

Authorised Version
Service Victoria Act 2018
No. 14 of 2018

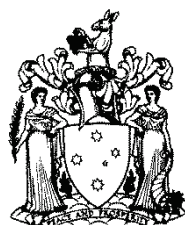
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Authorised Version



Victoria

Service Victoria Act 2018[†]

No. 14 of 2018

[Assented to 15 May 2018]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- (a) to provide for the delivery of Government services to the public by Service Victoria; and
- (b) to provide for a regulatory framework for the provision of identity verification functions by the Service Victoria CEO.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 30 September 2018, it comes into operation on that day.

3 Definitions

In this Act—

account information means any regulated information collected by the Service Victoria CEO in the exercise of any customer service function under this Act in respect of a Service Victoria account that relates to any of the following—

- (a) any record of an individual's Service Victoria account usage;
- (b) details of current authorities issued, or official information documents given or issued, to the individual to whom the Service Victoria account relates, whether or not obtained through Service Victoria;
- (c) details of any expired or cancelled authorities issued to the individual to whom the Service Victoria account relates obtained through Service Victoria;

authority means a licence, permit, approval, authority or other authorisation (by whatever name) given, granted or issued under an enactment;

credential usage history means the record of the usage of an electronic identity credential;

consent means express consent or implied consent;

Council has the same meaning as in the **Local Government Act 1989**;

customer service function means a function of the following kind conferred on a service agency under an enactment (whether express or implied)—

- (a) receiving an application or a request for an authority or official information document;
- (b) receiving payment of any appropriate fee required to be paid under an enactment in respect of an application or request for an authority or official information document;
- (c) delivering an authority or official information document;

customer service information means any regulated information collected by the Service Victoria CEO in the exercise of any customer service function under this Act which relates to any of the following—

- (a) authorities or official information documents;
- (b) applications for the issue or grant of an authority or official information document;

customer service standards means the standards developed under section 20;

electronic identity credential means a temporary electronic identity credential or an ongoing electronic identity credential;

function includes duty;

Health Complaints Commissioner means the ***Commissioner*** within the meaning of the **Health Complaints Act 2016**;

health information has the same meaning as in the **Health Records Act 2001**;

identifier has the same meaning as in the **Health Records Act 2001**;

identity document means a document that purports to provide evidence of an individual's identity specified in the identity verification standards;

identity information means, in relation to an individual—

- (a) an identity document or other information that an individual provides to the Service Victoria CEO for the purposes of verifying the individual's identity; and
- (b) any other prescribed information;

identity verification function means a function conferred on a service agency under an enactment (whether express or implied) that requires—

- (a) an individual to provide the service agency with information verifying the individual's identity; or
- (b) the service agency to obtain information verifying an individual's identity; or
- (c) the service agency to verify an individual's identity;

identity verification standards means the standards made by the Minister under Part 6;

Information Commissioner means the person appointed under section 6C of the **Freedom of Information Act 1982**;

level of assurance means—

- (a) in relation to an electronic identity credential, the degree of confidence that a credential is taken to provide as set out in the identity verification standards; or
- (b) in relation to an identity verification function, the level of assurance required for the purposes of that function as set out in the identity verification standards;

official information document means a document (by whatever name) given or issued under an enactment by a public entity containing information held by a public entity relating to an individual, a matter or a thing;

Examples

Birth certificate or an assessment notice under the **Working with Children Act 2005**.

ongoing electronic identity credential means an electronic identity credential issued under section 27(6);

personal information has the same meaning as in the **Privacy and Data Protection Act 2014**;

public entity has the same meaning as in the **Public Administration Act 2004**;

public service body has the same meaning as in the **Public Administration Act 2004**;

regulated information means personal information, health information, identifiers and unique identifiers;

service agency has the meaning given by section 4;

service agency function means a customer service function or an identity verification function;

service agency head means—

- (a) in the case of a public service body—the public service body Head within the meaning of the **Public Administration Act 2004**; or
- (b) in the case of a public entity that is a body corporate—the chief executive officer of the entity; or
- (c) in the case of a public entity that is an unincorporated body—the secretary or chairperson of the committee managing the affairs of the entity; or
- (d) in the case of Victoria Police—the Chief Commissioner of Police within the meaning of the **Victoria Police Act 2013**; or
- (e) in the case of a person described in section 4(1)(e)—that person;

service agency Minister, in relation to a service agency function, means the Minister responsible for administering the enactment that confers the function on the service agency;

Service Victoria means—

- (a) if an Administrative Office within the meaning of the **Public Administration Act 2004** is prescribed, that Administrative Office; or

- (b) if no Administrative Office is prescribed, the Department responsible to the Minister administering this Act;

Service Victoria CEO means the person employed under section 12(2) of the **Public Administration Act 2004** as the Head of Service Victoria;

Service Victoria database means the database established under section 17;

special body has the same meaning as in the **Public Administration Act 2004**;

temporary electronic identity credential means an electronic identity credential issued under section 27(1);

transferred customer service function means a customer service function that is, by operation of Part 2, transferred to the Service Victoria CEO;

transferred identity verification function means an identity verification function that is, by operation of Part 3, transferred to the Service Victoria CEO;

transaction has the same meaning as in the **Electronic Transactions (Victoria) Act 2000**;

unique identifier has the meaning given in Schedule 1 to the **Privacy and Data Protection Act 2014**;

Victoria Police has the same meaning as in the **Victoria Police Act 2013**.

4 Meaning of *service agency*

- (1) A *service agency* is any of the following—
- (a) a public service body;
 - (b) a public entity;
 - (c) Victoria Police;
 - (d) a Council;
 - (e) a person holding an office or position established by or under an Act (other than the office of member of the Parliament of Victoria) or to which the person was appointed by the Governor in Council, or by a Minister, otherwise than under an Act.
- (2) A *service agency* does not include a special body (other than Victoria Police).

Part 2—Transfer of customer service functions to Service Victoria

Division 1—Ministerial agreements

5 Transfer of customer service functions

- (1) Subject to subsection (3), the Minister and the service agency Minister may agree for the Service Victoria CEO to perform a customer service function that is to be prescribed as a transferred customer service function.
- (2) An agreement under subsection (1) must be in writing and a copy of it must be given to the service agency head and the Service Victoria CEO.
- (3) If the Minister is the service agency Minister, the Minister may publish a notice in the Government Gazette that—
 - (a) the customer service function is to be prescribed as a transferred customer service function; and
 - (b) as a result of that prescription, the Service Victoria CEO is to perform the function.
- (4) A copy of a notice under subsection (3) must be given to the service agency head and the Service Victoria CEO.
- (5) Despite anything to the contrary in the enactment that confers a customer service function on a service agency, on the commencement of a regulation that prescribes the customer service function to be a transferred customer service function—
 - (a) the customer service function is to be performed by the Service Victoria CEO; and

(b) the service agency cannot perform the customer service function unless it is delegated to the service agency head under section 8.

(6) A regulation prescribing a customer service function to be a transferred customer service function must not be made unless—

(a) an agreement has been made under subsection (1) in respect of that function; or

(b) a notice has been published under subsection (3) in respect of that function.

6 Service Victoria CEO and service agency head must give effect to agreement or notice

The Service Victoria CEO and a service agency head must use best endeavours to give effect to an agreement under section 5(1) or a notice under section 5(3) that applies to them.

Division 2—Transferred customer service functions

7 Transfer back of customer service functions to service agency

(1) Subject to subsection (2), the Minister and the service agency Minister may agree for the transfer back to a service agency of any transferred customer service function.

(2) If the Minister is the service agency Minister, the Minister may publish a notice in the Government Gazette that—

(a) the transferred customer service function is to be prescribed as a revoked customer service function; and

(b) as a result of that prescription, the service agency is to perform the function.

- (3) An agreement under subsection (1) must be in writing and a copy of it must be given to the service agency head and the Service Victoria CEO.
- (4) A copy of a notice under subsection (2) must be given to the service agency head and the Service Victoria CEO.
- (5) On the commencement of a regulation that prescribes a transferred customer service function to be a revoked customer service function—
 - (a) the customer service function is to be performed by the service agency in accordance with the enactment that confers the function on the service agency; and
 - (b) the Service Victoria CEO cannot perform that function.

8 Delegation of transferred customer service functions

- (1) The Service Victoria CEO, by instrument, may delegate any transferred customer service function to the service agency head of the service agency from which that function is transferred.
- (2) A service agency head to whom a transferred customer service function is delegated under subsection (1) may delegate that function to any person or class of person employed by, or acting on behalf of, the service agency from which the function is transferred.

Division 3—Other matters

9 Use and disclosure of regulated information

- (1) This section applies despite anything to the contrary in any Act (other than the **Charter of Human Rights and Responsibilities Act 2006**) or law.

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Part 2—Transfer of customer service functions to Service Victoria

- (2) A service agency is authorised to disclose regulated information that the agency holds to the Service Victoria CEO or a delegate of the Service Victoria CEO but only for the purpose of enabling any of the following functions to be performed—
- (a) transferred customer service functions;
 - (b) a function that is ancillary to a function described in paragraph (a).

Note

See section 55 for the disclosure of information to which a secrecy provision applies.

Part 3—Transfer of identity verification functions to Service Victoria

Division 1—Ministerial agreements

10 Transfer of identity verification functions

- (1) Subject to subsection (3), the Minister and the service agency Minister may agree for the Service Victoria CEO to perform an identity verification function that is to be prescribed as a transferred identity verification function.
- (2) An agreement under subsection (1) must be in writing and a copy of it must be given to the service agency head and the Service Victoria CEO.
- (3) If the Minister is the service agency Minister, the Minister may publish a notice in the Government Gazette that—
 - (a) the identity verification function is to be prescribed as a transferred identity verification function; and
 - (b) as a result of that prescription, the Service Victoria CEO is to perform the function.
- (4) A copy of a notice under subsection (3) must be given to the service agency head and the Service Victoria CEO.
- (5) Despite anything to the contrary in the enactment that confers an identity verification function on a service agency, on the commencement of a regulation that prescribes the identity verification function to be a transferred identity verification function—
 - (a) the identity verification function is to be performed by the Service Victoria CEO; and

- (b) the service agency cannot perform the identity verification function unless it is delegated to the service agency head under section 13.
- (6) A regulation prescribing an identity verification function to be a transferred identity verification function must not be made unless—
 - (a) an agreement has been made under subsection (1) in respect of that function; or
 - (b) a notice has been published under subsection (3) in respect of that function.

11 Service Victoria CEO and service agency head must give effect to agreement or notice

The Service Victoria CEO and a service agency head must use best endeavours to give effect to an agreement under section 10(1) or a notice under section 10(3) that applies to them.

Division 2—Transferred identity verification functions

12 Transfer back of identity verification functions to service agency

- (1) Subject to subsection (2), the Minister and the service agency Minister may agree for the transfer back to a service agency of any transferred identity verification function.
- (2) If the Minister is the service agency Minister, the Minister may publish a notice in the Government Gazette that—
 - (a) the transferred identity verification function is to be prescribed as a revoked identity verification function; and
 - (b) as a result of that prescription, the service agency is to perform the function.

- (3) An agreement under subsection (1) must be in writing and a copy of it must be given to the service agency head and the Service Victoria CEO.
- (4) A copy of a notice under subsection (2) must be given to the service agency head and the Service Victoria CEO.
- (5) On the commencement of a regulation that prescribes a transferred identity verification function to be a revoked identity verification function—
 - (a) the identity verification function is to be performed by the service agency in accordance with the enactment that confers the function on the service agency; and
 - (b) the Service Victoria CEO cannot perform that function.

13 Delegation of transferred identity verification functions

- (1) The Service Victoria CEO, by instrument, may delegate any transferred identity verification function to the service agency head of the service agency from which that function is transferred.
- (2) A service agency head to whom a transferred identity verification function is delegated under subsection (1) may delegate that function to any person or class of person employed by, or acting on behalf of, the service agency from which the function is transferred.

Division 3—Other matters

14 Service agencies authorised to disclose regulated information to Service Victoria

- (1) This section applies despite anything to the contrary in any Act (other than the **Charter of Human Rights and Responsibilities Act 2006**) or law.
- (2) A service agency is authorised to disclose regulated information that the agency holds to the Service Victoria CEO or a delegate of the Service Victoria CEO but only for the purpose of enabling any of the following functions to be performed—
 - (a) transferred identity verification functions;
 - (b) a function that is ancillary to a function described in paragraph (a).

Note

See section 55 for the disclosure of information to which a secrecy provision applies.

Part 4—Role of Service Victoria

15 Functions of Service Victoria CEO

The Service Victoria CEO has the following functions—

- (a) to perform transferred customer service functions;
- (b) to develop customer service standards to improve the delivery of Government services to individuals;
- (c) to verify identity and to perform transferred identity verification functions;
- (d) to assist the Minister to develop identity verification standards to achieve a consistent and secure process to verify identity;
- (e) to issue electronic identity credentials;
- (f) to provide advice and information on matters relating to customer service functions and identity verification functions;
- (g) to perform functions ancillary to a function referred to in paragraphs (a) to (c);
- (h) to perform any other functions conferred by or under this Act or any other enactment.

16 Powers of Service Victoria CEO

- (1) The Service Victoria CEO has power to do all things that are necessary or convenient to be done for or in connection with the performance of the Service Victoria CEO's functions.
- (2) In addition, for the purposes of performing a transferred customer service function, the Service Victoria CEO may exercise any power (whether express or implied) under the enactment that confers the customer service function on the service agency that is necessary or convenient to

be exercised to perform that transferred customer service function.

17 Service Victoria database

- (1) The Service Victoria CEO must establish and maintain a database for the purposes of recording information required for the performance of the functions of Service Victoria and the Service Victoria CEO.
- (2) The Service Victoria database—
 - (a) must be kept electronically; and
 - (b) may include the following in relation to individuals who use Service Victoria services—
 - (i) account information;
 - (ii) electronic identity credentials;
 - (iii) credential usage history;
 - (iv) customer service information;
 - (v) identity information; and
 - (c) may be comprised of multiple databases.

18 Exercise of power not to give applications or requests to service agency for determination

- (1) This section applies if the Service Victoria CEO does not give an application or request for an authority or official information document that the Service Victoria CEO has received to the appropriate service agency for determination because the application or request does not meet the requirements under the relevant enactment.
- (2) The exercise of that power is not to be taken to be a decision of the service agency to reject or refuse the application or request.

Part 5—Customer service functions

Division 1—Performance of customer service functions

19 Service Victoria CEO must comply with customer service standards

The Service Victoria CEO must comply with customer service standards when performing—

- (a) transferred customer service functions; or
- (b) a function that is ancillary to a function described in paragraph (a).

Example

An example of a function that is ancillary to a function described in paragraph (a) is refunding a payment that was collected as part of exercising a transferred customer service function.

Division 2—Customer service standards

20 Development of customer service standards

- (1) The Service Victoria CEO must develop standards that relate to one or more of the following—
 - (a) the customer experience with the provision of services;
 - (b) the development and design of processes for the provision of services;
 - (c) the handling of customer complaints, including response times for handling customer complaints;
 - (d) the monitoring of and reporting on compliance with the customer service standards;
 - (e) any other matter related to the exercise of customer service functions.

- (2) Customer service standards must be published on the Internet.

Division 3—Minimum standards for customer service information and account information

21 Service Victoria CEO must comply with minimum standards

- (1) The Service Victoria CEO must comply with the minimum standards set out in this Division for the collection, use, disclosure and retention of customer service information and account information.
- (2) For the purposes of Division 8 of Part 3 of the **Privacy and Data Protection Act 2014**, a contravention of the minimum standards set out in this Division involving personal information is taken to be an interference with the privacy of an individual.
- (3) For the purposes of Division 9 of Part 3 of the **Privacy and Data Protection Act 2014**, a contravention of the minimum standards set out in this Division involving personal information is taken to be a contravention of an Information Privacy Principle of the **Privacy and Data Protection Act 2014**.
- (4) For the purposes of Part 6 of the **Health Records Act 2001**, a contravention of the minimum standards set out in this Division involving health information is taken to be an interference with the privacy of an individual.
- (5) For the purposes of section 66 of the **Health Records Act 2001**, a contravention of the minimum standards set out in this Division involving health information is taken to be a contravention of that Act.

22 Minimum standard for collection of information

- (1) The Service Victoria CEO must not collect customer service information unless the collection is necessary to perform any functions under this Act for an individual to whom that information relates.
- (2) The Service Victoria CEO must not collect account information unless—
 - (a) the collection is necessary to perform any functions under this Act for an individual to whom that information relates; and
 - (b) the individual has consented.

23 Minimum standard for use or disclosure of information

- (1) The Service Victoria CEO must not use or disclose customer service information unless the use or disclosure is necessary—
 - (a) to perform any functions under this Act for an individual to whom that information relates; or
 - (b) for a person authorised by the Service Victoria CEO to carry out administrative, technical or other functions relating to the management, maintenance or auditing of the Service Victoria database.
- (2) The Service Victoria CEO must not use or disclose account information unless the use or disclosure is necessary—
 - (a) to perform any functions under this Act for an individual to whom that information relates and the individual has consented; or
 - (b) for a person authorised by the Service Victoria CEO to carry out administrative, technical or other functions relating to the

management, maintenance or auditing of the Service Victoria database.

- (3) Despite subsections (1) and (2), the Service Victoria CEO may use or disclose customer service information or account information if—
- (a) the information is personal information and it is used or disclosed in accordance with Information Privacy Principle 2.1(d), 2.1(e), 2.1(g) or 2.1(h) of the **Privacy and Data Protection Act 2014**; or
 - (b) the information is health information and it is used or disclosed in accordance with Health Privacy Principle 2.2(h), 2.2(i) or 2.2(j) of the **Health Records Act 2001**.

24 Minimum standard for retention of information

- (1) The Service Victoria CEO must not retain any incomplete application for an authority or official information document for longer than the earlier of—
- (a) 90 days after the creation of the application; or
 - (b) any other period required by law.
- (2) Subject to subsection (1), the Service Victoria CEO must not retain customer service information relating to an individual after the earlier of—
- (a) notification being received from the service agency that the transaction to which the information relates is complete; or
 - (b) any other period required by law.

- (3) The Service Victoria CEO must not retain account information after the earlier of—
- (a) the closure or expiry of the account to which the information relates; or
 - (b) any other period required by law.
- (4) The Service Victoria CEO must not retain any authority or official information document, or copy of an authority or official information document, once it has been delivered to the individual to whom it relates, unless required by law.

Part 6—Identity verification and electronic identity credentials

Division 1—Performance of identity verification functions

25 Service Victoria CEO must comply with identity verification standards

The Service Victoria CEO must comply with the identity verification standards when—

- (a) verifying identity under this Part; or
- (b) performing a function that is ancillary to identity verifications under this Part.

Division 2—Identity verification and electronic identity credentials

26 Application for temporary electronic identity credential

- (1) An individual may apply to the Service Victoria CEO for the issue of a temporary electronic identity credential in the form and manner determined by the Service Victoria CEO.
- (2) An application for a temporary electronic identity credential must—
 - (a) be made in a form and manner consistent with the determination made under subsection (1); and
 - (b) be accompanied by any identity information required by the determination made under subsection (1).

27 Determination of application for temporary electronic identity credential

- (1) If an individual makes an application under section 26, the Service Victoria CEO must—
 - (a) issue a temporary electronic identity credential to the individual; or
 - (b) issue an interim refusal notice to the individual in accordance with section 28.
- (2) A temporary electronic identity credential or interim refusal notice under subsection (1) must be issued—
 - (a) in the case of an individual who is a member of a prescribed class of individual—within the period prescribed for that class; or
 - (b) in any other case—within 10 days after receiving the application under section 26.
- (3) The Service Victoria CEO must issue a temporary electronic identity credential to an individual unless—
 - (a) any or all of the identity information accompanying the application under section 26 cannot be verified using the procedure set out in the identity verification standards; or
 - (b) the Service Victoria CEO issued an electronic identity credential to the individual and that credential was suspended under section 36; or
 - (c) the individual, before making the application, made the same, or a substantially similar, application that—
 - (i) was refused under section 28; and
 - (ii) was accompanied by the same or substantially similar information.

- (4) Before a temporary electronic identity credential issued to an individual expires under subsection (5), the Service Victoria CEO must determine whether the individual, other than an individual to whom an ongoing electronic identity credential is issued, consents to the continuation of the temporary electronic identity credential as an ongoing electronic identity credential.
- (5) If an individual does not consent to the continuation of a temporary electronic identity credential, the credential expires—
 - (a) if the individual uses the credential for the purposes of a transaction—on the later of the following days—
 - (i) the day on which that transaction is finally determined;
 - (ii) the day on which the Service Victoria CEO determines that the individual does not consent to the continuation of the credential; or
 - (b) in any other case—10 days after the credential is issued.
- (6) If an individual consents to the continuation of a temporary electronic identity credential, the Service Victoria CEO must issue an ongoing electronic identity credential to the individual.
- (7) Unless it is renewed under section 30, an ongoing electronic identity credential issued under subsection (6) expires on the earlier of the following—
 - (a) the expiry of a period of 10 years after the day on which the credential is issued;
 - (b) the expiry of any shorter period prescribed for the purposes of this subsection.

28 Interim refusal notices—issue of temporary electronic identity credential

- (1) An interim refusal notice issued to an individual under section 27 must—
 - (a) specify the reasons that the notice is issued; and
 - (b) specify the date on which the notice is issued; and
 - (c) invite the individual to submit further identity information in support of the application in response to which the notice is issued within 28 days after the date of the notice.
- (2) Within 7 days after receiving a submission under subsection (1) from an individual, the Service Victoria CEO must consider the submission and either—
 - (a) issue a temporary electronic identity credential to the individual; or
 - (b) refuse to issue a temporary electronic identity credential to the individual.
- (3) If the individual to whom an interim refusal notice is issued under section 27 does not make a submission in response to that notice within 28 days after the date on which the notice is issued, the Service Victoria CEO must refuse to issue a temporary electronic identity credential to the individual.

29 Limit on use of temporary electronic identity credentials

A temporary electronic identity credential may not be used in relation to the determination of more than one transferred customer service function or transferred identity verification function.

30 Renewal of electronic identity credentials

- (1) An individual may apply to the Service Victoria CEO for the renewal of an ongoing electronic identity credential in the form and manner determined by the Service Victoria CEO.
- (2) An application for the renewal of an ongoing electronic identity credential must—
 - (a) be made—
 - (i) at least 90 days before the credential is due to expire under section 27(7); or
 - (ii) if the credential is suspended under section 36 and the period of that suspension ends less than 90 days before the credential is due to expire under section 27(7), as soon as reasonably practicable after the end of the suspension; and
 - (b) be made in a form and manner consistent with the determination made under subsection (1).
- (3) If an individual makes an application for the renewal of an ongoing electronic identity credential, the Service Victoria CEO must—
 - (a) renew the ongoing electronic identity credential; or
 - (b) issue an interim refusal notice to the individual in accordance with section 31.
- (4) The Service Victoria CEO must renew the ongoing electronic identity credential or issue an interim refusal notice under subsection (3)—
 - (a) in the case of an individual who is a member of a prescribed class of individual—within the period prescribed for that class; or

- (b) in any other case—within 10 days after receiving the application for the renewal.
- (5) The Service Victoria CEO must issue an interim refusal notice to an individual if—
 - (a) the application for the renewal of the ongoing electronic identity credential does not comply with subsection (2); or
 - (b) the Service Victoria CEO is satisfied on reasonable grounds that the individual is not the individual to whom the ongoing electronic identity credential relates; or
 - (c) the identity of the applicant has not been verified in accordance with the identity verification standards.
- (6) An ongoing electronic identity credential renewed under subsection (3) continues in force until the earlier of the following—
 - (a) the expiry of a period of 10 years after the day on which the credential is renewed under that subsection;
 - (b) the expiry of any shorter period prescribed for the purposes of this section;
 - (c) the cancellation of the credential under section 38.

31 Interim refusal notices—renewal of ongoing electronic identity credential

- (1) An interim refusal notice issued to an individual under section 30 must—
 - (a) specify the reasons that the notice is issued; and
 - (b) specify the date on which the notice is issued; and

- (c) invite the individual to submit further identity information in support of the application for the renewal of the ongoing electronic identity credential within 28 days after the date of the notice.
- (2) Within 7 days after receiving a submission under subsection (1) from an individual, the Service Victoria CEO must consider the submission and either—
 - (a) renew the ongoing electronic identity credential; or
 - (b) refuse to renew the ongoing electronic identity credential.
- (3) If the individual to whom an interim refusal notice is issued under section 30 does not make a submission in response to that notice within 28 days after the date on which the notice is issued, the Service Victoria CEO must refuse to renew the ongoing electronic identity credential.

32 Status and level of assurance may be recorded on electronic identity credentials

The Service Victoria CEO may record the status and level of assurance of an electronic identity credential from time to time on the credential.

33 Increase in levels of assurance

- (1) An individual may apply to the Service Victoria CEO for an increase in the level of assurance of an ongoing electronic identity credential issued to the individual in the form and manner determined by the Service Victoria CEO.
- (2) An application for an increase in the level of assurance of an ongoing electronic identity credential must—

- (a) be made in a form and manner consistent with the determination made under subsection (1); and
 - (b) be accompanied by any identity information required by the determination made under subsection (1).
- (3) If an individual makes an application for an increase in the level of assurance of an ongoing electronic identity credential, the Service Victoria CEO must—
 - (a) increase the level of assurance of the ongoing electronic identity credential; or
 - (b) issue an interim refusal notice to the individual in accordance with section 34.
- (4) The Service Victoria CEO must increase the level of assurance of the ongoing electronic identity credential or issue an interim refusal notice under subsection (3)—
 - (a) in the case of an individual who is a member of a prescribed class of individual—within the period prescribed for that class; or
 - (b) in any other case—within 10 days after receiving the application for the increase.
- (5) The Service Victoria CEO must increase the level of assurance of an ongoing electronic identity credential unless—
 - (a) any or all of the identity information accompanying the application for the increase cannot be verified using the procedure set out in the identity verification standards; or
 - (b) the individual to whom the credential is issued, before making the application for the increase, made the same, or a substantially similar, application that—

- (i) was refused under section 34; and
 - (ii) was accompanied by the same or substantially similar information; or
 - (c) the application for the increase does not comply with the determination under subsection (1).
- (6) If the level of assurance of an ongoing electronic identity credential is increased under subsection (3), that credential continues in force until the earlier of the following—
- (a) the expiry of a period of 10 years after the day on which the level of assurance of the credential is increased;
 - (b) the expiry of any shorter period prescribed for the purposes of this subsection.

34 Interim refusal notices—increase in level of assurance

- (1) An interim refusal notice issued to an individual under section 33 must—
- (a) specify the reasons that the notice is issued; and
 - (b) specify the date on which the notice is issued; and
 - (c) invite the individual to submit further identity information in support of the application for the increase in the level of assurance within 28 days after the date of the notice.
- (2) Within 7 days after receiving a submission under subsection (1) from an individual, the Service Victoria CEO must consider the submission and either—

- (a) increase the level of assurance of the ongoing electronic identity credential; or
 - (b) refuse to increase the level of assurance of the ongoing electronic identity credential.
- (3) If the individual to whom an interim refusal notice is issued under section 33 does not make a submission in response to that notice within 28 days after the date on which the notice is issued, the Service Victoria CEO must refuse to increase the level of assurance of the ongoing electronic identity credential.

35 Electronic identity credential as evidence of identity

- (1) The requirements of a transferred identity verification function to obtain information relating to an individual's identity or to verify an individual's identity are met if—
- (a) the Service Victoria CEO notifies the service agency that an electronic identity credential has been issued to the individual; and
 - (b) the level of assurance of the credential is the same as, or higher than, the level of assurance required for the purposes of the function under the identity verification standards.
- (2) The suspension, expiry or cancellation of an electronic identity credential, or the removal or variation of any information recorded on that credential, does not, of itself, affect the validity of a transaction that relied on the credential to verify the identity of an individual if the suspension, expiry, cancellation, removal or variation takes place after the transaction was finally determined.
- (3) If the Service Victoria CEO notifies a service agency that an electronic identity credential has been issued to an individual, the Service Victoria

CEO must notify the service agency if the credential is cancelled under section 38.

36 Suspension of electronic identity credentials

- (1) The Service Victoria CEO must suspend the operation of an electronic identity credential if the Service Victoria CEO is satisfied on reasonable grounds that the individual to whom the credential is issued is not the individual to whom the credential relates.
- (2) The Service Victoria CEO may consider any information the Service Victoria CEO considers appropriate when determining whether to suspend an electronic identity credential under subsection (1).
- (3) As soon as reasonably practicable after suspending an electronic identity credential under subsection (1), the Service Victoria CEO must give the individual to whom the credential is issued a written notice that—
 - (a) specifies the date and grounds on which the credential was suspended; and
 - (b) invites the individual to make submissions on the suspension within 28 days after the date of the notice; and
 - (c) describes the effect of subsection (4).
- (4) The suspension of an electronic identity credential under subsection (1) is revoked if the Service Victoria CEO does not cancel the credential under section 38(1) within the period set out in section 38(2).

- (5) The suspension of an electronic identity credential under this section has effect—
 - (a) from the time decided by the Service Victoria CEO and specified in the notice given to the individual under subsection (3); and
 - (b) until the credential is cancelled under section 38(1) or the suspension of the credential is revoked under subsection (4).
- (6) The suspension of an electronic identity credential under this section does not affect the date on which the credential is to expire.

37 Effect of suspension of electronic identity credential on statutory timeframes

- (1) This section applies if—
 - (a) a service agency is exercising a function conferred on the service agency by an enactment in relation to an individual to whom an electronic identity credential is issued; and
 - (b) the Service Victoria CEO has notified the service agency of the issue of the electronic identity credential.
- (2) If the enactment that confers the function on the service agency specifies a time period in which the function must be exercised, that time period—
 - (a) ceases to run if, and from the time, the Service Victoria CEO notifies the service agency of the suspension of the electronic identity credential; and
 - (b) begins to run again if, and from the time, the Service Victoria CEO notifies the service agency that the suspension of the electronic identity credential is revoked.

38 Cancellation of electronic identity credential by Service Victoria CEO

- (1) The Service Victoria CEO must, by written notice, cancel an electronic identity credential that is suspended under section 36(1) if, after considering any submission in response to the invitation under section 36(3)(b), the Service Victoria CEO remains satisfied on reasonable grounds that the individual to whom the credential is issued is not the individual to whom the credential relates.
- (2) Notice under subsection (1) must be given within 7 days after the earlier of the following—
 - (a) the day the Service Victoria CEO receives a submission from the individual in response to the invitation under section 36(3)(b);
 - (b) the end of the period during which the individual may make a submission in response to that invitation.
- (3) The Service Victoria CEO must cancel an electronic identity credential if the Service Victoria CEO is satisfied on reasonable grounds that—
 - (a) the credential has been issued or renewed in error or the level of assurance of the credential has been increased in error; or
 - (b) the individual to whom the credential was issued has died.
- (4) The Service Victoria CEO may consider any information the Service Victoria CEO considers appropriate when determining whether to cancel an electronic identity credential under subsection (3).
- (5) After cancelling an electronic identity credential under subsection (3)(a), the Service Victoria CEO must, as soon as possible after the credential

is cancelled, give the individual to whom the credential is issued a written notice that specifies the date and grounds on which the credential was cancelled.

- (6) A cancellation of an electronic identity credential has effect from the time at which—
- (a) in the case of a cancellation under subsection (1), notice is given to the individual under that subsection; or
 - (b) in the case of a cancellation under subsection (3)(a), notice of the cancellation is given to the individual under subsection (5); or
 - (c) in the case of a cancellation under subsection (3)(b), the Service Victoria CEO cancels the electronic identity credential.

39 Cancellation of ongoing electronic identity credential by individual

- (1) An individual may apply to the Service Victoria CEO for the cancellation of an ongoing electronic identity credential in the form and manner determined by the Service Victoria CEO.
- (2) On receiving an application for the cancellation of an ongoing electronic identity credential, the Service Victoria CEO must—
 - (a) cancel the credential; and
 - (b) as soon as reasonably practicable after cancelling the credential, give notice in writing to the individual to whom the credential is issued of the cancellation.

40 Review by VCAT

- (1) A person may apply to VCAT for review of a decision—
 - (a) to refuse to issue an electronic identity credential; or
 - (b) to cancel an electronic identity credential; or
 - (c) to refuse to renew an ongoing electronic identity credential; or
 - (d) to refuse to increase the level of assurance of an ongoing electronic identity credential.
- (2) An application for review under this section must be made within 28 days after the day on which the Service Victoria CEO gives notice of the refusal or decision.

Division 3—Identity verification standards

41 Minister may make identity verification standards

- (1) The Minister may make identity verification standards for the purpose of achieving a consistent and secure identity verification framework for transactions.
- (2) The identity verification standards are to deal with digital and non-digital processes and are to deal with, but are not limited to, the following issues—
 - (a) determination of the level of assurance required for each transaction and any subsequent process for approval by the service agency Minister;
 - (b) the identity information required for each level of assurance;
 - (c) the process for any exceptions to be applied if an individual's identity cannot be readily identified;

- (d) any terms and conditions applying to the issue and renewal of an electronic identity credential.
- (3) The Minister must have regard to the guiding principles set out in section 42 when making the identity verification standards.
- (4) The identity verification standards are a legislative instrument within the meaning of the **Subordinate Legislation Act 1994**.

42 Guiding principles for making and use of identity verification standards

The following are the guiding principles for making and using the identity verification standards—

- (a) user choice—individuals may choose whether to have a temporary electronic identity credential or an ongoing electronic identity credential;
- (b) minimal data is to be requested and stored—individuals must not be asked to provide more information than necessary in order for Service Victoria to verify the individual's identity and personal information can only be stored with the individual's consent, unless required by law;
- (c) risk-based approach to identity verification—a consistent and evidence-based approach is to be employed to determine the level of assurance of identity required for transactions;
- (d) security, transparency and accountability—Service Victoria, and any external service providers engaged to provide identity verification services are to be regularly audited by an independent entity to ensure

compliance with privacy and data security requirements;

- (e) flexibility—the standards must, to the extent practicable, be able to adapt to new technologies or methods of identity verification;
- (f) national consistency—the standards must, to the extent practicable, align to national requirements, as set out in any relevant national framework or guidelines as in force from time to time.

43 Service Victoria CEO to use identity verification standards

The Service Victoria CEO must use the identity verification standards when performing functions under this Part.

Division 4—Minimum standards for identity information

44 Service Victoria CEO must comply with minimum standards

- (1) The Service Victoria CEO must comply with the minimum standards set out in this Division for the collection, use, disclosure and retention of identity information and information recorded on electronic identity credentials.
- (2) For the purposes of Division 8 of Part 3 of the **Privacy and Data Protection Act 2014**, a contravention of the minimum standards set out in this Division involving personal information is taken to be an interference with the privacy of an individual.
- (3) For the purposes of Division 9 of Part 3 of the **Privacy and Data Protection Act 2014**, a contravention of the minimum standards set out

in this Division involving personal information is taken to be a contravention of an Information Privacy Principle of the **Privacy and Data Protection Act 2014**.

- (4) For the purposes of Part 6 of the **Health Records Act 2001**, a contravention of the minimum standards set out in this Division involving health information is taken to be an interference with the privacy of an individual.
- (5) For the purposes of section 66 of the **Health Records Act 2001**, a contravention of the minimum standards set out in this Division involving health information is taken to be a contravention of that Act.

45 Minimum standard for collection of identity information

The Service Victoria CEO must not collect identity information unless—

- (a) the collection is necessary to perform any identity verification functions under this Act for an individual to whom that information relates; and
- (b) the individual has consented.

46 Minimum standard for use or disclosure

- (1) The Service Victoria CEO must not use or disclose identity information, an electronic identity credential, information recorded on a credential or credential usage history unless the use or disclosure is necessary—
 - (a) to perform any functions under this Act for an individual to whom that information relates and the individual has consented; or
 - (b) for a person authorised by the Service Victoria CEO to carry out administrative, technical or other functions relating to the

management, maintenance or auditing of the Service Victoria database.

- (2) Despite subsection (1), the Service Victoria CEO may use or disclose identity information, an electronic identity credential, information recorded on a credential or credential usage history if—
- (a) the information is personal information and it is used or disclosed in accordance with Information Privacy Principle 2.1(d), 2.1(e), 2.1(g) or 2.1(h) of the **Privacy and Data Protection Act 2014**; or
 - (b) the information is health information and it is used or disclosed in accordance with Health Privacy Principle 2.2(h), 2.2(i) or 2.2(j) of the **Health Records Act 2001**.

47 Minimum standard for retention of information

- (1) The Service Victoria CEO must not retain any identity information for longer than any period required by law.
- (2) The Service Victoria CEO must not retain a temporary electronic identity credential, information recorded on that credential or credential usage history after that credential expires or is cancelled unless—
 - (a) a longer period of retention is required by law; or
 - (b) in the case of a temporary electronic identity credential, an ongoing electronic identity credential is issued under section 27(6) in respect of that credential.
- (3) The Service Victoria CEO must not retain an ongoing electronic identity credential, information recorded on that credential or credential usage history for longer than any period required by law.

Part 7—Offences

48 Improper issue of electronic identity credentials

A person must not knowingly issue an electronic identity credential to an individual to whom the credential does not relate.

Penalty: 240 penalty units or 2 years imprisonment or both.

49 False or misleading statement in applications

An individual who applies for an electronic identity credential, an increase in the level of assurance of an ongoing electronic identity credential or the renewal of an ongoing electronic identity credential must not—

- (a) include in the application a statement or information that the individual knows to be false or misleading in a material particular; or
- (b) provide with that application any document that the individual knows to be false or misleading in a material particular.

Penalty: 240 penalty units or 2 years imprisonment or both.

50 Unauthorised access to, use of or disclosure of data or information

- (1) A person must not, without reasonable excuse, access, use or disclose any data or information obtained by the person under this Act other than—

- (a) in accordance with this Act; or
- (b) in connection with the performance of functions under this Act.

Penalty: 240 penalty units or 2 years imprisonment or both.

- (2) Without limiting what may be a reasonable excuse, it is a reasonable excuse if the access, use or disclosure was made—
- (a) in good faith for the purposes of this Act; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) to a court or tribunal in the course of legal proceedings; or
 - (d) pursuant to an order of a court or tribunal; or
 - (e) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth; or
 - (f) to an Australian legal practitioner for the purpose of obtaining legal advice or representation; or
 - (g) as required or authorised by or under this Act or any other Act.

51 Restrictions on access, use or disclosure of data or information

A person must not access, use or disclose any data or information obtained by the person under this Act if the person knows or is reckless as to whether the data or information may be used (whether by the person or any other person) to—

- (a) endanger the life or physical safety of any person; or
- (b) commit, or assist in the commission of, an indictable offence; or
- (c) impede or interfere with the administration of justice.

Penalty: 600 penalty units or 5 years imprisonment or both.

Part 8—General

52 Delegation

The Service Victoria CEO, by instrument, may delegate any function or power conferred or duty imposed on the Service Victoria CEO under this Act, the regulations or any other enactment to—

- (a) a prescribed person; or
- (b) a prescribed class of person.

Note

A power to delegate does not include the power to delegate that power of delegation unless the contrary intention appears (see section 42A(1) of the **Interpretation of Legislation Act 1984**).

53 Reporting requirements

- (1) The Service Victoria CEO must provide a report to the Information Commissioner on the operation of Service Victoria in relation to personal information (other than health information) at intervals of no longer than 12 months.
- (2) The Service Victoria CEO must provide a report to the Health Complaints Commissioner on the operation of Service Victoria in relation to health information at intervals of no longer than 12 months.
- (3) A report under subsection (1) or (2) must include, but is not limited to, the following matters—
 - (a) the number of applications made under section 26 during the period to which the report relates;
 - (b) the number of electronic identity credentials issued during that period;
 - (c) the number of applications for the issue of electronic identity credentials refused during that period;

- (d) the number of electronic identity credentials suspended and cancelled during that period;
- (e) details of the transferred identity verification functions for which electronic identity credentials were used during that period;
- (f) details of any requests for access to information regarding the use of electronic identity credentials, including whether such requests were granted, during that period;
- (g) an assessment by the Service Victoria CEO of the operational issues that have arisen during that period.

54 Handling of regulated information under other Acts

- (1) This section does not affect the handling of regulated information that would otherwise be permitted by or under the **Privacy and Data Protection Act 2014**, the **Health Records Act 2001** or any other Act.
- (2) Except as expressly provided by this Act, this Act does not affect obligations under the **Privacy and Data Protection Act 2014** or the **Health Records Act 2001** in relation to the handling of regulated information.
- (3) If the Service Victoria CEO becomes aware that this Act, the **Privacy and Data Protection Act 2014** or the **Health Records Act 2001** has been, or is likely to have been, breached in relation to regulated information handled under this Act while in the control of the Service Victoria CEO, the Service Victoria CEO must, as soon as practicable after becoming aware of the possible breach, inform—
 - (a) in the case of a breach of this Act or the **Privacy and Data Protection Act 2014**, the Information Commissioner; and

- (b) in the case of a breach of the **Health Records Act 2001**, the Health Complaints Commissioner.

55 Disclosure and use of regulated information to which a secrecy provision applies

- (1) If a secrecy provision applies to regulated information disclosed to the Service Victoria CEO by a service agency, the disclosure of that information to the Service Victoria CEO does not contravene the secrecy provision if the disclosure is in accordance with, and for the purposes of, this Act.
- (2) If a secrecy provision applies to regulated information collected by the Service Victoria CEO under this Act, the collection, holding, management or use of that information by the Service Victoria CEO does not contravene the secrecy provision if the collection, holding, management or use is in accordance with, and for the purposes of, this Act.
- (3) In this section—

secrecy provision means a prescribed provision of an Act that restricts the use or disclosure of specified information, whether that restriction is absolute or subject to qualifications or exceptions.

56 Audit

- (1) The Minister, in writing, may require the Service Victoria CEO to conduct an audit of the compliance with this Act of any computerised database maintained by Service Victoria for the purposes of this Part.
- (2) An audit required under subsection (1) must be undertaken by an independent auditor.

- (3) The Service Victoria CEO must submit a copy of the auditor's report on the outcome of an audit required under subsection (1) to the Minister within 10 days after receiving that report.

57 Review of operation of Act

- (1) The Minister must cause an independent review of the operation of this Act to be undertaken as soon as possible after the third anniversary of the commencement of this Act.
- (2) The person who undertakes the review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament within 12 months after the third anniversary of the commencement of this Act.
- (4) In this section—

independent review means a review undertaken by persons who, in the opinion of the Minister, possess appropriate qualifications to undertake the review.

58 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter required or permitted by this Act to be prescribed or necessary or convenient to be prescribed to give effect to this Act.
- (2) Regulations made under this section may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;
 - (c) confer a discretionary power or authority or impose a duty on a specified person or body or a class of person or body;

- (d) exempt specified persons or things or classes of person or classes of thing from complying with all or any of the regulations—
 - (i) whether unconditionally or on specified conditions; and
 - (ii) either wholly or to such an extent as is specified;
 - (e) apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time; or
 - (iii) as in force from time to time.
- (3) Without limiting the requirements of section 5 or 10, the Minister must not recommend to the Governor in Council the making of a regulation—
- (a) for the purposes of section 5 prescribing as a transferred customer service function a customer service function of a service agency which is a Council; or
 - (b) for the purposes of section 10 prescribing as a transferred identity verification function an identity verification function of a service agency which is a Council—

unless the Minister has obtained the prior agreement to that transfer of the relevant Council or Councils whose functions are to be transferred.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly: 1 November 2017

Legislative Council: 21 November 2017

The long title for the Bill for this Act was "A Bill for an Act to provide for the delivery of Government services to the public by Service Victoria and for other purposes."