

Health Privacy it's my business



Health Records Act
Health Privacy Principles
Right of Access

Information Sheet No. 4

Employment Related Health Information

Key message

The *Health Records Act 2001* (Vic) (HRA) applies to any health information relating to employees in Victoria, including past, current and prospective employees, wherever that information is held.

Purpose

This information sheet provides basic information for employers about their legal obligations under the HRA. Employers may handle a range of health information relating to their employees including:

- health assessments;
- pre-selection tests (e.g. psychological testing);
- accident and injury information;
- sick leave, maternity leave; and
- information relating to discrimination claims on the basis of impairment.

Some of this health information may be in an employee personnel file, although it may also be in other places such as board or management minutes, or accident/injury books.

Information relating to the Commonwealth legislation is included in italics.

Organisations and consumers need to be aware that the Privacy Act 1988 (Cwth) which includes the 10 National Privacy Principles (NPPs), regulates the handling of personal information, including health information, in the Commonwealth public sector and in the private sector (including the private health sector) throughout Australia.

Employee records

Employers who hold any health information relating to individuals are obliged to comply with the HRA. Health information includes information or opinion about the physical, mental or

psychological health of an individual, personal information collected in connection with donation of body parts and genetic information¹. Employers must manage this health information in accordance with the HRA.

The HRA does not alter ownership of the health information relating to employees, but it gives the individual about whom the information relates, a right to access that information.

An employee can authorise another person to be given access to their health information; this authorisation must be in writing.

Employee records are specifically exempted from the Commonwealth legislation (but not from the HRA). The exemption relates to the acts or practices of employers (private sector) involving an employee record that are directly related to a current or former employment relationship. Therefore data collected as part of a pre-employment check is regulated by the NPPs until the individual becomes an employee.

Employer obligations

Employers who hold health information must provide access and ensure compliance with the Health Privacy Principles (HPPs) and associated legislative requirements under the HRA. Unless exemptions apply organisations should seek consent of the individual before collecting, using or disclosing an individual's health information.

If an employer has health information relating to an employee that was provided by a third party in confidence, release of that information to the employee is restricted unless the third party gives consent. Where a doctor is engaged by an employer to

¹ See s. 3 HRA

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report on an employee, the employee waives the right of confidentiality for that specific use or disclosure by giving either express or implied consent. Organisations that are not health service providers must take reasonable steps to destroy or de-identify health information if it is no longer needed for the purpose for which it was collected or any other purpose authorised by law. The HRA applies to the health information of deceased individuals as far as it is reasonably capable of doing so.

Privacy Policy

The privacy policy of an employer required under HPP 5 should clearly document the manner in which health information of employees is collected, used, disclosed, stored and destroyed. The policy must also detail how an employee can gain access to health information about them. This document should be made available to anyone who asks.

Collection Statement

At or before the time of collecting health information the employer must fulfil the requirements of HPP 1.4. This requires an employer, when collecting health information about an employee, to take steps that are reasonable in the circumstances to ensure that the employee is generally aware of:

- (a) the identity of the organisation and how to contact it; and
- (b) the fact that he or she is able to gain access to the information; and

- (c) the purposes for which the information is collected; and
- (d) to whom (or the types of individuals or organisations to which) the organisation usually discloses information of that kind; and
- (e) any law that requires the particular information to be collected; and
- (f) the main consequences (if any) for the individual if all or part of the information is not provided.

About information sheets

Information sheets are advisory only and do not constitute legal advice nor are they law.

They are intended to help organisations apply the HPPs in everyday or practical circumstances. Organisations may need to seek separate legal advice on the application of the *Health Records Act* to a particular situation.

Nothing in an information sheet limits the Health Services Commissioner's powers to investigate complaints under the Act or to apply the HPPs in the way that seems most appropriate to the facts of any case being dealt with.

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MORE INFORMATION:

Office of the Health Services Commissioner

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