

HEALTH PRIVACY IN VICTORIA

13 November 2019



OVERVIEW

- **Function of the Health Complaints Commissioner**
- **Privacy laws in Victoria**
 - Relevant legislation
- **Definition of Health Information**
 - Common issues for public sector agencies
- **Complaints Process**
 - Role of the HCC in HRA complaints
 - VCAT referrals and decisions

FUNCTIONS OF THE HEALTH COMPLAINTS COMMISSIONER



- Commenced on 1 February 2017 under the *Health Complaints Act 2016*.
- Administer HCA and HRA.
- Includes Statutory Guidelines on Research 2002 and Statutory Guidelines on Transfer or Closure of the Practice or Business of a Health Service Provider 2002.
- Deliver education and training to service providers and general public.

PRIVACY LEGISLATION

Victoria:

- *Health Records Act 2001*
- *Privacy & Data Protection Act 2014*
- *Charter of Human Rights and Responsibilities Act 2006*

Commonwealth:

- *Privacy Act 1988*

Other relevant legislation:

- *Freedom of Information Act 1982 (Vic and Cth)*

IMPACT OF OTHER LEGISLATION

- The *Health Records Act* does not override other legislation.
- Existing provisions in other statutes governing the confidentiality, use and disclosure of health information and those that regulate access to certain kinds of personal information continue to apply.
 - s.141 *Health Services Act* 1988
 - *Children, Youth and Families Act* 2005
 - Family Violence Information Sharing Scheme

WHAT IS HEALTH INFORMATION

- Identifiable personal information collected in the provision of health service.
- Identifiable information about a person's health (if a non-health service provider).

WHAT IS HEALTH INFORMATION

Information or opinion about:

- The physical, mental or psychological health (at any time) of an individual.
- The disability of an individual.
- An individual's expressed wishes about the future provision of health services to him or her
- A health service that has been provided or is to be provided in the future to an individual.
- Other personal information collected to provide or in the course of providing a health service
- Organ donation
- Genetic information

HEALTH PRIVACY PRINCIPLES

1. Collection
2. Use & Disclosure
3. Data Quality
4. Data Security & Retention
5. Openness
6. Access & Correction
7. Identifiers
8. Anonymity
9. Trans border Data Flows
10. Transfer/closure of practice of health service provider
11. Making information available to another health service provider

COMMON ISSUES FOR PUBLIC SECTOR AGENCIES

- Collection.
- Use and disclosure.
- Data Security.
- Accuracy of public sector records – remedy is under FOI.

ROLE OF THE HCC IN HRA



- If you're not sure, ask us!
- Provide advice on the Act, do not give legal advice or tell you what you should do.

HRA COMPLAINT PROCESS

- Must be in writing, we can assist with this if there are barriers.
- Cannot accept third party complaints under HRA.
- Need to establish legal standing to complain ‘on behalf of’, particularly relevant where an individual is deceased or separated parents.
- If someone has not taken steps to resolve the issue with the provider, where appropriate we will assist them to do so, for example if they have not made an access request we can assist them to do so before accepting the complaint.

HRA COMPLAINT PROCESS

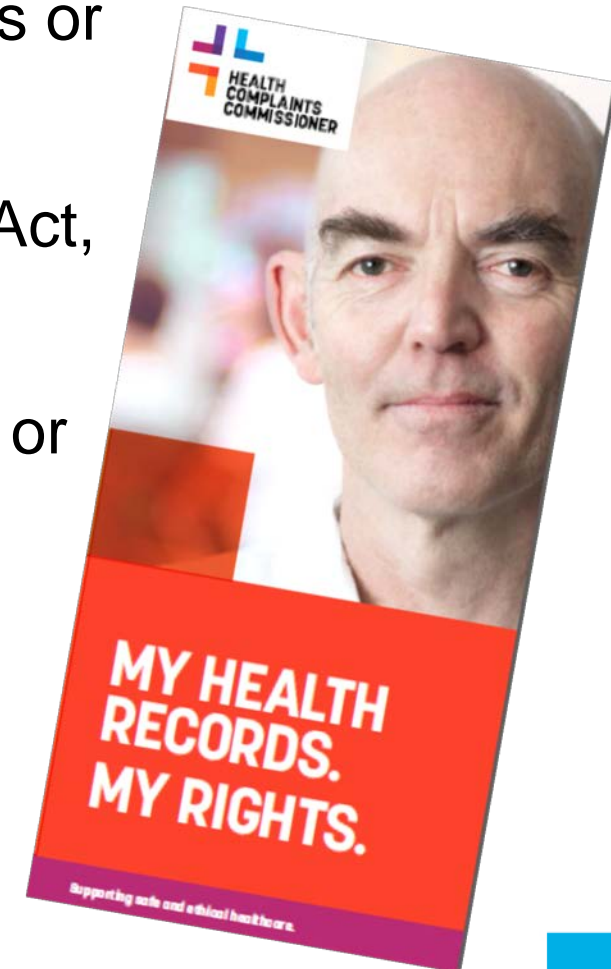
- When a complaint is received, we have 90 days to gather information, assess the issues and determine whether we will deal with it or decline to deal with it.
- Within the 90 days, many complaints are resolved informally, this can be:
 - Education about obligations under HRA
 - Written responses explaining what has happened
 - Options for resolution, eg. Correction or access granted

HRA COMPLAINT PROCESS

- If not resolved in the 90 days and appropriate to do so, we will attempt to conciliate the complaint.
- More formal process, we can compel production of documents, propose options for resolution.
- If, within the 90 days or in a conciliation process, the complainant wants the matter referred to VCAT, we facilitate this.
- We aim to promote resolution where possible and work impartially with both parties toward solutions.

RESOURCES

- Brochure for consumers on their rights to access or amend their health records.
- See www.hcc.vic.gov.au for information on the Act, the latest fees for accessing records and more.
- Contact us for advice anytime on 1300 582 113 or hcc@hcc.vic.gov.au



Questions

Health Complaints Commissioner

hcc.vic.gov.au

1300 582 113



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