

Certificate pursuant to s55 of the *Privacy and Data Protection Act 2014*: Victorian Auditor-General's Office

Background

On 20 May 2016 the Victorian Auditor-General's Office (VAGO) submitted an application for Certification under s55 of the *Privacy and Data Protection Act 2014* (PDPA) to the Commissioner for Privacy and Data Protection (CPDP). On 15 July 2016 CPDP issued a certificate in relation to VAGO's obligations under Information Privacy Principle (IPP) 1.5 of the PDPA.

On 14 September 2016 VAGO submitted a second application, seeking to incorporate changes to the *Audit Act 1994* that came into effect on 1 July 2016 by virtue of the *Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016*.

This Certificate responds to VAGO's initial application of 20 May 2016, and the subsequent application of 14 September 2016.

This Certificate:

1. Repeals the 15 July 2016 Certificate, and
2. Replaces it so as to take account of the legislative changes referred to above.

VAGO's applications relate to its obligations under IPP 1.5. IPP 1.5 states:

If an organisation collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in IPP 1.3 except to the extent that making the individual aware of the matters would pose a serious threat to the life or health of any individual.

Pursuant to the *Audit Act 1994*, during the commission of financial and performance audits of the Victorian public sector, including audits that have called for information from associated entities and audits of bodies that receive public grants, VAGO may collect personal information from third parties.

IPP 1.5 requires that where an organisation collects personal information about an individual from someone else, it must take reasonable steps to ensure that the individual is or has been made aware of the matters listed in IPP 1.3 (subject to limited exceptions).

IPP 1.3 requires that at or before the time (or, if that is not practicable, as soon as practicable after) an organisation collects personal information about an individual, the organisation must take reasonable steps to ensure that the individual is aware of:

- (a) the identity of the organisation and how to contact it; and
- (b) the fact that the individual is able to gain access to the information; and
- (c) the purposes for which the information is collected; and
- (d) to whom (or the types of individuals or organisations to which) the organisation usually discloses information of that kind; and
- (e) any law that requires the particular information to be collected; and
- (f) the main consequences (if any) for the individual if all or part of the information is not

provided.

Personal information collected

The Auditor-General is an independent officer of the Victorian Parliament, appointed to examine the management of public resources and to assess the performance and accountability of public sector operations and activities on behalf of Parliament and Victorians. VAGO has broad powers under the *Audit Act 1994* to gather information as part of its functions. Section 11 gives the power to compel any information from any person as required for an audit. Additionally, s12(1) allows the Auditor-General to override secrecy requirements in legislation or by rule of law (e.g. cabinet confidentiality) to enable information to be shared with VAGO by persons employed in the public service or persons employed in an associated entity, or by an authority or an associated entity.

In order to undertake these functions the Auditor-General collects significant amounts of data, and often this includes the collection of innocuous personal information. The Australian Auditing Standards require sufficient and appropriate evidence in order to form an audit conclusion and the *Audit Act 1994* requires VAGO to comply with these standards. Usually redacted or de-identified information is unacceptable, as the standards require source data that has not been manipulated.

The information required by the Auditor-General may include significant amounts of personal information, however in most cases the personal information is largely incidental in nature. The personal information is not the subject of the audit and will not be used or disclosed at an individual level, for any secondary purpose.

The types of personal information VAGO may collect include the following:

- Employee payroll information for the purposes of testing payroll functions and bank account reconciliations.
- Files of individual service users or cases, used in aggregate to track service efficiency and effectiveness.
- Complaint files, including personal information of complainants and third parties, in order to assess complaint-handling performance.
- Residential contact details and other personal information in relation to assessment of various emergency responses.
- Other personal information necessary to undertake the functions of the Auditor-General under the *Audit Act 1994*.

VAGO's notification procedures

VAGO's current practice for notification includes detailed information in its privacy policy on its website. Pursuant to IPP 1.3, the website sets out VAGO's practices in relation to the collection, disclosure and handling of personal information. Purposes listed for collecting information include enabling VAGO to gather evidence for its financial and performance audits under the powers of the *Audit Act 1994*. It is made clear that information gathered for audit evidence can include personal information.

Compliance with IPP 1.5

Compliance with IPP 1.5 requires an organisation to take "reasonable steps" to make individuals aware of the matters listed in IPP 1.3. What is reasonable depends on the circumstances. In some cases it may be reasonable to take either no or very limited steps. In others it might be appropriate to take more significant action to satisfy the 'reasonable steps' test. In VAGO's circumstances it is relevant that:

- the purpose for collection involves little or no further disclosure;
- relatively few people will have access to the personal information in its full form;
- the personal information is protected by strict secrecy provisions in the *Audit Act 1994* (ss 12(2) and 20(A));
- there is little or no likely effect on the individual;
- the provision of complete and timely evidence to VAGO is essential to the ability of auditors to reach robust findings and conclusions; and
- there is a very strong public interest in the collection occurring and occurring swiftly without undue bureaucracy or cost.

It is reasonable as a result to not provide direct notice to individuals other than including a notice in the privacy policy, and ensuring the privacy policy is publicly available.

On the basis of the discussion above, collection of personal information by VAGO in performing its statutory audit functions does not give rise to a requirement that each individual be notified of the collection. In my opinion it is a reasonable response to the requirements of IPP 1.5 that appropriate notification of collection, in general terms, should be included in policy and other materials generally published and that no other notice is given except in the most exceptional circumstances.

Certification

I certify that based on the evidence provided in the applications, the general provision of notice in the privacy policy on the VAGO website for the collection of personal information during the commission of financial and performance audits of the Victorian public sector, including audits that have called for information from associated entities and audits of bodies that receive public grants pursuant to the *Audit Act 1994*, constitutes reasonable steps for the purpose of IPP 1.5.

Conditions

I provide this Certification on the following understanding:

- All information provided to CPDP by VAGO in relation to these applications are true and correct.
- This Certification relates only to personal information that is audit evidence collected and held by VAGO. All other personal information collected by VAGO is not subject to this Certification.
- VAGO is and remains subject to strict secrecy provisions under the *Audit Act 1994* (ss 12(2) and 20(A)) with respect to personal information collected as audit evidence.
- VAGO undertakes to promptly advise CPDP of any material changes that may affect the factual basis of its applications and these conditions.



DAVID WATTS

Commissioner for Privacy and Data Protection