

# VICTORIAN PRIVACY LEGISLATION

## Introduction

The Victorian *Information Privacy Act 2000* and the Victorian *Health Records Act 2001* regulate the way that certain organisations handle personal information. The Acts regulate the manner in which personal information may be collected, stored, accessed, transmitted, disclosed, used and disposed of.

Both Acts apply to the University; members of staff who handle personal information have to comply with the legislation.

## ***INFORMATION PRIVACY ACT 2000***

The Act regulates the handling of ‘personal information’ by public sector organisations (including universities). ‘Personal information’ is defined in s. 3 to mean –

information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, ...;

‘Health information’ is excluded from the definition of personal information. Health information is regulated by the *Health Records Act* (see below).

## **Purposes of the Act**

The main purposes of the Act are to establish a regime for the responsible collection and handling of personal information, to provide individuals with rights of access to personal information, to provide remedies for interferences with privacy and to provide for the appointment of a Privacy Commissioner.

The Act came into effect on 1 September 2001. Agencies must be fully compliant by 1 September 2002.

## **To whom does the Act apply?**

The Act applies to the Victorian public sector and to bodies established for a public purpose under an Act, such as universities. The Act also applies to contracted service providers in some circumstances.

## **Information Privacy Principles (IPP’s)**

The IPP’s (in Schedule 1 to the Act) are central to the Act. The 10 IPP’s prescribe how personal information is to be handled. An organisation covered by the Act must comply with these IPP’s, unless the organisation has developed an alternative code of practice.

Readers should familiarise themselves with all of the IPP's which can be viewed at [www.dhs.vic.gov.au/privacy](http://www.dhs.vic.gov.au/privacy) . Some of the more important IPP's are –

- an organisation that collects personal information must take reasonable steps to ensure that the individual to whom the personal information relates is aware of the following matters: the identity of the organisation and how to contact it, that the individual can gain access to the information, the purposes for which the information is collected and to whom the organisation usually discloses information of that kind (IPP 1.3 and 1.5). If the personal information has been collected from someone other than the individual to whom the personal information relates, the organisation need not notify that individual if making the individual aware of these matters would pose a serious threat to the life or health of any person.
- an organisation must not use or disclose personal information for a purpose other than the primary purpose of collection unless the individual has consented to the use or disclosure or certain other conditions are fulfilled (IPP 2.1).
- an organisation must take reasonable steps to protect the security of the personal information that it holds (IPP 4.1).
- an organisation must provide an individual with access to the personal information it holds about that individual on request, except in specified circumstances (IPP 6.1). It should be noted that IPP 6 is subject to the access (and correction) procedures in the *Freedom of Information Act 1982*.
- an organisation must not assign unique identifiers to individuals unless it is necessary to enable the organisation to carry out its functions efficiently (IPP 7.1).
- an organisation must not transfer personal information about an individual to someone outside Victoria except in specified circumstances (IPP 9.1).
- an organisation must not collect 'sensitive information' (as defined in Schedule 1 to the Act) about an individual, except in specified circumstances (IPP 10).

## **Exemptions from the Act**

The Act does not apply to a document containing personal information, or to the personal information contained in a document, that is –

- (a) a generally available publication; or
- (b) kept in a library, art gallery or museum for the purposes of reference, study or exhibition; or
- (c) a public record under the control of the Keeper of Public Records that is available for public inspection in accordance with the *Public Records Act 1973*; or
- (d) archives within the meaning of the *Copyright Act 1968*.

## **Privacy Commissioner**

A Privacy Commissioner, whose principal functions will be community education and conciliation of complaints, will administer the Act.

## **Complaint and enforcement mechanisms**

A person who believes an agency covered by the Act has breached an IPP may complain to the Privacy Commissioner, who may attempt to conciliate the complaint. If conciliation fails, the complainant may take the complaint to the Victorian Civil and Administrative Tribunal (VCAT). VCAT can make binding determinations to resolve the complaint.

## ***HEALTH RECORDS ACT 2001***

The Health Records Act regulates the handling of personal information that is ‘health information’. ‘Health information’ is defined in s. 3 to mean –

- (a) information or an opinion about –
  - (i) the physical, mental or psychological health (at any time) of an individual; or
  - (ii) a disability (at any time) of an individual; or
  - (iii) an individual’s expressed wishes about the future provision of health services to him or her; or
  - (iv) a health service provided, or to be provided, to an individual –  
that is also personal information; or
- (b) other personal information collected to provide, or in providing, a health service; or
- (c) other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body parts, organs or body substances; or
- (d) other personal information that is genetic information about an individual in a form which is or could be predictive of the health (at any time) of the individual or of any of his or her descendants.

## **Purposes of the Act**

The purpose of the Act are expressed in s. 1 to be the promotion of the fair and responsible handling of health information held in the public and private sectors, providing individuals with a right of access to their health information and providing a framework for the resolution of complaints regarding the handling of health information.

The Act will commence operation in two phases. The Health Privacy Principles will take effect as voluntary standards on 1 March 2002. On 1 July 2002, the Act will be fully operational; individuals and agencies will need to comply with the Act and with the Health Privacy Principles from that date.

## **To whom does the Act apply?**

The Act applies to private health service providers, to persons or bodies which collect, hold or use health information and to Victorian public sector organisations (including bodies established for a public purpose under an Act, such as universities) that are health service providers or which collect, hold or use health information.

## **Health Privacy Principles (HPP's)**

The HPP's (in Schedule 1 to the Act) are central to the Act. The 11 HPP's prescribe how health information is to be handled. An organisation covered by the Act must comply with these HPP's.

Readers should familiarise themselves with all of the HPP's which can be viewed at [www.health.vic.gov.au/hsc](http://www.health.vic.gov.au/hsc). Some of the more important HPP's are –

- an organisation must not collect health information about an individual unless the individual has consented or other specified circumstances apply (HPP 1.1).
- an organisation that collects health information must take reasonable steps to ensure that the individual to whom the health information relates is aware of the following matters: the identity of the organisation and how to contact it, that the individual can gain access to the information, the purposes for which the information is collected and to whom the organisation usually discloses information of that kind (HPP 1.4 and 1.5). If the health information has been collected from someone other than the individual to whom the health information relates, the organisation need not notify that individual if making the individual aware of these matters would pose a serious threat to the life or health of any individual or would involve the disclosure of information given in confidence.
- an organisation must not use or disclose health information about an individual for a purpose other than the primary purpose of collection unless the individual has consented to the use or disclosure or certain other conditions are fulfilled (HPP 2.2).
- an organisation must take reasonable steps to protect the security of the health information that it holds (HPP 4.1) and must not delete health information unless specified circumstances apply (HPP 4.2).
- an organisation must provide an individual with access to health information it holds about that individual on request, except in specified circumstances (HPP 6.1). It should be noted that HPP 6 is subject to the access (and correction) procedures in the *Freedom of Information Act 1982*.

- an organisation may only assign identifiers to individuals if it is reasonably necessary to enable the organisation to carry out its functions efficiently (HPP 7.1).
- an organisation must not transfer health information about an individual to someone outside Victoria except in specified circumstances (HPP 9.1).

## **Exemptions from the Act**

Division 3 of Part 2 of the Act provides for various exemptions including health information held for personal, family or domestic use and publicly available information.

## **Statutory Guidelines**

The Health Services Commissioner is responsible for the implementation of the Act, and has the power to issue guidelines for the purposes of the Health Privacy Principles. The Commissioner has issued draft Guidelines for the purposes of HPP 1.1(e)(iii) and HPP 2.2(g)(iii) regarding the collection, use and disclosure of health information for research or the compilation or analysis of statistics. The draft Guidelines can be reviewed at [www.health.vic.gov.au/hsc](http://www.health.vic.gov.au/hsc).

## **Complaint and enforcement mechanisms**

A person who believes that his/her privacy has been breached may complain to the Health Services Commissioner, who may attempt to conciliate the complaint. If conciliation fails, the complainant may take the complaint to the Victorian Civil and Administrative Tribunal (VCAT). VCAT can make binding determinations to resolve the complaint.

## **COMMONWEALTH PRIVACY ACT**

Recent amendments to the *Commonwealth Privacy Act 1988* will extend the coverage of that Act from the Commonwealth public sector to the private sector (with certain exemptions). The Act is not directly relevant to La Trobe University.

*More detailed information about the new privacy regime can be found at [www.dhs.vic.gov.au/privacy](http://www.dhs.vic.gov.au/privacy) and [www.health.vic.gov.au/hsc](http://www.health.vic.gov.au/hsc).*