

Quick Reference

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

Information privacy is about protection of information and provision of access rights

Implementation dates:

IPA requires full compliance by 1 September 2002

HRA requires full compliance by 1 March 2002 (target date) and no later than 1 July 2002

Health service definition encompasses activities that are performed to assess, maintain or improve a person's health – this includes a number of socially oriented programs such as home help services, meals on wheels and personal care

WHAT IS INFORMATION PRIVACY?

The term **information privacy** refers to the control of the collection, use, disclosure and disposal of information and the individual's right to control how their personal information is handled.

Personal information is information about a person (eg name, age, sex), whether recorded or not, that **identifies** them, or could be used with other readily available information (eg address, indigenous status) to identify them. It can also include other identifying elements such as voice readings, photographs, video imaging etc.

Information privacy law protects individuals from harm that may arise from misuse of their personal information. It also enables services to collect information they need to perform their activities and / or functions - people are usually more willing to provide full and frank information if satisfied that it will be treated in confidence.

The idea is not new – confidentiality and access have long been recognised and reflected as important values by the Department of Human Services (DHS) and its funded services. What differs is that the introduction of new Victorian privacy laws provides a clear legislative framework to strengthen those values.

WHAT ARE THE NEW PRIVACY LAWS?

The new Victorian laws are the: -

- *Information Privacy Act 2000 (IPA)* covering non-health information
- *Health Records Act 2001 (HRA)* covering health information

The IPA applies to public sector organisations while the HRA has a broader application and relates to both public sector and private sector organisations in the handling of health information.

WHICH LEGISLATION HAS MOST RELEVANCE FOR PRIMARY CARE PARTNERSHIP (PCP) MEMBER AGENCIES?

The majority of member agencies in a Primary Care Partnership (PCP), whether public funded services or private practitioners, will be handling information that is deemed to be health information.

Health information is broadly defined in the HRA to include personal information (including an opinion) about a person's physical, mental or psychological health or disability.

In addition, it covers all personal information collected by **health services** to provide, or in providing a health service – this includes medical, psychiatric, disability, aged care, palliative care, diagnostic and pharmaceutical dispensing services.

Most PCP member agencies will fall into the above category and will be covered by the provisions of the HRA. As such the information provided in this and other information sheets in this series, will primarily reflect the standards in the HRA.

AM I A HEALTH SERVICE PROVIDER FOR THE PURPOSE OF THE HRA?

The HRA defines **health services** to include activities that are performed by an organisation to assess, maintain or improve a person's health or to diagnose illness, injury or disability (refer to HRA, Part 1, Section 3 for full text).

In a PCP environment this would include a range of services that may not necessarily be readily identifiable as health related services. For example, Home and Community Care (HACC) funded services often delivered by local government, (eg meals on wheels, personal care, carer support programs, social interaction and planned activity groups) and formal counselling services.

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Where conditions made by either the IPA or HRA are inconsistent with a condition made under other laws (eg mandatory reporting under the Children & Young Persons Act) then those other conditions take priority

Other examples include mandated access rights under Freedom of Information and restricted disclosure of information under Section 141 of the Health Services Act

Better Access to Services (BATS) aims and objectives are supported by the principles that sit within privacy legislation

Privacy principles are set out in Schedule 1 in each Act

The principles apply to all stages of the information life cycle from collection to disposal

WHERE DOES COMMONWEALTH PRIVACY LEGISLATION APPLY?

Commonwealth privacy law applies only to Commonwealth Government Departments and private sector services directly funded by the Commonwealth. It will **not** cover either Victorian Government agencies or their funded services.

Where there is any doubt about which law applies organisations should seek independent legal advice or alternatively, contact the (Victorian) Office of the Health Services Commissioner, Level 30/570 Bourke Street, Melbourne 3000.

WHAT ABOUT EXISTING OBLIGATIONS?

DHS privacy policy currently applies to all funded services and reflects and supports the spirit of the privacy principles in both Victorian Acts.

Existing laws regulating personal information handling will not be replaced by the privacy Acts. The intent of the Acts is to provide a regulatory environment to the extent that it supports and complements other laws. There will be instances where the requirements of other laws may be inconsistent with privacy legislation, where protection or disclosure of information is required, for example, as in mandatory reporting requirements. In such instances the obligations under other laws should take precedence.

WHY COMPLY WITH PRIVACY REQUIREMENTS?

The basic reason to comply with privacy requirements is simple - it is law. However, there are other good reasons to comply, particularly in a PCP context as compliance:

- Constitutes good business practice based on openness and accountability that engenders consumer trust
- Supports economy of practice enabling sharing of relevant consumer data (subject to consent provisions) among PCP member agencies
- Improves accuracy of information for use in diagnosis and treatments with consumer becoming more confident about disclosing vital health details that are necessary to their ongoing care
- Builds on the already strong culture of consumer confidentiality that exists in the health care sector

PRIVACY IN PRACTICE – KEY POINTS TO NOTE

The privacy laws and policy protect health information by setting out restrictions on how information is handled from collection to disposal. The key messages in summary (some of which are qualified by prescribed **exceptions**, specifying circumstances when they do not apply) are:

- Identify the primary purpose for information and collect only the information needed for that purpose
- Inform the person – ensure they know why you need information and how you will handle it
- Do not share the information for a different purpose without the person's consent
- Provide the person with access to their information on request
- Keep the information secure and dispose of it only when redundant, in accordance with statutory requirements

Refer to other Information Sheets contained in this Information Privacy Resource Pack for further detail.

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.