

Application for public interest determination

Notice pursuant to section 29(4) of the *Privacy and Data Protection Act 2014*

Information Commissioner may make a determination

On 25 July 2024, the Department of Justice and Community Safety (**DJCS**) and the Department of Families, Fairness and Housing (**DFFH**) applied to the Information Commissioner for a public interest determination (**PID**) under section 29(1) of the *Privacy and Data Protection Act 2014* (**PDP Act**).

Under section 31(1) of the PDP Act, the Information Commissioner may make a PID if satisfied that the public interest in an organisation doing an act or engaging in a practice substantially outweighs the public interest in complying with a specified Information Privacy Principle (**IPP**).

In deciding whether to make a PID, 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;
- the objects of the PDP Act; and
- any submission received from persons whose interests would be affected by the PID.

Background to the application

The DJCS administers the Stolen Generations Reparations Package (**the Package**) established by the Victorian government to help address the trauma and suffering caused by the forced removal of Aboriginal and Torres Strait Islander children from their families, community, culture, identity and Country.¹ Applications for the package opened on 31 March 2022.

Aboriginal and Torres Strait Islander people can apply to DJCS for the package and, if found eligible, will be entitled to 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.

To facilitate the provision of removal records to an eligible applicant, DJCS will provide the applicant's personal information to DFFH. DFFH will locate the removal records and provide them directly to the applicant or their nominated support person and notify DJCS. DJCS will coordinate services to support the applicant.

¹ Detailed information on the package is available on the Victorian Government's website here: <https://www.vic.gov.au/stolen-generations-reparations-package>

OFFICIAL

The removal records are likely to contain information about third parties, such as applicants' relatives and non-familial carers, unrelated clients and the people involved in the removal of the applicant from their family and/or their institutionalisation for the purposes of managing the removal, separation and care of the applicant. The third-party information is likely to include personal and health information. DFFH will redact any third-party health information contained in the records before providing them to eligible applicants.

The application

The application seeks departure from compliance with IPP2.1.

IPP 2.1 requires organisations to not use or disclose personal information about an individual for a purpose other than the primary purpose of collection or for one of the secondary permitted purposes listed in IPP 2.1. Without the PID, IPP 2.1 would not permit DFFH to provide removal records to eligible applicants where the records contain the personal information of third parties.

On 21 August 2023, the Acting Information Commissioner made a temporary public interest determination (TPID) under section 39(1) of the PDP Act permitting DFFH to depart from complying with IPP 2.1 to enable DFFH to provide removal records to eligible applicants.² The TPID will expire on 22 August 2024.

If granted, the PID will replace the TPID to facilitate the ongoing provision of removal records to eligible applicants.

The public interest

The application states that the public interest in DFFH providing removal records to eligible applicants substantially outweighs the public interest in complying with IPP 2.1 because it will:

- enable applicants to feel empowered to choose and receive tailored restorative reparations as part of their package, which includes access to their own removal records;
- contribute to State reparations for the harm they have experienced as members of Victoria's Stolen Generations;
- 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, the disconnection from which resulted from being removed as a member of the Stolen Generations;

² The TPID is available on the OVIC website here: <https://ovic.vic.gov.au/privacy/resources-for-organisations/modifying-the-application-of-the-information-privacy-principles/applications-to-modify-the-information-privacy-principles/>

OFFICIAL

- enable applicants to read and respond to the information collected about them consistent with the principle of Indigenous Data Sovereignty; and
- as a result, support applicants' healing, and the healing of their families, from the harm caused by their removal and separation.

The application states it would not be practical to obtain the consent of all third parties whose information is contained in the removal records before providing them to eligible applicants as required by IPP 2.1(b). Seeking consent from third parties would be time-consuming and cause significant delays in providing the records to eligible applicants and would be unlikely to yield results from all third parties, noting some may be interstate or overseas. The application also states that enabling access to removal records is time critical as many applicants are high priority applicants who are either over 65 or in poor health.

No other grounds under IPP 2.1 would apply to support the sharing of the proposed information.

Duration of the PID

The application seeks the PID to continue until 31 March 2028.

Submissions may be made in relation to the application

In accordance with section 29(4)(b) of the PDP Act, the Information Commissioner invites any persons whose interests would be affected by the PID to make a submission in relation to the application.

Submissions are invited from the date of this notice and must be received by **14 August 2024**.

Submissions must be emailed to policyteam@ovic.vic.gov.au. If a submission cannot be sent by email, please contact this office on 1300 006 842 to discuss alternative options.

Sean Morrison

Information Commissioner

6 August 2024