Australian Privacy Foundation

https://www.privacy.org.au

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25 October 2021

Bonnie Kent
Director
Office of the General Counsel
Department of Premier and Cabinet

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Dear Ms. Kent

Re: The proposed Service Victoria Amendment Bill 2021

Thank you for seeking comment from the Australian Privacy Foundation (APF) about the proposed Service Victoria Amendment Bill 2021 (Bill).[1] The APF is the country's leading privacy advocacy organisation. Accordingly, we refer to the development of the Bill and the proposed reform of the Service Victoria Act 2018 to make the following observations.

1. The APF is concerned about extending powers of Service Victoria (SV) in its role as an Administrative Office of Department of Premier and Cabinet (DPC) so as to ensure that SV is better equipped to quickly respond to urgent government priorities. In particular we are concerned by the SV's proposed power to expand its data pool and to link its digital services (collecting, exchanging, using, and disclosing personal data of individuals) with digital information held by the Commonwealth, other State or Territory government bodies and related agencies.

2. The Bill permits the Minister responsible for SV to direct SV to undertake new – unspecified - functions in relation to the delivery of government services, which will extend executive power without scrutiny and oversight of the Parliament.

3. The Consultation Paper, 20 September 2021 (the Paper), states that current 'barriers' impact on customer service provision, while the SV briefing indicates these barriers are inconvenient.[2] The Service Victoria Act 2018, s 16 vests the 'power to do all things that are necessary or convenient to be done for or in connection with the performance of the SV CEO's functions', neither document makes the case that proposed changes supporting the Bill are both necessary and imperative.[3] Rather, the 'inconvenient' argument, like the one in the SV briefing, tends to be used by government authorities

when removing a requirement for legal warrants and judicial oversight in related circumstances.

4. The APF require a robust response from the DPC regarding this very wide-ranging extension of SV powers prior to the review of the SV Act reporting in mid-2022. The current COVID public health emergency does not clearly justify the SV function extension. There is no purpose in reviewing the Bill and supporting documents if fundamental change is already in place, making the review irrelevant.

5. We welcome references in the Paper to seek consent from the individual to whom the information relates, controlling how this information is handled by SV and aligning the SV Act with the Information Privacy Principles and Health Privacy Principles in the Privacy and Data Protection Act and the Human Rights Act.[4-5]

6. The APF ask that the Bill explicitly includes a requirement for 'active consent' rather than simply specify 'consent', which nowadays often includes 'implied consent'. Given the proposed exponential expansion of the data collection, the active consent should be in the form of clear, freely given, *specific*, informed and unambiguous indication of the individual's agreement to the collection, holding, management and retention of personal information by SV. Such consent could be obtained by an electronic or oral statement. Silence, pre-ticked boxes or inactivity should not constitute a valid consent.

7. A publicly available Privacy Impact Assessment of the Bill and supporting reform does not seem to have occurred. An informed discussion of the Bill requires the proposal to be widely publicised and accessible to individuals in order to promote informed community discussion.

8. Although SV database holdings from all consenting agencies and businesses will not be co-located in a single database, the Paper makes it clear that data linkage will occur under some circumstances. A review of implemented controls, access policy and operational readiness, as well as independent oversight, must occur before the Bill progresses through parliament.

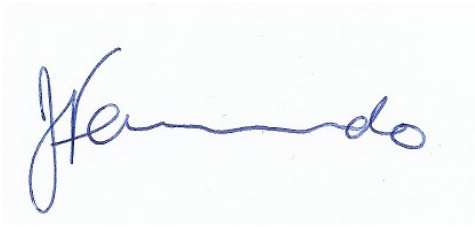
9. The Paper refers to the SV's obligations under the Victorian Charter of Human Rights Act 2006 (Charter); however, such fundamental Charter protections as rights to privacy (s 13(a)) and rights in criminal proceedings (s 25(1)) can be derogated by Parliament, as evidenced by introduction of the Victorian Health Legislation Amendment (Information Sharing) Bill 2021, where individuals are statutorily precluded from seeing a copy of their own records or determining whether they should be uploaded on the system.[5-7]

This Bill and subsequent extension of SV powers are ostensibly intended to improve efficiency of service delivery to the Victorian community, but this is an inordinate response and mirrors

Federal government initiatives, resulting in a duplication of effort. The Paper lacks detail on how Victorians will benefit from this system relative to a risk/benefit calculation. The Bill is an example of digital function creep.

The urgent need for transparent data collection and storage mechanisms to be implemented across the State, given the rapid pace of technological security and privacy threats, is urgent if the community is to trust digital service implementations into the future. I look forward to your reply, and would be happy to help with developing further responses to these issues.

Yours sincerely



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ACKNOWLEDGEMENT

I thank the Executive Board of the Australian Privacy Foundation for their contribution to this letter.

REFERENCES

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