

Victoria: Privacy Commissioner

APPLICATION FORM FOR ACCREDITATION AS A DATA PROTECTION AUTHORITY

Application to the Credentials Committee for accreditation as a data protection authority pursuant to the resolutions adopted at the 23rd International Conference of Data Protection and Privacy Commissioners at Paris on 25th September 2001.

Notes:

- (a) Please complete application in French or English.
- (b) Please keep answers brief and to the point.
- (c) Please ensure that all 33 questions are answered
- (d) If you retype the form, please include the numbered questions with your answers. It is possible to avoid such retyping by getting the electronic application form in French or in English upon request by e mail at credentials@privacy.org.nz.

Details of applicant

1. Name and postal address of authority

Office of the Victorian Privacy Commissioner Level 11, 10-16 Queen Street Melbourne, Victoria 3000 AUSTRALIA GPO Box 5057 Melbourne, Victoria 3001 AUSTRALIA
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2. Contact person for this application:

(a) Name

Mr Paul Chadwick

(b) Email address

XXXXXXXXXXXXXXXXXXXX@XXXXXX
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(c) Direct telephone number

XXXXXXXXXXXX

(d) Fax contact

XXXXXXXXXXXX

Type of application

3. The application is for accreditation as:

(a) national Authority	YES/NO
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- (b) sub-national Authority YES/NO
- (c) Authority within an international, if yes which one.....YES/NO

Description of applicant

4. Description of Authority (e.g. commissioner, commission, board etc)

commissioner

5. Is the Authority a public body? YES/NO

6. Geographical jurisdiction

State of Victoria, Australia

7. Sectoral coverage (i.e. does the applicant's jurisdiction cover the entire public and private sectors? If only part of a sector or if there are significant activities not covered, please specify)

public sector (state and local government); private service providers appropriately contracted to state and local government

8. Is the role of the Authority mainly concerned with data protection and privacy?
YES/NO

Legal basis

9. Title of law under which the Authority is constituted

Information Privacy Act 2000 (Vic.)

10. Is this principally a data protection law? YES/NO

11. Status of the law (e.g. statute, regulation, executive order)

statute

12. Which body made the law?

Parliament of Victoria

13. What body has the power to amend or revoke the law?

Parliament of Victoria

Autonomy and independence

14. Who appoints member(s) of the Authority? (Please explain if a different process applies to the presiding member from other Authority members in this question and in subsequent questions.)

Governor in Council (ie, Governor acting on the advice of Executive Council, which is comprised of at least two and normally four Ministers who meet with the Governor and represent the Government).

15. What process is followed?

The process used to date is as follows:

The position is publicly advertised; interviews are conducted by the Department of Justice and the appointment is recommended to the Attorney-General; the Attorney-General makes the appointment subject to Cabinet approval; the appointment is then submitted to the Governor-in-Council for approval (with the Governor acting on advice of the Executive Council).

16. For what term are appointments made?

The Privacy Commissioner holds office for the period, not exceeding 7 years, that is specified in the instrument of appointment and is eligible for re-appointment.

17. Does the law under which the Authority operates explicitly state that it acts independently? YES/NO

18. May the member(s) be removed before expiry of their term? YES/NO

19. If yes, who may remove members of the Authority before expiry of their term?

The Governor in Council may suspend the Privacy Commissioner but can only remove the Privacy Commissioner with a declaration by both Houses of Parliament.

20. Are there limited reasons specified in the statute, or in another law, providing the permitted grounds for removal?

The legislation is silent on permitted grounds of removal, providing only that the grounds for suspension must be laid before each House of Parliament to consider whether a declaration ought be made that the Privacy Commissioner be removed from office.

There is a separate provision in the legislation that deems the office of Privacy Commissioner to be vacant in certain situations (outlined below in Question 21).

21. What are the grounds for removal?

The grounds for suspension and removal are not specified.

The office of Privacy Commissioner is deemed to be vacant if the Privacy Commissioner becomes insolvent under administration, is convicted of an indictable offence, or nominates for election for a House of a Commonwealth, State or Territory Parliament.

22. Does the Authority possess the following powers (briefly describe and give statutory references)

(e) to initiate an investigation with seeking provision YES/NO

details: The Information Privacy Act 2000 (Vic) gives the Privacy Commissioner power to:

- examine an organisation's practices to ascertain whether personal information is maintained in accordance with the Information Privacy Principles or applicable code of practice: s. 58(f),
- issue compliance notices under Part 6 and carry out an investigation for this purpose: s. 58(i);
- conduct or commission audits of records of personal information maintained by an organisation to ascertain whether the records are maintained in accordance with the Information Privacy Principles or applicable code of practice: s. 58(j);
- receive and invite representations from members of the public on any matter affecting personal privacy: s. 58(q);
- make suggestions to any person or organisation in relation to any matter that concerns the need for, or desirability of, action by that party in the interests of personal privacy: s. 58(u); and
- gather information that, in the Privacy Commissioner's opinion, will assist him or her in carrying out his or functions under the Act: s. 58(v).

The Privacy Commissioner also has power to compel a person to give information, produce documents or answer questions relevant to a conciliation (s. 34) or to a decision to service a compliance notice (s. 44).

(f) to report to the head of State, head of Government or legislature YES/NO

details: The Information Privacy Act empowers the Privacy Commissioner to report to the Parliament through the Attorney-General on any act or practice that the Privacy Commissioner considers to be an interference with the privacy of an individual, whether or not it had been the subject of a complaint : s. 63.

The legislation empowers the Privacy Commissioner to report directly to the Attorney-General in relation to:

- approving and revoking codes of practice : ss 58(b) and (c);
- reporting the outcome of an assessment of proposed legislation for adverse impacts on the privacy of individuals: s. 58(l); and
- reporting research findings on adverse effects of data processing and computer technology developments: s. 58(m).

The legislation also empowers the Privacy Commissioner to report and make recommendations to the Attorney-General or other Minister responsible for a public sector agency or Council administering a public register about the desirability of legislative or administrative action in the interests of personal privacy: s. 58(n).

(g) make public statements YES/NO

details: The legislation empowers the Privacy Commissioner to make public statements in relation to any matter affecting personal privacy or the privacy of any class of individual: s. 58(p).

The legislation also empowers the Privacy Commissioner to publish reports and recommendations from time to time, in the public interest, relating to the Privacy Commissioner's functions or to any matter investigated by the Privacy Commission : s. 63(3).

23. Does the Authority (and its staff) have immunity from legal suit for actions performed in the course of their duties?

Not in the statute. Immunity is handled on a case by case basis.

24. Applicants may list any other measures set out in the statute or in other laws which guarantee the Authority's independence (for example if the law provides specifically that the Authority's finances are protected).

The Privacy Commissioner is not subject to direction in exercising his employment powers: see ss 15-16 Public Sector Management & Employment Act 1998 (Vic).

The Privacy Commissioner is required to report to Parliament through the Attorney-General each year on the financial operations of the Office of the Privacy Commissioner: Part 7, Financial Management Act 1994 (Vic). This report must include details of any privacy audits conducted by the Privacy Commissioner under s. 58(j); s. 62, Information Privacy Act. The financial statements of the Office of the Privacy Commissioner are subject to independent audit at least once each year by the Victorian Auditor-General: Part 3, Audit Act 1994 (Vic).

Proceedings for an offence against the Information Privacy Act 2000 may be brought by the Privacy Commissioner or any person authorised by the Privacy Commissioner: s. 71.

Consistency with international instruments

25. Does the Authority explicitly implement any international instrument (for example if the law under which the Authority operates specifies that it implements such international instrument)?
- YES/NO

If "yes", which of the following does it principally implement?

- | | | |
|-----|--|--------|
| (a) | OECD Guidelines (1980) | YES/NO |
| (b) | (i) Council of Europe Convention No 108 (1981) | YES/NO |
| | (ii) Council of Europe Additional Protocol (8 November 2001) | YES/NO |
| (c) | UN Guidelines (1990) | YES/NO |
| (d) | EU Directive (1995) | YES/NO |

26. Does the law instead, or additionally, implement any general or specific international instrument? (If so, list the international body and the instrument)

Not explicitly.

27. Have significant questions been raised about the extent to which the law is consistent with the international instruments which are claimed to be implement in answer to questions 25 and 26? (Applicants should supply further information to assist the Committee including a description of any measures under way to address these inconsistencies.)

No.

Appropriate functions

28. Does the Authority possess functions in any of the following areas (briefly describe and give statutory references):

- (a) compliance (e.g. audit, inspection) YES/NO

details: The Privacy Commissioner can issue compliance notices for repeated or serious and flagrant privacy breaches: s. 58(i) and Part 6, Information Privacy Act.

The Privacy Commissioner can also conduct examinations and audits to ascertain whether an organisation is complying with the Information Privacy Principles or an applicable code of practice: ss 58(g) & (j).

- (b) approvals (e.g. prior-checking, notification) YES/NO

details: The Privacy Commissioner can consider requests whether to advise the Attorney-General to recommend to Governor Council that a code of practice be approved, varied or revoked: ss 58(b) & (c) and Part 4.

The Privacy Commissioner is authorised to examine, assess and report on whether legislative proposals would authorise or require acts that may have an adverse impact on privacy: s. 58(l).

The Privacy Commissioner can also examine and assess (with or without a request) the impact on personal privacy of any act or practice, or proposed act or practice, of an organisation : s. 58(t).

The Privacy Commissioner is also empowered to monitor and report on the adequacy of equipment and user safeguards: s. 58(k).

- (c) redress for individuals (e.g. complaints, conciliation enforcement) YES/NO

details: The Privacy Commissioner can receive, investigate and conciliate complaints : s. 58(h) and Part 5, Information Privacy Act.

Conciliation agreements are only enforceable if registered with the Victorian Civil & Administrative Tribunal (VCAT): s. 35.

Compensation and other orders for redress are available from VCAT. For VCAT to hear a complaint, it must be referred by the Privacy Commissioner (where the Privacy Commissioner declines to entertain a complaint or where conciliation fails or is inappropriate) or by the Attorney-General (where an important public policy issue is raised by a complaint, whether or not it is being or has been conciliated): Division 5 of Part 5.

- (d) sanctions available to Authority (for example, prosecution and enforcement) YES/NO

details: The Privacy Commissioner can issue a compliance notice for a repeated or serious and flagrant breach. A failure to comply with a compliance notice is an offence punishable (subject to Crown immunity from prosecution: s. 8) by up to \$300, 000 (body corporates) or \$60,000 (individuals) : s. 48.

The Privacy Commissioner is authorised to prosecute offences against the Information Privacy Act (including a failure to comply with a compliance notice): s. 71.

The Privacy Commissioner is authorised to make public statements about any matter affecting the personal privacy of an individual of class of individuals: s. 58 (p).

- (e) guidance (e.g. compliance advice) YES/NO

details: The Privacy Commissioner can issue guidelines in relation to codes of practice and on procedures to be adopted in accessing documents held by agencies or Ministers: ss 58(d) & (e).

The Privacy Commissioner is also empowered to publish model contractual terms for the transfer of personal information outside of Victoria: s. 58(f).

The Privacy Commissioner can provide advice (with or without a request) to any individual or organisation on any matter relevant to the operation of the Information Privacy Act and to make suggestions to anyone on the need or desirability of action in the interests of personal privacy: ss 58(s) & (u).

- (f) public education YES/NO

details: The Privacy Commissioner is empowered to promote an understanding and acceptance of the Information Privacy Principles and of the objects of those Principles, and to undertake educational programs on the Privacy Commissioner's own behalf or in cooperation with other bodies concerned with the protection of personal privacy: ss 58(a) & (o).

As noted above, the Privacy Commissioner is authorised to make public statements about any matter affecting the personal privacy of an individual of class of individuals: s. 58 (p).

- (g) policy advice for government YES/NO

details: The Privacy Commissioner can make reports and recommendations in relation to any matter that concerns the need for or desirability of administrative or legislative action in the interests of personal privacy: s. 58(n).

- (h) studies or research (e.g. into developing technologies, privacy issues)
YES/NO

details: The Privacy Commissioner is authorised to undertake research into, and monitor developments in, data processing and computer technology to ensure any adverse effect on privacy is minimised, and to report findings to the Attorney-General: s. 58(m).

The Privacy Commission can receive or invite representations from members of the public on any matter affecting personal privacy and can consult and cooperate with other bodies concerned with personal privacy: ss 58(q) & (r).

Additional comments

29. Applicants are invited to offer any further comments that they wish.

Written advice from a Queen's Counsel has confirmed the independence of the Office. Having been in existence for less than one year, the Office has no annual report as yet but some information about its activities can be found at the website (details at Question 32) and more will be provided at the request of the Credentials Committee.

Other materials

30. List any attachments which will accompany the application as an electronic attachment or to follow by post.

31. If law under which the Authority operates is accessible on the Internet, please give the reference

URL: <http://www.dms.dpc.vic.gov.au/l2d/I/ACT01911/index.html>

32. If a recent annual report of the Authority (or a similar recent publication outlining typical activities) is available on the Internet, please give the reference

URL: <http://www.privacy.vic.au>

Research use

33. With the consent of applicants, the Committee proposes to make copies of the applications available to appropriate researchers approved by the Committee to facilitate a study on data protection. Please indicate whether you agree to this use:

- I agree to this application being released to a researcher YES/NO

Making the application

The application should be emailed to the credentials committee at credentials@privacy.org.nz

If sent as an email attachment it should be in M/S Word.

If unable to email the application, it should be posted to:

Credentials Committee
C/- Privacy Commissioner
P O Box 466
Auckland
New Zealand

The Committee needs access to a copy of the law under which the Authority is constituted. This need not be supplied in hard copy if it is available on the Internet and listed at question 31. If the law itself is not in English or French, it will be useful to supply an English or French summary or translation if one exists.

Use of information

The information in this form will be used for processing the application and will be disclosed to members of the committee and their staff (being the commissioners from New Zealand, France and the United Kingdom) and future committees. It may be also disclosed also to the Data Protection Authorities which participate to the international conference and approved researchers. Any personal data contained in the form is available for access and correction in accordance with the applicable data protection laws of current and future committees. In the first instance it is subject to the New Zealand Privacy Act 1993.

ACCREDITATION OF DATA PROTECTION AUTHORITY
CHECKLIST FOR THE CREDENTIALS SUB-GROUP

1 Name of Authority

Victorian Privacy Commissioner, Australia

2 Does the authority have clear and wide ranging data protection functions covering a broad area of economic activity (eg not just an advising body or a body operating in a narrow field such as medical privacy)?

Yes

No

Don't know

Notes

Public sector in State and their private sector contractors

3 Legal Basis.

Is the authority a public body established on an appropriate legal basis (eg by statute or regulation)?

Yes

No

Don't know

Notes

Information Privacy Act (Vic)

4 Autonomy and Independence?

Is the authority guaranteed on appropriate degree of autonomy and independence to perform its functions (eg the power to make public statements and protection from removal from office)?

Yes

No

Don't know

Notes

No explicit statement but only removed by vote of both Houses of Parliament. Has appropriate powers.

5 Consistency with International Instruments.

Is the law under which the authority operates compatible with at least one of the international instruments dealing with data protection and privacy (eg EU Directive, OECD Guidelines, Council of Europe Convention)?

Yes

No

Don't know

Notes

None cited explicitly

The Australian approach is derived from the OECD Guidelines and is compatible with them. I would therefore state "yes" in answer to this question.

6 Appropriate Functions.

Notes

Does the authority have an appropriate range of functions with the legal powers necessary to perform those functions (eg the power to receive and investigate complaints from individuals without seeking permission)?

Yes

No

Don't know

Full range of functions

7 Does the Sub-group recommend accreditation?

Yes

No

Notes

The only 'negative' element concerns implementation of international instruments but this is not a significant issue in the context of the other matters.

I also support accreditation but do not see the international matter as negative. The law is compatible with the OECD Guidelines the "negative" element was the failure to cite this in the application. The omission may relate to a state/federal sensitivity whereby the federal government can legislate for international affairs. A State Government might not cite such a motive in enacting a state law. However, the international compatibility is easily identified in the federal law and this state law is merely modelled upon that.

8 If accreditation is recommended what is the accreditation as?

National authority (within the UN criteria)

Authority within a limited sub-national territory

Authority within an international or supranational body

Notes

9 If accreditation is as an authority within an international/supranational body does the recommendation include voting rights?

Notes

Voting Rights

No Voting Rights

- 10 If accreditation is not recommended does the Sub Group recommend that accreditation is refused or is more information needed before a decision can be made?

Refusal

More Information

Notes

- 11 If accreditation is not recommended and the application is from an authority with narrow functions does the Sub Group recommend that, at the discretion of the conference host, observer status is granted?

Not Applicable

Yes

Not

Notes

If more information is required what is this:

Signed on behalf of the Sub-group:

Jonathan Bamford

Date: 3/07/02

Blair Stewart

Date: 9 July 2002

Date:

Note: 2 signatures required for recommendations for accreditation.
3 signatures required for recommendations for refusal.