



# Mental Health Reform Victoria Privacy Policy

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## Overview

Mental Health Reform Victoria (MHRV) is an Administrative Office created under the *Public Administration Act 2004*, in relation to the Department of Health and Human Services. Mental Health Reform Victoria is implementing the recommendations of the Royal Commission into Victoria's Mental Health System and helping set the foundations for system change. MHRV acknowledges the sensitivity of personal information provided to it. Therefore, MHRV is committed to protecting the privacy of this personal and health information in accordance with the law.

MHRV is bound by privacy and other laws, including:

- *Privacy and Data Protection Act 2014 (PDP Act)*
- *Health Records Act 2001*
- *Public Records Act 1974*
- *Mental Health Act 2014*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Freedom of Information Act 1982*

To access these Acts, [go to the Victorian Legislation and Parliamentary Documents website](http://www.legislation.vic.gov.au/)  
<<http://www.legislation.vic.gov.au/>>

## To what and whom does this policy apply?

In delivering MHRV's remit from the Royal Commission's Interim report it is expected the vast majority of information MHRV will use will be gathered by other agencies (such as Department of Health and Human Services) and provided to MHRV according to their privacy policies and data sharing criteria relevant to the information requested.

However, it is expected MHRV may need to collect, use, store and disclose a range of personal and health information for the purposes of providing services or to carry out its implementation of the reforms. This policy applies to all such personal and health information collected, stored, used and disclosed about any individual including clients, patients of health service providers and people registering for services.

This policy also applies to all personal and health information collected, stored, used and disclosed about people working for MHRV. This includes staff, secondees, labour hire, personnel, contractors, sub-contractors and those on work experience and volunteers. These individuals are collectively referred to throughout this document as workplace participants.

## What does MHRV do?

The Royal Commission into Victoria's Mental Health System published an interim report in November 2019. The report outlines 9 recommendations which provide a starting point for system transformation. MHRV leads the implementation of Recommendations 1 through 7. The services and functions that MHRV funds and contracted service providers deliver include mental health care and mental health workforce development. To help deliver this work, MHRV collaborates with specialists and people with diverse experience and expertise, and work with the Royal Commission to ensure MHRV's implementation of the recommendations are true to their original intent.

## Definitions of personal, health and sensitive information

### Personal information

Personal information is defined in the PDP Act as 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, but does not include information of a kind to which the Health Records Act applies.

### Sensitive information

Sensitive information is a subset of personal information. It is defined in the PDP Act and means information or an opinion about an individual's:

- racial or ethnic origin
- political opinions
- membership of a political association
- religious beliefs or affiliations
- philosophical beliefs
- membership of a professional or trade association
- membership of a trade union
- sexual preferences, orientation or practices
- criminal record

that is also personal information.

### Health information

Health information is defined in the Health Records Act. Where information is health information and so is not caught by the PDP Act, then the law is different in some aspects. The Health Records Act defines health information as:

- information or an opinion about:
  - the physical, mental or psychological health (at any time) of an individual; or
  - a disability (at any time) of an individual; or
  - an individual's expressed wishes about the future provision of health services to him or her; or
  - a health service provided, or to be provided, to an individualthat is also personal information (see definition of personal information under the *Health Records Act 2001* below); or
- other personal information collected to provide, or in providing, a health service; or
- 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
- 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

The definition does not include health information, or a class of health information or health information contained in a class of documents, that is prescribed as exempt health information for the purposes of the Health Records Act generally or for the purposes of specified provisions of that Act.

Personal information is defined in the Health Records Act as information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information about an individual who has been dead for more than 30 years.

## Collection of personal and health information

MHRV collects personal and health information necessary to MHRV's activities, including various programs and services it runs and those it funds others to provide.

Where MHRV collects personal and health information it is by lawful and fair means and not in an unreasonably intrusive way. If it is reasonable and practicable to do so, MHRV collects personal and health information about an individual only from that individual. When collecting information directly from an individual and when collecting information from someone else about an individual, MHRV will take reasonable steps to ensure the individual is aware of why the information is being collected (including the purposes for the collection and any relevant laws requiring the collection), who it may be disclosed to, the main consequences if the individual does not disclose the information (if collecting information directly from the individual), and how the individual may contact MHRV and gain access to the information collected. There may be exceptions in the Information Privacy Principles and the Health Privacy Principles in certain circumstances that do not require reasonable steps to be taken but this needs to be assessed on a case by case basis.

MHRV typically collects information in the following ways:

- directly from the individual to which the information relates
- where it is not reasonable or practicable to collect the information directly from the individual, information may be collected from a third party, such as the individual's authorised representative
- as a by-product of service delivery, which may include through funded agencies (such as health services) which are required to provide the information to MHRV for the purpose of MHRV's activities (usually included in extracts from their electronic systems)

### Where information may be provided by a third party.

MHRV collects personal and health information for delivering, planning, funding, monitoring, evaluating and improving our services and activities. Unless the use or disclosure of personal or health information is for the primary purpose of collection, or it is for secondary purpose and one of the permissible exceptions under Information Privacy Principle 2.1 or Health Privacy Principle 2.2 applies, MHRV removes identifying details from the information it collects.

## Collection of sensitive information

MHRV may collect sensitive information where:

- the individual has consented to the collection
- the collection is required or authorised under law
- the collection is necessary to prevent or lessen a serious threat to the life or health of any individual, where the individual whom the information concerns is physically or legally incapable of giving consent to the collection or physically cannot communicate consent to the collection, or
- the collection is necessary for the establishment, exercise or defence of a legal or equitable claim.

MHRV may also collect sensitive information about an individual if:

- the collection is necessary for research or the compilation or analysis of statistics relevant to government funded targeted welfare or educational services, or
- the information being collected relates to an individual's racial or ethnic origin and the purpose of the collection is to provide government funded targeted welfare or educational services, and
- there is no reasonably practicable alternative to collecting the information for either purpose, and
- it is impracticable for the organisation to seek the individual's consent to the collection.

## Types of information collected by MHRV

The types of personal or health information MHRV collects depends on the nature of the contact with MHRV, services provided (where applicable) and statutory requirements of MHRV.

Personal information collected by MHRV may include (but is not limited to):

- name, address and contact details
- personal circumstances (age, gender and information about children)
- financial matters (payment and bank account details)
- identity (date and country of birth)
- government identifiers.

## What MHRV does with the information collected

MHRV uses and discloses personal (including sensitive information) and health information for:

- the primary purpose for which it was collected; or
- a purpose related to that for which it was collected (secondary purpose) where the legislative requirements for using or disclosing for a secondary purpose are met.

MHRV may use or disclose personal (including sensitive information) or health information when:

- the secondary purpose relates to the primary purpose of collection (or directly relates to the primary purpose in the case of sensitive or health information) and an individual would reasonably expect MHRV to use or disclose it in this way
- the individual to whom the information is about has given consent for the use or disclosure
- MHRV is required, authorised or permitted by or under law to use or disclose the information.

The information collected might be able to be shared within MHRV between different business units if business units comply with the Information Privacy Principles or Health Privacy Principles before doing so. Such information may also be shared from MHRV to service providers to enable efficient and effective delivery of quality services in compliance with the Information Privacy Principles and Health Privacy Principles.

MHRV may collect, use, hold and disclose personal and health information about a range of matters, including, but not limited to:

- individuals participating in funded services
- managing contracts and funding agreements
- managing fraud and compliance investigations
- managing audits
- managing grants
- employment and personnel matters concerning staff and contractors
- correspondence from members of the public to MHRV, Ministers and Parliamentary Secretaries
- complaints made and the feedback provided
- requests made under the *Freedom of Information Act 1982*
- investigating incidents, for example, child protection and health protection matters
- planning, monitoring and evaluating MHRV functions and services
- meeting legislative requirements
- policy development and research
- meeting the reporting requirements of government and external oversight agencies
- mandatory reporting of certain diseases.

There may be circumstances where MHRV is authorised and/or required by law to collect, use, hold or disclose an individual's information.

Wherever it is lawful and practicable, an individual must be given the option of remaining anonymous when interacting with MHRV. A circumstance where it is not practicable for the individual to remain anonymous is where MHRV is responsible for providing a range of specific and coordinated services to the individual.

## How MHRV stores and protects information

Wherever possible MHRV utilises the data security infrastructure of the Department of Health and Human Services. Where this is not possible, MHRV has security measures designed to protect personal and health information from misuse, loss, unauthorised access, modification or disclosure.

MHRV will take reasonable steps to destroy or permanently de-identify personal information if it is no longer needed for any purpose in line with the *Public Records Act 1974*. In relation to health information, MHRV will take reasonable steps to destroy or permanently de-identify health information if it is no longer needed for the purpose for which it was collected or any other purpose authorised by the Health Records Act, the regulations made under the Health Records Act, or any other law.

MHRV takes reasonable steps to ensure that any personal and health information it collects, uses and discloses is accurate, complete and up to date, and having regard to the purpose for which health information is to be used, that it is relevant to MHRV's current functions and activities.

## Access to and correction of information

An individual may ask for access to their information or request a correction to their information by contacting MHRV through:

- the MHRV area that has the information (where known)
- emailing the Data and Reporting Unit <privacy@mhrv.vic.gov.au>

When contacted, MHRV will let the individual know whether it holds information about the individual and any further steps that that individual should take to obtain access to the information.

If a query relates to an individual's health information, this information will be held directly by the public health service provider. In this situation it would be more appropriate to make contact directly with the health service provider.

## Making a complaint about a privacy incident (breach)

An individual may make a complaint about a potential privacy incident (breach) by contacting MHRV's Data and Reporting unit by emailing [privacy@mhrv.vic.gov.au](mailto:privacy@mhrv.vic.gov.au).

MHRV undertakes to resolve privacy complaints and breaches in a timely and fair manner.

An individual may also make a privacy complaint to:

- the Health Complaints Commissioner in relation to a complaint relating to health information: 1300 582 113
- the Office of the Victorian Information Commissioner in relation to a complaint relating to personal or sensitive information: 1300 666 444.

## How does MHRV protect information transferred outside of Victoria?

MHRV adheres to the requirements of the PDP Act and Health Records Act when transferring personal and health information outside of Victoria.

The only circumstances in which personal and health information may be transferred or stored outside of Victoria is when the transfer or storage meets one (or more) of the following criteria:

- MHRV reasonably believes that the recipient of the information is subject to a law, binding scheme or binding contract that provides substantially similar protection to the PDP Act or Health Records Act
- the individual has provided consent to the transfer
- the transfer is necessary for the performance of a contract between the individual and MHRV, or for the implementation of pre-contractual measures taken in response to the individual's request
- the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the individual between MHRV and a third party
- the transfer is for the benefit of the individual, and it is impracticable to obtain the individual's consent to the transfer, but if it were practicable to obtain consent the individual would be likely to give it
- MHRV has taken reasonable steps to ensure that information which it has transferred will not be held, used or disclosed by recipients inconsistently with the Information Privacy Principles or Health Privacy Principles
- in the case of health information, the transfer is required or authorised by law.

## Workplace participant responsibilities

It is every workplace participant's responsibility to familiarise themselves with the Information Privacy Principles set out in the PDP Act and the Health Privacy Principles set out in the Health Records Act and to ensure that they comply with them. Online training is available on the Department of Health and Human Service's intranet on the PDP Act.

## Further information

To receive this publication in a different format, [email the Data and Reporting team](#)

<[privacy@mhrv.vic.gov.au](mailto:privacy@mhrv.vic.gov.au)>

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