

## Temporary Public Interest Determination

I, Rachel Dixon, Acting Information Commissioner, make the following temporary public interest determination under section 39 of the *Privacy and Data Protection Act 2014* (Vic).

### 1. Authority

1.1. This temporary public interest determination is made under section 39(1) of the Act.

### 2. Interpretation

2.1. For the purposes of this temporary public interest determination:

**Act** means *Privacy and Data Protection Act 2014* (Vic).

**Application** means the application for a temporary public interest determination made by DFFH and DJCS to the Acting Information Commissioner under section 38(1) of the Act on 10 August 2023.

**DFFH** means the Department of Families, Fairness and Housing.

**DJCS** means the Department of Justice and Community Safety.

**Eligible Applicant** means an applicant found eligible by DJCS for financial and restorative reparations under the Package.

**IPP** means an Information Privacy Principle as set out in Schedule 1 of the Act.

**Package** means the Stolen Generations Reparations Package established by the Victorian Government.

**Personal information** has the same meaning as in section 3 of the Act.

**Removal Records** means records held by DFFH about an Eligible Applicant's removal from their families, community, culture, identity, and Country.

**Third Party** means an individual whose personal information may be included in the removal records such as the Eligible Applicant's relatives, non-familial carers and individuals involved in the Eligible Applicant's removal.

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**Third Party Information** means the personal information of Third Parties included in the removal records, being some or all of the following:

- First name
- Middle name
- Surname
- Date of Birth
- Work and/or residential address
- Ward file number(s)
- Sensitive information collected when the removal records were created
- Abuse information (including sexual, physical and emotional)
- Criminal charge sheets
- Foster carer assessments
- Adoption information
- Psychological assessments
- Developmental, education and health information

## 3. Scope

3.1. The temporary public interest determination applies to Third Party Information. The temporary public interest determination does not apply to health information as defined by section 3 of the *Health Records Act 2001* (Vic).

## 4. Background

4.1. DJCS administers the Package. Under the Package, Aboriginal and Torres Strait Islander people can apply to DJCS and, if successful, will be eligible for financial and restorative reparations. One of the restorative reparations available to Eligible Applicants is access to their Removal Records.

4.2. When an Eligible Applicant requests access to their Removal Records, DJCS will provide their Personal Information to DFFH. DFFH will locate the Eligible Applicant's Removal Records and provide them directly to the Eligible Applicant. DJCS will not have access to the Removal Records.

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- 4.3. The Removal Records are likely to contain Third Party Information. The Third Party Information in the Removal Records was collected for the primary purpose of managing the removal of the Eligible Applicant. The disclosure of Third Party Information to Eligible Applicants under the Package constitutes a use and disclosure that is not permitted under IPP 2.1.
- 4.4. The application seeks to depart from complying with IPP 2.1. IPP 2.1 requires organisations to not use or disclose personal information for a purpose other than the primary purpose of collection or one of the secondary permitted purposes listed in IPP 2.1(a) – (h).

## 5. DFFH's Act or Practice

- 5.1. DFFH will provide Removal Records to Eligible Applicants that are likely to contain Third Party Information.
- 5.2. DFFH will provide Removal Records to Eligible Applicants without seeking the consent of Third Parties.
- 5.3. The Application states that DJCS expects to receive over 1000 applications under the Package by the close of the Package in March 2027. Each Eligible Applicant's Removal Record is likely to contain Third Party Information of multiple Third Parties.
- 5.4. The Application states it would not be practical to locate and contact all Third Parties and obtain their consent to disclose Third Party Information to Eligible Applicants. The Application states seeking consent from Third Parties would be time-consuming and cause significant delays in providing Removal Records to Eligible Applicants, and would be unlikely to yield results of all Third Parties, noting some individuals may be interstate or overseas. The Application also states that given the age of the Removal Records, contact details may be outdated.

## 6. The public interest

- 6.1. The Application notes the following:

*The Package was developed to help address the trauma and suffering caused by the forced removal of Aboriginal children from their families, community, Culture, identity and language.*

*The Steering Committee oversaw consultations with Stolen Generations people across Victoria in early 2021 about the design of Stolen Generations Reparations in Victoria. Based on this consultation, the Steering Committee developed a report (Final Report) to Government setting out recommendations on the design of the Package (see Stolen Generations Reparations Steering Committee Report).*

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*In the Final Report, at page 53, the Steering Committee notes that: “It was consistently stated throughout consultation sessions across Victoria that access to records remains an ongoing issue for Stolen Generations. The Stolen Generations Reparations survey indicates that 33 of 63 participants who identified as Stolen Generations would benefit from access to family history and other records as a part of a Reparations package.”*

*At page 71, the Steering Committee also noted that, during the consultation process with Stolen Generations, participants “consistently raised various records access concerns indicating that access to personal and family records remains an issue, including they did not know how to access records, did not understand or agree with the Freedom of Information redaction process, or were unable to locate family due to limitations in accessing records”.*

*The Healing Foundation’s Historical Records Taskforce published principles regarding improved access to and better preservation of records relating to stolen children and separated families. The principles relate to having national consistency, permissive access, trauma-aware and healing-informed access and release, and acknowledgement of intergenerational trauma. These principles are supported by a community of Australian and New Zealand Information Commissioners.*

*The Final Report follows several reports that have noted the importance to First Peoples of supported access to their records and recommended improvements and changes to assist Stolen Generations in accessing their records and understanding their family history.*

*Most recently, the Yoorook Commission has also noted:*

- *the harm caused to Victorian Aboriginal and Torres Strait Islander peoples, including the reinforcement of deficit narratives and systemic racism and the denial of Indigenous sovereignty, by the absence of Indigenous control over information recorded by government agencies; and*
- *the need for Indigenous Data Sovereignty and Governance.*

*See [032322 Yoorook DataSovereigntyGuidance.pdf \(yoorrookjusticecommission.org.au\)](#)*

*Recommendation 11 of the Final Report is that “eligible applicants to the Stolen Generations Reparations [P]ackage are provided with a copy of their personal records if requested”. Eligible applicants are able to request a copy of their government removal records as part of their reparations. For many applicants, DFFH holds their removal records, such as their wardship files. As part of the Package, DFFH would facilitate access to these records for eligible applicants.*

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6.2. The Application states that the public interest in departing from IPP 2.1 substantially outweighs the public interest in complying with IPP 2.1 as it will facilitate timely access to Removal Records for Eligible Applicants. The Application states that timely access to Removal Records will:

- *enable applicants to feel empowered to choose and receive tailored restorative reparations as part of their Package, which includes access to their own records;*
- *contribute to State reparations for the harm they have experienced as members of Victoria's Stolen Generation;*
- *enable applicants to receive their records from DFFH as part of their Package, rather than applying separately to DFFH, with support services coordinated by DJCS if requested;*
- *support applicants' journey to reconnect to their identity, history, language, community, Culture, Country and family;*
- *enable applicants to read and respond to the information collected about them consistent with the principle of Indigenous Data Sovereignty; and*
- *support applicants' healing, and the healing of their families, from the harm caused by their removal and separation.*

6.3. The Application states there is an urgent need for a temporary public interest determination as many priority Eligible Applicants are either elderly and in poor health.

## 7. Determination

7.1. I have considered the Application, the public interest, and the object of the Act.

7.2. I have considered that the Aboriginal and Torres Strait Islander peoples who are members of the Stolen Generation form a significant portion of the public, such that their interests constitute a public interest.

7.3. There is a strong public interest in the Stolen Generations receiving their Removal Records under the Package. Receiving Removal Records will help the Stolen Generations to fill gaps in and understand their personal and family history, connect with family, and help to heal from the harm caused by the removal.

7.4. I am satisfied that the public interest in DFFH disclosing Removal Records to Eligible Applicants substantially outweighs the public interest in complying with IPP 2.1 regarding Third Party Information.

7.5. I am also satisfied that the Application requires a temporary public interest determination given the urgency in providing Removal Records to priority applicants who are elderly and unwell. These individuals may otherwise miss out on the opportunity to receive their Removal Records.

7.6. Consequently, DFFH is permitted to depart from compliance with IPP 2.1 and engage in the act or practice described in paragraphs 5.1 and 5.2.

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## 8. Duration

8.1. The temporary public interest determination has effect from the date that it is signed until 22 August 2024.



Rachel Dixon

**Acting Information Commissioner**

21 August 2023