[Boarding Houses Act 2012 \(NSW\)](#)

[Aged Care Act 1997 \(Cth\)](#)

[Quality of Care Principles 2014 \(Cth\)](#)

[Aged Care Quality and Safety Commission Act 2018 \(Cth\)](#)

[National Disability Insurance Scheme Act 2013 \(Cth\)](#)

## Definitions

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**ACF** means Aged Care Facility

**Aged Care Quality and Safety Commission (the Commission)** is responsible for the accreditation of government-subsidised residential aged care services and the quality review of home care services, which includes community support packages, respite for carers and day therapy centres, as well as flexible care programs for Aboriginal and Torres Strait Island people. The Commission also imposes sanctions upon facilities which do not meet the necessary standards.

**Ageing and Disability Commission** is an independent agency of the NSW government which works to protect older people and adults with disability from abuse, neglect and exploitation.

**Areas for Improvement** is a direction from the Aged Care Quality and Safety Commission to an aged care provider to improve their service to meet the Aged Care Quality Standards.

**AV** means Authorised Visitor. NSWTCG can appoint an Authorised Visitor to provide advice on the customer's needs and welfare.

**ABH** means Assisted Boarding House.

**Banning Order** is an order made by the NDIS Quality and Safety Commission which prohibits or restricts specified activities by a provider or a person employed or otherwise engaged by a provider. A banning order is one of the most serious regulatory responses to prevent a person from providing supports or services in the NDIS market.

**Boarding House Compliance Team** investigates complaints and undertakes regular monitoring inspections of ABH and issues sanctions for non-compliance. This team is within Department of Communities & Justice.

**Customer** means a managed person identified within the [NSW Trustee and Guardian Act 2009](#) whose financial affairs are managed by NSW Trustee or a person represented by the Public Guardian for health and lifestyle decision in accordance with the Guardianship Act 1987.

**CSO** means NSWTCG Client Services Officer.

**Disability Inclusion Act 2014** commits the NSW Government to making communities more inclusive and accessible for people with disability now and into the future. It also regulates specialise disability supports and services to people with disability.

**Guardian** means a person appointed to make legally valid decisions on behalf of a person with disability who is unable to make decisions on their own or without supporting regards to their health and lifestyle. A guardian can be appointed by the Guardianship Division of the NSW Civil and Administrative Tribunal (this can be a private guardian or the Public Guardian). A guardian can also be appointed through a legal process known as Enduring Guardianship.

**Home Care Provider** delivers aged care services to older people, so they can stay in their homes and/or their communities for longer.

**Independent Administrator** is a person the Aged Care Facility appoints in response to sanctions to assist them to comply with their governance and business responsibilities.

**NDIA** National Disability Insurance Agency.

**NDIS** means National Disability Insurance Scheme.

**NDIS Quality and Safeguards Commission** is an independent agency established to improve the quality and safety of NDIS supports and services.

**NCAT** means the NSW Civil and Administrative Tribunal.

**Non-Compliance Notice** is notification that the aged care provider is not providing the care and services provided by law and that if action is not taken within the agreed timeframe, a sanction may be issued.

**Notice to Agree** is issued by the Aged Care Quality and Safety Commission to an aged care home where non-compliance has resulted in the Commission considering revoking their approval to deliver aged care through a sanction. This includes where the aged care home has failed to give an undertaking to remedy their non-compliance, has failed to comply with the non-compliance plan or has made an unsatisfactory response to a non-compliance notice. A Notice to Agree may, in certain circumstances, be issued before a sanction.

**Nurse Adviser** is a person the Aged Care Facility appoints in response to sanctions to assist them to comply with their clinical responsibilities.

**Residential facility** refers to a facility which provides accommodation and other types of support including assistance with day-to-day living or other forms of care to people with disability or with age related conditions. This includes aged care facilities and specialist disability accommodation funded by the NDIS.

**Sanction** means the Aged Care Quality and Safety Commission has revoked the provider's approval to deliver aged care as a result of continued non-compliance.

## Document information

<b>Title:</b>	Sanctions and Closures Policy
<b>Owner:</b>	Disability Advocacy Unit
<b>Approver:</b>	Chief Executive Officer
<b>Date of Effect:</b>	20 November 2020