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D21/142756

Dr Juanita Fernando  
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Australian Privacy Foundation  
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Dear Dr Juanita

Thank you for your letter dated 25 October 2021 providing the Australian Privacy Foundation's (APF) comments on the reforms to the *Service Victoria Act 2018* which are proposed to be included in the Service Victoria Amendment Bill 2021 (Bill).

We appreciate the time you have taken in considering the reforms and the thoughtful, detailed feedback you have provided. The Department of Premier and Cabinet, in consultation with Service Victoria, has reviewed APF's comments on the Bill's proposed reforms and has prepared a response to the comments in the enclosed document.

The APF's feedback on these reforms has been used to inform the development of the Bill.

Feel free to get in touch with me if you have any queries or wish to discuss anything further.

Yours sincerely

**Bonnie Kent**  
Director

15 / 11 / 2021

Enc. Response to APF's feedback provided on 25 October 2021

# Response to the Australian Privacy Foundation (APF) feedback

## Extending Service Victoria's (SV's) powers and functions

- DPC acknowledges the APF's concerns about the Service Victoria Amendment Bill 2021's (Bill) extension of SV's functions under the *Service Victoria Act 2018* (SV Act) to support the delivery of government services, particularly in partnership with Commonwealth, State and Territory agencies. DPC notes that the functions that SV will perform, including in entering arrangements with other jurisdictions, will be administrative or identity verification functions (with regulatory decision-making functions remaining with the relevant service agency).
- In many instances, SV may already be able to perform these types of functions under the *Public Administration Act 2004* and Victorian privacy laws. However, the Bill provides clarity as to how the SV Act will apply to SV when performing those functions.
- Importantly, the Bill will clarify that the Customer Service Standards, Identity Verification Standards and minimum standards under the SV Act apply to these functions (including minimum standards on the retention of information, which ensure SV does not unnecessarily retain information for longer than necessary to perform function or to comply with legal requirements). These requirements are in addition to other Victorian privacy law protections. In certain circumstances, SV will also be subject to additional standards or laws in other jurisdictions. This means that the level of information protections that SV offers in its services will not be decreased when entering agreements with other jurisdictions.
- Given the sensitivity of the information handled by Service Victoria, the minimum standards under the SV Act are designed to create additional safeguards to restrict when Service Victoria can collect, use, disclose or retain information and are supported by offences in the Service Victoria Act that apply to unauthorised access to, use or disclosure of information handled under the Act.
- Schedule 1 outlines the strength of the current protections in the SV Act, compared to other protections that would otherwise apply to SV if they were not contained in the SV Act, and the changes that the Bill is making to further strengthen these protections.
- DPC notes that the independent review of the SV Act will also take into account the impacts of the reforms in the Bill, should they pass Parliament. The report of the independent review will be tabled in Parliament by 30 June 2022.

## Ministerial direction power

- With respect to the new Ministerial direction power, this is not dissimilar to the existing ability of the Minister to give directions to SV and the SV CEO as an Administrative Office and Administrative Office Head under the *Public Administration Act 2004*. For the reasons above, the new direction power will clarify the application of the SV Act to those functions.
- The Bill also ensures there is a high degree of transparency and accountability when SV performs functions by Ministerial direction by including a requirement for a Ministerial direction to be published in the Government Gazette as soon as reasonably practicable after it is issued.
- The Minister will remain accountable to the Parliament as the responsible Minister for the SV Act with respect to any directions given to the Service Victoria CEO.

## Barriers in the SV Act

- DPC acknowledges the APF's concerns that it is unclear whether the reforms proposed by the Bill are necessary and imperative.

- DPC notes that the reforms address many barriers identified by DPC, SV and service agencies since the commencement of the SV Act in 2018.
- Many of these issues existed before the COVID-19 pandemic, however the important role that SV has performed in responding to the pandemic has made it even more apparent that these barriers greatly impact SV in performing its role.
- We note that the barriers in the SV Act that the Bill is addressing are significant, and are making it unnecessarily difficult, and sometimes impossible, for SV to onboard new services that are demanded by the government and the public, including the types of functions SV was established to deliver. These barriers mean that SV is not operating at its full potential and that Victorians are not able to access all the services that they need on SV's platform.
- For example, the SV Act unnecessarily limits the types of administrative functions that SV can perform, which means a broad range of simple, administrative transactions, such as allowing Victorians to submit applications in relation to a range of services or programs to the Victorian Government, are not clearly permitted under the SV Act.
- With respect to section 16 of the SV Act, DPC notes that this power is significantly limited by the type of functions that the SV CEO can perform (i.e. administrative customer service or identity verification functions) and the other minimum standards or protections under the SV Act and other privacy laws. It also importantly does not remove any requirements for legal warrants or judicial oversight.

### Privacy arrangements

- DPC notes that the greater flexibility for SV to perform functions under the Bill means that more personal information will be brought under the protections of the minimum standards in the SV Act (as well as other privacy protection laws, including the *Privacy and Data Protection Act 2014* (PDP Act) and *Health Records Act 2001* (HR Act)) and SV's strong data security framework.
- Schedule 1 outlines the strength of the current protections in the SV Act, compared to other protections that would otherwise apply to SV if they were not contained in the SV Act, and the changes that the Bill is making to these protections.

### Requirement for consent

- DPC notes the APF's suggestion that the Bill explicitly includes a requirement for "active consent". The Bill does not make amendments to the current definition of "consent" under section 3 of the SV Act.
- However, we note that Service Victoria provides clear and transparent information to customers about how their information is used to ensure they understand what they are consenting to. Where privacy or information laws of other jurisdictions need to be complied with, these will also be adhered to.
- This helps customers to control how their information is handled by Service Victoria and by other government agencies and is consistent with Service Victoria's obligations under Victoria's privacy legislation, as well as Service Victoria's own Customer Service Standards and privacy and security policy.

### Charter rights and privacy impacts

- DPC has undertaken a detailed assessment of any impacts of the Bill's reforms under the *Charter of Human Rights and Responsibilities Act 2005*, including on the right to privacy. A statement of compatibility for the Bill will be tabled before Parliament when the Bill is introduced.
- DPC has also consulted with all Victorian government departments, Victoria Police, key partner agencies of Service Victoria, the Victorian Equal Opportunity and Human Rights Commission, the Health Complaints Commissioner, the Office of the Victorian Information Commissioner, the Commonwealth Department of



Home Affairs, Commonwealth Digital Transformation Agency, and a number of independent privacy sector stakeholders.

***Data collection and storage***

- DPC notes the APF's comments on the Bill's reform allowing SV to hold data in a segregated platform on behalf of government agencies. SV has a strong data security framework in place and the Bill limits SV's ability to collect, use, disclose or retain information held on behalf of a service agency, except where necessary to perform functions under the SV Act (for example, to develop or perform maintenance on the database). SV will also be required to keep each data set relating to a particular government service separate from other data that is held by SV.
- The responsible Minister will be able to issue mandatory guidelines in relation to the establishment and maintenance of these databases. These guidelines may impose more stringent data protections depending on the type of data and relevant circumstances.
- SV is also subject to oversight by the Victorian Information Commissioner and Health Complaints Commissioner, and is required to comply with any applicable obligations under the PDP Act and the HR Act.

**Department of Premier and Cabinet  
Office of the General Counsel  
15 November 2021**

## Schedule 1 – Summary overview of privacy protections under the SV Act and the Bill compared to other Victorian privacy legislation

Privacy Protection	Protections provided by general privacy legislation	Comparative strength of SV Act protections	Service Victoria Amendment Bill 2021 proposed amendments
Information handling restrictions	Privacy principles under Privacy and Data Protection Act and Health Protection Act ('Privacy Principles').	<b>Stronger</b>	
		Privacy Principles <i>plus additional limitations</i> on the collection, use, disclosure and retention of certain types of information (see Part 5, Division 3 and Part 6, Division 5).	<p>Minor improvements to permit collection, use and disclosure in broader range of circumstances, not inconsistent with Privacy Principles. Additional limitations still apply.</p> <p>Restrictions also apply to the collection, use and disclosure of information that forms part of a database that Service Victoria maintains on behalf of a service agency.</p> <p>Changes to retention periods to permit information to be retained for as long as it is required for a function under the Service Victoria Act or a longer period if required by law.</p>
Mandatory notification of (potential) breaches	No mandatory notification requirements.	<b>Stronger</b>	
		Mandatory notification of (potential) privacy breaches to the Victorian Information Commissioner and Health Complaints Commissioner (section 54).	More data will be subject to the notification provisions because of various amendments that mean more information will be subject to the Service Victoria Act.
Offences for unauthorised use and disclosure	No general offences for unauthorised use applicable to Service Victoria.	<b>Stronger</b>	
		Specific offences in relation to unauthorised use of any information held by Service Victoria (section 50 and 51).	More data will be subject to the offence provisions because of various amendments that mean more information will be subject to the Service Victoria Act.
Reporting to Victorian Information Commissioner and Health Complaints Commissioner	No positive reporting obligations for Service Victoria.	<b>Stronger</b>	
		Service Victoria must report to the Information Commissioner and Health Complaints Commissioner at least every 12 months (section 53).	Technical clarification to ensure it applies to all forms of electronic identity credentials whether under transfer regulations or another mechanism.
Compliance and enforcement by Victorian Information Commissioner and Health Complaints Commissioner	Victorian Information Commissioner and Health Complaints Commissioner can conciliate complaints, carry out investigations and issue	<b>Stronger</b>	
		Service Victoria Act expands oversight by the Victorian Information Commissioner and Health Complaints Commissioner oversight by making a breach of the information handling restrictions in the Service	More data will be subject to the offence provisions because of various amendments that mean more information will be subject to the Service Victoria Act.

	compliance notices in relation to an interference with privacy.	Victoria Act equivalent to a breach of the Privacy and Data Protection Act or Health Records Act (section 21 and 44).	
<b>Auditing</b>	Auditor-General performance audit powers.	<b>Stronger</b>	
	Also see above powers for Information Commissioner and Health Complaints Commissioner.  No general mandated independent audit of databases.	The Minister may require an independent audit of Service Victoria's databases to review compliance with the Service Victoria Act, in addition to Auditor-General's powers (section 56).	More data will be subject to the potential for audit where directed by the Minister.