

Quick Reference

This information is intended for all Executive Officers/Managers, Administrative Staff and Health Practitioners

Section 18 of HRA and Sections 14(c) and 18 of the IPA provides further guidance on interference with privacy.

Compliance date for HRA is no later than 1 July 2002.

Compliance date for IPA is 1 September 2002.

Website for the Health Services Commissioner www.health.vic.gov.au/hsc provides advice on handling complaints

Sections 45-47 of the HRA and Section 25-32 of the IPA articulate the right of a consumer to make a complaint to the Health Services Commissioner (health information) and the Victorian Privacy Commissioner (non-health personal information) regarding a breach of their privacy.

WHAT IS MEANT BY 'INTERFERENCE WITH PRIVACY'?

Privacy law defines an 'interference with privacy' as an act or a practice of an organisation that is contrary to, or inconsistent with Privacy Principles or, in the case of non-health information, an applicable code of practice, where this exists.

These include:

- Failure on the part of an organisation to provide access to a consumer's personal or health information
- Any other act or practice that breaches the requirements of any privacy principle in relation to personal or health information of an individual.

The provisions of both Victorian privacy laws, the Health Records Act 2001 (HRA) and the Information Privacy Act 2000 (IPA) allow for a consumer or their authorised representative to make a complaint regarding a breach of their privacy.

Complaints should, in the first instance, be handled by the organisation holding the personal or health information. If the situation remains unresolved at that level the complainant may then have recourse to either the Health Services Commissioner (for health information) or the Victorian Privacy Commissioner (for non-health information).

WHO ARE THE PRIVACY COMMISSIONERS?

The Health Services Commissioner and the Victorian Privacy Commissioner are independent statutory authorities established to receive and resolve complaints about organisations, including Primary Care Partnership (PCP) member agencies. However, complaints will only be investigated by the Commissioners where:

- A complaint was made to a service provider and no response was received within the relevant statutory timeline or
- A response was received from the service provider but the response is considered to be inadequate.

It is expected that the Commissioners will issue guidance about how they intend to handle complaints. Broadly speaking, it is understood that the Commissioners' approach will focus on conciliation wherever possible.

WHO CAN MAKE A COMPLAINT?

With effect from the compliance dates for each Act (refer quick reference guide), a consumer can complain to the relevant Commissioner about an act or a practice by a service provider they regard as an interference with their information privacy. In addition, an authorised representative may make a complaint on behalf of a consumer if the person does not have legal capacity (refer to Information Sheet 6, Capacity and Consent).

WHAT OBLIGATIONS DOES THIS PLACE ON PCP MEMBER AGENCIES?

The HRA and the IPA provide that any complaint made to the Commissioners after the compliance dates can only be investigated if all other complaint mechanisms have been exhausted.

It is not only good practice but also a legal requirement to attempt, wherever possible, to resolve a complaint directly with the consumer. In the first instance, consumers should be encouraged to discuss their concerns and resolve their complaints directly with the PCP member agency, if possible.

Quick Reference

See consumer information brochure “*What happens to information about me?*”

Information Sheet 3 provides further guidance in the appointment of a Privacy Officer

WHAT SHOULD PCP MEMBER AGENCIES DO TO MANAGE COMPLAINTS?

A clearly articulated complaints process should be documented in the PCP (Partnership) privacy protocols so that staff and users of a service are aware of their responsibilities in handling a consumer complaint. Having an effective complaints handling process is an important part of managing privacy risks within the health service. Besides being able to handle complaints quickly and effectively, a good complaints handling process will assist the PCP member agency to:

- Identify (and address) any systemic or ongoing compliance problems with the new privacy laws
- Use the opportunity to increase consumer confidence in the health service provider's privacy procedures and
- Build a good reputation for the health service

WHAT HAPPENS IF THE COMPLAINT CANNOT BE RESOLVED INTERNALLY?

If a complainant is not satisfied with the resolution offered by the PCP member agency, he/she has a right to complain to the relevant Commissioners. The consumer must be made aware of this mechanism.

PRIVACY IN PRACTICE – SOME KEY ELEMENTS OF AN EFFECTIVE COMPLAINTS HANDLING PROCESS

Partnerships should include in their privacy protocols a statement on procedures and rules applying to the handling of consumer complaints. The following key elements should be considered when developing the protocol on complaints:

- Nominate a Privacy Officer who will assume the responsibility for handling complaints
- Put mechanisms in place to inform the consumer of their right to complain
- Establish clear steps to be taken when a complaint is made
- Consider flexible arrangements to take account of different cultural and communication needs

LEGAL ADVICE: DISCLAIMER

Information contained within this information sheet is not intended to substitute for legal advice. Primary Care Partnerships and / or member agencies should take advice from their legal advisors in determining whether their policies and practices comply with all relevant legislation.