

Privacy and Data Protection Act 2014 (Vic)

INSTRUMENT OF DELEGATION

PART A - INTRODUCTION

1. I, Sven Bluemmel, the Information Commissioner appointed under sections 6C and 6E of the *Freedom of Information Act 1982 (Vic) (FOI Act)*, delegate the powers and functions specified in this document to staff of the Office of the Victorian Information Commissioner (**OVIC**) holding the positions set out below.

PART B - PURPOSE

2. The purpose of this instrument of delegation is to delegate the powers and functions conferred on the Information Commissioner under the *Privacy and Data Protection Act 2014 (PDP Act)*.

PART C - AUTHORITY

3. This instrument of delegation is made under the powers conferred on the Information Commissioner by section 80 of the PDP Act.

PART D - REVOCATION

4. All previous instruments of delegation that delegate any powers and functions under the PDP Act are revoked and replaced with this instrument of delegation.

PART E - GENERAL CONDITIONS ON DELEGATION

5. This instrument of delegation does not prevent the Information Commissioner nor the Privacy and Data Protection Deputy Commissioner (**Deputy Commissioner**) from exercising, performing or discharging any delegated powers.
6. In any case, where notice is given to a delegate by the Information Commissioner or the Deputy Commissioner that the Information Commissioner or the Deputy Commissioner proposes to exercise, perform or discharge any of the delegated powers, the delegate must not commence, or must immediately cease to exercise, perform or discharge the delegated power.
7. This instrument of delegation is subject to compliance with any specific administrative policies, procedures and guidelines currently in operation or issued from time to time.

PART F - DELEGATION TO THE PRIVACY AND DATA PROTECTION DEPUTY COMMISSIONER

8. The **Deputy Commissioner** has powers and functions under sections 8B, 8C(2), 8D(2), and 8G. In addition to those powers and functions, I also delegate the delegable powers and functions specified in Part F below to the person appointed as the Deputy Commissioner under section 8H of the PDP Act.
 - a) **Part 1:** Any delegable function set out in sections 8A, 8C, 8D and 8G.
 - b) **Part 3:** All delegable powers and functions in **Part 3 – Information Privacy**, including to:
 - (i) Division 3 – Codes of practice
 - (1) **Section 22:** Approve or amend a code of practice;
 - (2) **Section 25:** Establish and maintain a code of practice register;
 - (3) **Section 26:** Advise a Minister to recommend that approval of a code of practice be revoked.

- (ii) Division 5 – Public interest determinations and temporary public interest determinations
 - (1) **Sections 29, 30 and 31:** Deal with applications for public interest determinations or make public interest determinations;
 - (2) **Section 35:** Revoke a public interest determination including public interest determinations made by the Information Commissioner;
 - (3) **Sections 37, 38, 39 and 40:** Deal with applications for temporary public interest determinations or make temporary public interest determinations;
 - (4) **Section 41:** Revoke a public interest determination including public interest determinations made by the Information Commissioner.
- (iii) Division 6 – Information Usage Arrangements
 - (1) **Section 47:** Consult about information usage agreements or direct any party to an information usage agreement to consult as appropriate;
 - (2) **Section 48:** Issue report about an information usage arrangement application;
 - (3) **Section 49:** Deal with applications for information usage arrangements and issue certificates in respect of information usage agreements;
 - (4) **Section 50:** Send reports about information usage arrangements to a Minister for approval;
 - (5) **Section 52:** Deal with applications to amend information usage arrangements and issue certificates in respect of information usage agreements;
 - (6) **Section 53:** Make request to a Minister to revoke an information usage arrangement;
 - (7) **Section 54:** Report to a Minister about approved information usage arrangements.
- (iv) Division 8 – Information privacy complaints
 - (1) **Section 58:** Treat complaints referred to by the Information Commissioner by the Ombudsman as a complaint received under section 57 of the PDP Act (privacy complaint);
 - (2) **Section 61:** Notify a respondent that a privacy complaint was received;
 - (3) **Section 62:** Decline to entertain a privacy complaint;
 - (4) **Section 63:** Refer a privacy complaint to another specified body;
 - (5) **Section 64:** Dismiss a stale privacy complaint;
 - (6) **Section 66:** Dismiss an inappropriate privacy complaint;
 - (7) **Section 67:** Conciliate a privacy complaint;
 - (8) **Section 68:** Serve a notice to produce or attend in relation to a privacy complaint conciliation;
 - (9) **Section 69:** Prepare and certify an agreement made by parties during conciliation;
 - (10) **Section 71:** Notify parties that conciliation of a privacy complaint was unsuccessful;
 - (11) **Section 77:** Report or make recommendations to a Minister about a Victorian Civil and Administrative Tribunal (VCAT) order about a public register.

- (v) Division 9 – Enforcement of Information Privacy Principles and approved information usage arrangements
 - (1) **Section 78:** Serve a compliance notice or extend time to take action specified in a compliance notice including a compliance notice issued by the Information Commissioner;
 - (2) **Section 79:** Serve a notice to produce or attend in relation to deciding whether to issue a compliance notice.
- (vi) Division 10 – Notices to produce or attend
 - (1) **Section 83B:** Vary or revoke a notice to produce or attend including a notice to produce or attend served by the Information Commissioner;
 - (2) **Section 83C:** Serve a notice to attend requiring immediate attendance;
 - (3) **Section 83D:** Report to the Victorian Inspectorate about a notice to produce or attend;
 - (4) **Section 83E:** Require evidence on oath or affirmation during an examination.
- c) **Part 4:** All delegable powers and functions in **Part 4 – Protective Data Security**, including:
 - (i) Division 2 – Protective data security framework
 - (1) **Section 85:** Develop the Victorian Protective Data Security Framework;
 - (2) **Sections 86 and 87:** Issue, amend, revoke or reissue protective data security standards;
- d) **Part 5:** All delegable powers and functions in Part 5 – Law enforcement data security.
- e) **Part 6:** All delegable powers and functions in Part 6 – General powers of the Information Commissioner, including:
 - (i) Division 1
 - (1) **Section 106:** Require a public sector body head to give access to public sector data or a public sector organisation’s data system;
 - (2) **Section 107:** Require the Chief Commissioner of Police to give access to law enforcement data or law enforcement data system;
 - (3) **Section 108:** Require the Chief Statistician to give access to crime statistics data or any crime statistics data system
 - (4) **Section 109:** Take copies or extracts of data or documents access under sections 106, 107 or 108
 - (5) **Section 110:** Request a public sector body head to provide assistance;
 - (6) **Section 111:** Report to a Minister or publish reports and recommendations;
 - (7) **Section 112:** Refer information from compliance audits to specified persons and bodies;
 - (8) **Section 113:** Notify public sector body heads about disclosures to IBAC.
- f) **Part 7:** All delegable powers and functions in **Part 7 – General**, including:
 - (i) **Section 121:** Consult with person before disclosing information about that person;
 - (ii) **Section 124:** Commence a prosecution.

PART G - DELEGATION TO THE GENERAL COUNSEL AND ASSISTANT COMMISSIONERS

9. To the persons holding the following positions, and any person for the time being acting in or performing the duties of the following positions:

- **General Counsel**
- **Assistant Commissioner, Information Security,**
- **Assistant Commissioner, Privacy and Assurance,**
- **Assistant Commissioner, Policy,**
- **Assistant Commissioner, Public Access Reviews and Regulation, and**
- **Assistant Commissioner, Public Access Operations and Compliance**

I delegate the following powers and functions:

- a) **Section 22(4):** Consult with a person or body about whether the Minister should approve or amend a code of practice;
- b) **Section 26(4):** Consult with a person or body about whether the Minister should revoke approval of a code of practice;
- c) **Section 29(6):** Invite persons affected by a public interest determination to confer;
- d) **Section 35(2):** Consult with affected persons about whether to revoke a public interest determination;
- e) **Section 41(2):** Notify an organisation about an intention to revoke a public interest determination;
- f) **Section 47(2):** Consult about information usage agreements or direct any party to an information usage agreement to consult as appropriate;
- g) **Section 58:** Treat complaints referred to the Information Commissioner by the Ombudsman as a complaint received under section 57 of the PDP Act (privacy complaint);
- h) **Section 61:** Notify a respondent that a privacy complaint was received;
- i) **Section 62:** Decline to entertain a privacy complaint;
- j) **Section 63:** Refer a privacy complaint to another specified body;
- k) **Section 64:** Dismiss a stale privacy complaint;
- l) **Section 66:** Dismiss an inappropriate privacy complaint;
- m) **Section 71:** Notify parties that conciliation of a privacy complaint was unsuccessful;
- n) **Section 78(3):** Extend time to take action specified in a compliance notice;
- o) **Section 83D:** Report to the Victorian Inspectorate about a notice to produce or attend; and
- p) **Section 109:** Take copies or extracts of data or documents accessed under sections 106, 107 or 108.
- q) **Section 121:** Consult with person before disclosing information about that person

PART H - DELEGATION TO OFFICERS OF THE OFFICE OF THE VICTORIAN INFORMATION COMMISSIONER

10. To the persons holding the following positions, and any person for the time being acting in or performing the duties of the following positions:

- Assistant Commissioner, Privacy and Assurance,
- Manager, Privacy Guidance and Dispute Resolution,
- Senior Privacy Advisor and Conciliator, and
- Privacy Advisor and Conciliator

I delegate the following powers and functions:

- a) **Section 67:** Conciliate a privacy complaint.
- b) **Section 69:** Prepare and certify an agreement made by parties during conciliation.
- c) **Section 71:** Notify parties that conciliation of a privacy complaint was unsuccessful.

11. To all **OVIC staff employed** pursuant to my power to employ staff under section 6Q of the *Freedom of Information Act 1982*, I delegate the delegable powers and functions under:

- a) **Section 58:** Treat complaints referred to the Information Commissioner by the Ombudsman as a complaint received under section 57 of the PDP Act (privacy complaint).
- b) **Section 61:** Notify a respondent that a privacy complaint was received.
- c) **Section 109:** Take copies or extracts of data or documents accessed under sections 106, 107 or 108.

PART M - DURATION

12. This instrument of delegation is in force unless and until it is replaced by another instrument.



Sven Bluemmel
Information Commissioner

10 January 2023