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Application for temporary public interest determination

Notice pursuant to section 38(4) of the Privacy and Data Protection Act 2014

### **Information Commissioner may make a temporary public interest determination**

On 10 August 2023, the Department of Families, Fairness and Housing (**DFFH**) and the Department of Justice and Community Safety (**DJCS**) applied to the Information Commissioner for a temporary public interest determination (**TPID**) under section 38(1) of the *Privacy and Data Protection Act 2014* (Vic) (**PDP Act**).

Under section 39(1), the Information Commissioner may make a TPID if satisfied that:

* the public interest in the organisation doing the act or engaging in the practice substantially outweighs the public interest in complying with a specified Information Privacy Principle (**IPP**)[[1]](#footnote-1), and
* the application raises matters that require that a determination be made urgently.

In deciding whether to make a TPID, the Information Commissioner must have regard to whether or not permitting the organisation to do the act or engage in the practice is in the public interest, and the objects of the PDP Act.

### **Background to the application**

DJCS administers the Stolen Generations Reparations Package (**the package**) through the Stolen Generations Reparations Unit Aboriginal Justice Group.[[2]](#footnote-2)

The Victorian Government established the package in March 2022 to help address the trauma and suffering caused by the forced removal of Aboriginal and/or Torres Strait Islander children from their families, community, culture, identity and Country.

Aboriginal and Torres Strait Islander people can apply to DJCS for the package and, if successful, will be eligible for financial and restorative reparations. One of the restorative reparations available is access to records held by the State about the applicant’s removal.

DFFH holds the removal records. Among other documents, the records are comprised of ward register entries, ward files, institutional files, and child protection files. In addition to containing the personal information of the package applicant, the removal records may contain the personal information of third parties such as the applicant’s relatives and non-familial carers, and the individuals involved in the removal of the applicant. The third party information is likely to include 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

Where an eligible applicant requests access to their removal records, DJCS will upload their name and date of birth to a SharePoint folder managed and secured by DJCS.DJCS will grant DFFH access to the folder. DFFH will retrieve the removal records from archival storage, provide the records directly to the applicant and notify DJCS. DJCS will not have access to the removal records. Once DJCS has received the notification from DFFH, it will coordinate services to support the applicant.

### **The TPID application**

To facilitate the provision of removal records to eligible applicants, DFFH seeks to depart from complying with IPP 2.1.

IPP 2.1 requires an organisation to only use or disclose personal information about an individual for the primary purpose for which it was collected or for one of the secondary permitted purposes listed in IPP 2.1(a) – (h). Without a TPID, IPP 2.1 would not allow DFFH to disclose the removal records to eligible applicants where the records contain the personal information of individuals other than the applicant.

If the Information Commissioner grants the TPID, DFFH will be permitted to disclose removal records to eligible applicants regardless of whether the records contain the personal information of third parties.

### **The public interest**

### DFFH’s non-compliance with IPP 2.1

The application states that the public interest in facilitating timely access to the removal records substantially outweighs the public interest in complying with IPP 2.1.

The application states that providing access to the 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’ efforts 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.

Further, the application states there are practical limitations in locating all third parties whose information may be included in the removal records and seeking their consent to disclose their information to the relevant applicant. As most of the records contain documents created before 1989, the application states that the process of locating the third parties would cause significant delays in releasing the records to the applicants, and would be unlikely to yield results.

The application states there is an urgent need for a TPID because many of the applicants are priority applicants who are either elderly or in poor health.

### **Duration of the TPID**

A TPID must operate for no longer than 12 months from the date on which the Information Commissioner makes the determination.

### **Next steps**

The Information Commissioner is considering the TPID application. If the Information Commissioner makes a determination, it will be published on the OVIC website, and will include a statement of reasons for making the TPID.

1. The Information Privacy Principles are set out in Schedule 1 of the PDP Act. [↑](#footnote-ref-1)
2. Detailed information on the package is available on the Victorian Government’s website here: <https://www.vic.gov.au/stolen-generations-reparations-package>. [↑](#footnote-ref-2)