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| Privacy framework for maternal and child health services |
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# Introduction

The privacy framework for maternal and child health (MCH) services includes:

* *Health Records Act 2001 (Vic)* – in particular, the Health Privacy Principles contained in Schedule 1 of the Act
* *Privacy and Data Protection Act 2014 (Vic)* – in particular, the Information Privacy Principles contained in Schedule 1 of the Act
* Council policies.

Health information is often particularly sensitive, therefore clients of the MCH service need to be confident that their information will be handled appropriately and confidentially. Additionally, the Health Records Act provides a legislative requirement for the protection of the privacy of health records. This makes it critical that at the time of collecting information, the client is provided with information about their privacy. The Victorian MCH service privacy information fact sheet, ‘What happens to information about you and your family’, has been developed to assist in this process.

MCH nurses may provide this information fact sheet at the time of information collection or beforehand. However, this is not a substitute for a clear and open discussion at the time of collection.

# Health Records Act 2001

The Health Records Act 2001 provides protection for an individual’s health information that is held in the public and private sectors. It does this through:

* setting standards called Health Privacy Principles (HPPs) for the collection, handling, and disposal of health information in the public and private sectors
* creating a right of access for Victorians to health information about them
* providing an accessible framework for the resolution of complaints about the handling of health information.

## Who does it affect?

Those who collect or handle health information, including:

* health service providers such as maternal and child health, aged care, disability services and immunisation
* any other organisation that collects or handles health information such as childcare, pre-schools, fitness centres and youth programs
* those who provide the health information about themselves to these organisations
* clients, employees, users or recipients of services.

## Health Privacy Principles

The Health Privacy Principles cover the following aspects of health information:

* collection
* use and disclosure
* data quality
* data security and retention
* openness
* access and correction
* identifiers (such as discreet file reference)
* anonymity (if desired)
* transborder data flows
* transfer or closure of practice of health provider
* made available to another health service provider – if requested by the person to whom the information relates.

### 1. Collection

The MCH service collects health information that is necessary for its functions and activities. Generally, this will be by consent. However, there are other circumstances in which the collection of health information is permitted without consent, such as:

* where required to be collected by law
* the information is necessary to provide a health service and the individual is incapable of providing consent (and they do not have an authorised representative, or it is not reasonably practicable to obtain the consent of an authorised representative)
* the collection is necessary to prevent or lessen a serious threat to the life, health, safety or welfare of any individual, or a serious threat to public health, public safety or public welfare.

#### Consent

If it is reasonable and practicable to do so, the MCH service collects personal information about clients directly from them or their parent or guardian.

When obtaining consent, the maternal and child health nurse informs the client of the matters set out in the Act, including

* the purposes for which the information is collected
* how it will be used and disclosed
* how a person has a right of access to their health information and that of their child.

### 2. Use and disclosure

The MCH service and Council can only use or disclose health information collected for the primary purpose for which the information was collected (the provision of the MCH services) or secondary purposes permitted under the Act. It is important to note that MCH records are different to other council records, as they contain health information.

Health information can still be used by the Council or disclosed to others for some permitted secondary purposes. These are outlined in the Health Records Act2001 and include, but are not limited to:

* Where the purpose of the use or disclosure is directly related to the primary purpose (provision of MCH services) and the individual would reasonably expect the information to be used or disclosed for this purpose
* Where the individual provides consent
* Where required, authorised or permitted by law. For example, where there is a subpoena, court order or required under legislation
* For the purpose of funding, management, planning, monitoring, improvement or evaluation of the health service, or training provided to employees or person working for the health service provider. However, if the purpose can be achieved by de-identifying the information this should be done. Further, it must not be reasonably practicable to obtain consent of the individual, otherwise it should be sought.
* For the purpose of research, or the compilation or analysis of statistics, in the public interest. However, if this purpose can be achieved by de-identifying the information, this should be done. Additionally, it must not be reasonably practicable to obtain consent of the individuals, otherwise this should be sought.
* The organisation reasonably believes that the use or disclosure is necessary to lessen or prevent:
	+ a serious threat to an individual’s life, health, safety or welfare or
	+ a serious threat to public health, public safety or public welfare.

### 3. Data quality

The MCH service must take reasonable steps to ensure that the health information it collects, uses or discloses is accurate, complete, up to date, and relevant to its functions or activities. This requirement will be particularly important to provide good continuity of service to clients, provide the best outcome for clients and also as a risk mitigation measure.

### 4. Data security and retention

A Council must take reasonable steps to protect the health information it holds from misuse and loss and from unauthorised access, modification or disclosure. There are also specific legislative requirements in relation to deletion and transfer of health information.

### 5. Openness

The MCH service must make available to anyone who asks for it, information on the management of health information. (such as the factsheet, ‘What happens to information about you and your family’). The MCH service must take reasonable steps to let the client know, generally, what sort of health information it holds, for what purposes, and how it collects, holds, uses and discloses that information.

Council must set out in a document:

* clearly expressed policies on its management of health information
* the steps that an individual must take in order to obtain access to their health information
* make this document available to anyone who requests it.

This will generally be included either in a separate health privacy policy document or be incorporated into council’s privacy policy, which will also address its obligations under the Privacy and Data Protection Act.

On request a Council must take reasonable steps to let the individual know:

* whether the council holds health information relating to them
* the steps that the person should take if they wish to get access to the information.

If the Council does hold health information relating to the individual, to let the individual know in general terms:

* the nature of the information
* the purposes for which the information is used
* how the Council collects, holds, uses and discloses the information.

### 6. Access and correction

A client has a right to access and request correction of their health information held by the council. A request for access to health information is required to be made as an FOI request. If a client (or authorised representative) requests access to a client’s health information, it is recommended the MCH service confirm they should apply by an FOI application to the council’s FOI officer.

If a client believes that their personal information is inaccurate, incomplete or out of date, they may request the MCH service correct the information. Requests are to be dealt with in line with the Act.

### 7. Unique identifiers

The MCH service may assign unique identifiers to individuals that are necessary to carry out its functions and activities efficiently. For example, a unique identifier may be a number.

The MCH service may adopt unique identifiers that have been assigned by another organisation to individuals that are necessary to carry out its functions and activities efficiently.

### 8. Anonymity

Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with the MCH service.

### 9. Transborder data flows

The MCH service may transfer personal information about an individual to someone (other than the MCH service or the individual) who is outside Victoria only if the individual consents to the transfer.

### 10. Sensitive Information

The MCH service may also hold sensitive information with the consent of the client. Sensitive information includes information or an opinion about an individual’s racial or ethnic origin, political opinions, trade union membership, philosophical or religious beliefs, sexual preferences or criminal record.

## Health privacy complaints

To make a complaint to the Health Services Commissioner, telephone 8601 5200 or toll free 1800 136 066.

# Privacy and Data Protection Act 2014

## Personal information

Applies to personal information held by the Council. Personal information means information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Note**: The Privacy and Data Protection Act does not apply where the Health Records Act applies.

The Privacy and Data Protection Act shares the same principles as the Health Records Act and covers information:

* collection
* use and disclosure
* data quality
* data security and retention
* openness
* access and correction
* identifiers (such as discreet file reference)
* anonymity (if desired)
* transborder data flows
* transfer or closure of practice of health provider
* made available to another health service provider – if requested by the person to whom the information relates.

## Complaints

If a client feels aggrieved by the Council’s handling of their personal information, they may make a complaint to the relevant Council’s Privacy Officer. Alternatively, they may make a complaint to the Privacy Commissioner.

# Council policies

Under Health Privacy Principle 5 relating to openness, Council is required to have a document outlining its policy on its management of health information.

Some councils have a separate policy for health information under the Health Records Act, while others include this information under a more general privacy policy that outlines its policies under both the Health Records Act and the Privacy and Data Protection Act.

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