

## Public Interest Determination

I, Sean Morrison, Information Commissioner, make the following public interest determination under section 31(1) of the *Privacy and Data Protection Act 2014*.

### 1. Authority

1.1 This public interest determination is made under section 31(1) of the Act.

### 2. Interpretation

2.1 For the purposes of this public interest determination:

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

**Application** means the application for a public interest determination made by DJCS and DFFH to the Information Commissioner under section 29(1) of the Act on 25 July 2024

**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 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** mean records held by DFFH about an Eligible Applicant's removal by the State from their families, community, culture, identity and Country

**Sensitive Information** has the same meaning as in Schedule 1 of the Act

**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, including:

- 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 and education information

## 3. Scope

3.1 This public interest determination applies to Third Party Information. This 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 or their nominated support person. DJCS will not have access to the Removal Records.

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 by IPP 2.1.

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- 4.4 IPP 2.1 requires that organisations do 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).
- 4.5 The Application seeks to permit DFFH to depart from complying with IPP 2.1.

## 5. DFFH's Act or Practice

- 5.1 DFFH will provide Removal Records to Eligible Applicants on request. The Removal Records are likely to contain Third Party Information of multiple Third Parties. DFFH will provide Removal Records to Eligible Applicants without seeking the consent of the Third Parties.
- 5.2 The Application states that DJCS expects to receive over 1,200 applications under the Package by the close of the Package in March 2027.
- 5.3 The Application states it would not be practical to locate Third Parties and obtain their consent to disclose Third Party Information in the Removal Records to Eligible Applicants. The Application states seeking consent from Third Parties would be time-consuming, would cause significant delays in providing Removal 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 providing Removal Records to Eligible Applicants is time critical as many are either advanced in age or in poor health.

## 6. The Public Interest

- 6.1 The Application notes the following public interest reasons supporting the application to allow DFFH to depart from IPP 2.1:

*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.](#))*

*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 survey indicates that 33 of 63 participants who identified as Stolen Generations would benefit from access to family history and other records as 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*

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*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 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.*

*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.*

6.2 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, as it will facilitate timely access to Removal Records. 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 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;*
- *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.*

## 7. Previous Temporary Public Interest Determination

7.1 On 21 August 2023, the Acting Information Commissioner made a temporary public interest determination under section 39(1) of the Act, permitting DFFH to depart from complying with IPP 2.1 with respect to the acts or practices described in paragraph 5.1. The temporary public interest determination has effect until 22 August 2024.

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## 8. Determination

- 8.1 I have considered the Application, the public interest, the objects of the Act.
- 8.2 I have considered that a temporary public interest determination was in effect from 21 August 2023 to 22 August 2024 to enable DFFH to provide Removal Records to Eligible Applicants.
- 8.3 I consider that members of the Stolen Generations form a significant portion of the public, such that their interests constitute a public interest.
- 8.4 There is a strong public interest in members of the Stolen Generations receiving their Removal Records under the Package. Receiving Removal Records will help members of the Stolen Generations to fill in gaps and understand their personal and family history, connect with family, and help to heal from the harm caused to them by the removal.
- 8.5 For these reasons, I am satisfied that the public interest in DFFH disclosing Removal Records to Eligible Applicants substantially outweighs the public interest in DFFH complying with IPP 2.1 with respect to Third Party Information.
- 8.6 Consequently, DFFH is permitted to depart from complying with IPP 2.1 and engage in the acts or practices described in paragraph 5.1.

## 9. Duration

- 9.1 The public interest determination has effect from the date that it is signed until 31 March 2028. This will enable DFFH to disclose Removal Records to Eligible Applicants after applications for the Package close on 31 March 2027.

## 10. Report and review

- 10.1 DFFH and DJCS will report to the Information Commissioner on the public interest determination annually and at any other time as requested.
- 10.2 On receipt of the report, the Information Commissioner will review the public interest determination and consider whether to revoke or amend it.

Sean Morrison

Information Commissioner

21/8/2024