Version No. 004

Commissioner for Law Enforcement Data Security Act 2005

No. 84 of 2005

Version incorporating amendments as at 1 December 2008

TABLE OF PROVISIONS

Commissioner for Law Enforcement Data Security Act 2005

No. 84 of 2005

Version incorporating amendments as at 1 December 2008

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The principal purpose of this Act is to promote the use by the police force of Victoria of appropriate and secure management practices for law enforcement data by—

(a) providing for the establishment and appointment of a Commissioner for Law Enforcement Data Security;

(b) establishing a regime for the monitoring of law enforcement data security management practices;

(c) amending the **Public Administration Act 2004**.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day to be proclaimed.

(2) If this Act does not come into operation before 1 July 2006, it comes into operation on that day.

3 Definitions

In this Act—

Chief Commissioner of Police means the Chief
Commissioner of Police appointed under
section 4 of the **Police Regulation Act 1958**;

*Commissioner for Law Enforcement Data
Security* means the Commissioner for Law
Enforcement Data Security appointed under
section 5;

law enforcement agency has the same meaning as
in the **Information Privacy Act 2000**;

law enforcement data means any information
obtained, received or held by the police force
of Victoria—

  (a) for the purpose of one or more of its, or
any other law enforcement agency's,
law enforcement functions or activities;
or

  (b) for the enforcement of laws relating to
the confiscation of the proceeds of
crime; or

  (c) in connection with the conduct of
proceedings commenced, or about to be
commenced, in any court or tribunal; or

  (d) for the purposes of its community
policing functions;

law enforcement data system means a database
kept by the police force of Victoria (whether
in computerised or other form and however
described) containing law enforcement data.

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Commissioner for Law Enforcement Data Security Act 2005
No. 84 of 2005
Part 2—Commissioner for Law Enforcement Data Security

s. 4

PART 2—COMMISSIONER FOR LAW ENFORCEMENT DATA SECURITY

Division 1—Appointment, terms and conditions of office

4 Establishment

There is to be a Commissioner for Law Enforcement Data Security.

5 Appointment

(1) Subject to subsection (2), the Governor in Council may appoint a person as Commissioner for Law Enforcement Data Security.

(2) A person is not eligible for appointment as Commissioner for Law Enforcement Data Security if the person is a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory of the Commonwealth.

6 Remuneration and allowances

(1) The Commissioner for Law Enforcement Data Security is entitled to be paid the remuneration and allowances that are determined by the Governor in Council.

(2) The remuneration of the Commissioner for Law Enforcement Data Security cannot be reduced during his or her term of office unless he or she consents to the reduction.

7 Terms and conditions

(1) The Commissioner for Law Enforcement Data Security—

   (a) holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment; and

(b) is eligible for re-appointment; and

(c) holds office on the terms and conditions determined by the Governor in Council.

(2) The Commissioner for Law Enforcement Data Security may be appointed on a full-time or part-time basis.

8 Acting appointment

The Governor in Council may appoint an eligible person to act in the office of the Commissioner for Law Enforcement Data Security—

(a) during a vacancy in that office; or

(b) during a period or all periods when the person holding that office is absent from duty or is, for any reason, unable to perform the duties of the office.

9 Vacancy, resignation

The Commissioner for Law Enforcement Data Security ceases to hold office if he or she—

(a) resigns by notice in writing delivered to the Governor in Council; or

S. 9(b)
amended by
No. 4/2008
s. 32(Sch.
item 4).

(b) becomes an insolvent under administration; or

(c) is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or

(d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory of the Commonwealth; or

(e) is suspended or removed from office under section 10.

Commissioner for Law Enforcement Data Security Act 2005
No. 84 of 2005
Part 2—Commissioner for Law Enforcement Data Security

s. 10

10 Suspension and removal from office

(1) The Governor in Council may suspend the Commissioner for Law Enforcement Data Security from office on any of the following grounds—

(a) misconduct;

(b) neglect of duty;

(c) disability;

(d) any other ground on which the Governor in Council is satisfied that the Commissioner for Law Enforcement Data Security is unfit to hold office.

(2) The Minister must cause to be laid before each House of Parliament a full statement of the grounds of suspension within 7 sitting days of that House after the suspension.

(3) The Commissioner for Law Enforcement Data Security must be removed from office by the Governor in Council if each House of Parliament within 20 sitting days after the day when the statement is laid before it declares by resolution that the Commissioner for Law Enforcement Data Security ought to be removed from office.

(4) The Governor in Council must remove the suspension and restore the Commissioner for Law Enforcement Data Security to office unless each House makes a declaration of the kind specified in subsection (3) within the time specified in that subsection.

(5) If the Commissioner for Law Enforcement Data Security is suspended from office under subsection (1), he or she is deemed not to be the Commissioner for Law Enforcement Data Security during the period of suspension.

Commissioner for Law Enforcement Data Security Act 2005
No. 84 of 2005
Part 2—Commissioner for Law Enforcement Data Security

s. 11

Division 2—Functions and powers

11 Functions

(1) The Commissioner for Law Enforcement Data Security has the following functions—

(a) to establish appropriate standards for the security and integrity of law enforcement data systems;

(b) to establish appropriate standards and protocols for access to, and the release of, law enforcement data, including, but not limited to, the release of law enforcement data to members of the public;

(c) to conduct monitoring activities, including audits, to monitor compliance with the standards and protocols established under paragraphs (a) and (b);

(d) to refer the findings of monitoring activities conducted under paragraph (c) to an appropriate person or body for further action;

(e) to undertake reviews of any matters relating to law enforcement data security requested by the Minister or the Chief Commissioner of Police;

(f) any other functions conferred on the Commissioner for Law Enforcement Data Security by or under this or any other Act.

(2) The Commissioner for Law Enforcement Data Security must consult with the Chief Commissioner of Police when establishing standards and protocols under subsection (1)(a) and (b).

12 Powers

(1) The Commissioner for Law Enforcement Data Security has the following powers—

    (a) to require the Chief Commissioner of Police to give the Commissioner free and full access at all reasonable times to any law enforcement data (including any document on which law enforcement data is recorded) or any law enforcement data system as is necessary to enable the Commissioner to perform his or her functions under this Act;

    (b) despite anything to the contrary in any other Act or law, to make copies of, or take extracts from, any data or document accessed under paragraph (a);

    (c) to do all things that are reasonably necessary to be done for or in connection with the Commissioner's functions.

(2) Subject to subsection (3), the Chief Commissioner of Police must comply with a requirement of the Commissioner for Law Enforcement Data Security under subsection (1)(a).

(3) The Chief Commissioner of Police may refuse to comply with a requirement of the Commissioner for Law Enforcement Data Security under subsection (1)(a) if the Chief Commissioner considers that giving access to that data or system would, or would be reasonably likely to—

    (a) prejudice the investigation of a breach or possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance;

Commissioner for Law Enforcement Data Security Act 2005
No. 84 of 2005
Part 2—Commissioner for Law Enforcement Data Security

s. 13

(b) prejudice the fair trial of a person or the impartial adjudication of a particular case or disclose data that is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege;

(c) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law;

(d) endanger the lives or physical safety of persons engaged in or in connection with law enforcement or persons who have provided confidential information in relation to the enforcement or administration of the law.

(4) Section 6A of the **Police Regulation Act 1958** does not apply to any power, discretion, function, authority or duty of the Chief Commissioner of Police under this section.

Note

Under section 6(1) of the **Police Regulation Act 1958** any power, discretion, function, authority or duty of the Chief Commissioner of Police under this section may be exercised by a Deputy Commissioner.

13 Disclosure of information to the Director, Police Integrity and the Privacy Commissioner

(1) The Commissioner for Law Enforcement Data Security may disclose to—

(a) the Director, Police Integrity under section 102A(2) of the **Police Regulation Act 1958**; or

Commissioner for Law Enforcement Data Security Act 2005
No. 84 of 2005
Part 2—Commissioner for Law Enforcement Data Security

s. 14

(b) the Privacy Commissioner appointed under the **Information Privacy Act 2000**—

any information obtained or received in the course or as a result of the exercise of the functions of the Commissioner for Law Enforcement Data Security under this Act, being information relevant to the performance of functions or duties by the Director, Police Integrity or the Privacy Commissioner, as the case requires.

(2) The Commissioner for Law Enforcement Data Security must notify the Chief Commissioner of Police of any disclosure made under subsection (1).

14 Chief Commissioner of Police may provide assistance

The Commissioner for Law Enforcement Data Security may request the Chief Commissioner of Police to provide any assistance that the Commissioner for Law Enforcement Data Security reasonably considers appropriate to perform his or her functions under this Act, including the provision of staff and facilities.

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PART 3—GENERAL

15 Secrecy

(1) This section applies to—

  (a) the Commissioner for Law Enforcement Data Security; and

  (b) an acting Commissioner for Law Enforcement Data Security; and

  (c) any staff provided by the Chief Commissioner of Police under section 14.

(2) A person to whom this section applies who, either directly or indirectly, except for the purposes of this Act or otherwise in connection with the performance of his or her functions under this Act, and either while he or she is or after he or she ceases to be a person to whom this section applies, divulges or communicates to any person any information obtained or received in the course or as a result of the exercise of his or her functions under this Act, is guilty of an offence and liable to a level 9 fine (60 penalty units maximum).

16 Validity of acts and decisions

An act or decision of the Commissioner for Law Enforcement Data Security or an acting Commissioner for Law Enforcement Data Security is not invalid—

  (a) only because of a defect or irregularity in, or in connection with, the appointment of the Commissioner or acting Commissioner; or

  (b) on the ground that the occasion for the acting Commissioner to act had not arisen or had ceased.

s. 17

17 Annual reports

(1) The Commissioner for Law Enforcement Data Security must make a report to the Minister by 30 September in each year on the performance of the Commissioner's functions, and the exercise of the Commissioner's powers, under this Act during the financial year ending on the immediately preceding 30 June.

(2) The Minister must cause a copy of a report given to the Minister under subsection (1) to be laid before each House of Parliament before 30 October in the year in which the report is given to the Minister.

18 Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

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Pt 4 (Heading and s. 19) repealed by No. 28/2007 s. 3(Sch. item 10).

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 27 October 2005

Legislative Council: 17 November 2005

The long title for the Bill for this Act was "to establish the office of the Commissioner for Law Enforcement Data Security, to amend the **Public Administration Act 2004** and for other purposes."

The **Commissioner for Law Enforcement Data Security Act 2005** was assented to on 29 November 2005 and came into operation on 1 July 2006: section 2(2).

2. Table of Amendments

This Version incorporates amendments made to the **Commissioner for Law Enforcement Data Security Act 2005** by Acts and subordinate instruments.

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Statute Law Revision Act 2007, No. 28/2007
Assent Date:	26.6.07
Commencement Date:	S. 3(Sch. item 10) on 27.6.07 s. 2(1)
Current State:	This information relates only to the provision/s amending the **Commissioner for Law Enforcement Data Security Act 2005**

Motor Car Traders Amendment Act 2008, No. 4/2008
Assent Date:	4.3.08
Commencement Date:	S. 32(Sch. item 4) on 1.12.08: s. 2(2)
Current State:	The information relates only to the provision/s amending the **Commissioner for Law Enforcement Data Security Act 2005**

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Endnotes

3. Explanatory Details

No entries at date of publication.