



## Changes to the Health Complaints Act 2016 and the Health Services Act 1988

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### The Health Legislation Amendment and Repeal Bill

In September 2019, the Victorian Government passed the Health Legislation Amendment and Repeal Act. The Act addressed four main areas, one of which this article discusses in more detail:

- Strengthening existing restrictions for e-cigarette and tobacco advertising
- Enhancing information exchange between health services
- Annulling of the Access to Medicinal Cannabis Act 2016
- Several other miscellaneous amendments, including some to the Mental Health Act 2014.

### Amendments to the Health Complaints Act 2016

Within the Act, three sections of the Health Complaints Act 2016 were amended to remove the words "and imminent" so that the test for information release by the Commissioner in order to avoid any risks to life, health, welfare, or safety, was similar to the test in the Health Privacy Principles (HPPs) and the Information Privacy Principles (IPPs)<sup>(1)</sup>.

For complainants, this means that private information about the review can be disclosed if a serious threat to life, health, safety, or welfare has been determined, and was caused by the subject of the investigation.

### Amendments to the Health Services Act 1988

Arising out of the Duckett Report were recommendations to permit greater sharing of information relating to health risks and quality and safety between health services and health regulators. This may include identifying confidential information which might otherwise have been restricted for privacy reasons.

The Act permits great sharing of such information for quality and safety purposes to particular entities and advisers', whilst maintaining the privacy of individuals from public disclosure.

Amendments to the Health Services Act 1988 addressed the major

### People who can help



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Amendments to the Health Services Act 1988 addressed the major aspects relating to information sharing. The following points outline some of the amended sections, with information directly derived from Clause 85 of the Health Legislation Amendment and Repeal Bill<sup>(1)</sup>:

- The term **health service entity** was introduced to include all the entities in the Victorian health system that may disclose confidential information for quality and safety purposes. This was in addition to the term **health service entities**, which was introduced because new entities that provide health services may be created or regulated in the future.
- The term **quality and safety body** was defined to mean an entity that has functions relating to the quality and safety of health service entities.
- The term **special adviser** was used to describe an entity (including individuals) that may be appointed to provide specialist or expert advice in relation to quality and safety.
- New section 134X(1) and (2) permits the disclosure of confidential information for a quality and safety purpose between services that are considered as quality and safety bodies, and the Secretary.
- New section 134X(3) permits health service entities to disclose confidential information to the Secretary or a quality and safety body for a purpose relating to issues with quality and safety. A health service entity may disclose such confidential information to the Secretary or a quality and safety body at any time and a request for the information is not required, although the Secretary or quality and safety body may issue a request.
- New section 134X(4) permits the Secretary or a quality and safety body to disclose a limited amount of information to a health service entity, in order to enable the health service entity in identifying whether it has any confidential information related to a specific quality and safety purpose that may be requested by the Secretary or quality and safety body. This means that the Secretary can share the name and other identifying details of a particular individual to a health service entity in order to determine if any incidents in relation to that individual have occurred at that entity, for the purposes of incident reporting. However, the amendment is not intended for the Secretary and quality and safety bodies to disclose confidential information to health service entities for wider quality and safety purposes.
- New section 134ZB establishes a system through which the Minister can authorize the sharing of information between health service entities or a class of entities for quality and safety purposes.
- New section 134ZD provides protection from legal action and disciplinary proceedings for an individual who collects, uses, or discloses confidential information under this new Part in good faith and reasonable care.

Overall, the impact of these amendments upon the processes of information sharing between health services appears to be positive, addressing flaws in previous legislation that have long been ignored.

#### ***What does this mean for the involved bodies?***

- **Health services** – Health services no longer need to be wary of breaching Privacy Protection Act 2014 for disclosing confidential information if they are disclosing it for a relevant quality and safety purpose<sup>(2)</sup> as referred to in the Act.
- **Patients** – If a health service deems that there is a quality and safety issue related to patient's case, they may disclose particular confidential information to either the Secretary or a health service prescribed as a quality and safety body.

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- **Secretary and quality and safety body** – These two bodies can issue a request for confidential information if a quality and safety purpose has been specified<sup>(1)</sup>.

It is expected that this Bill will improve the process through which information is shared between health services for quality and safety purposes, and ensure that the standards of health services are upheld by all.

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[1] *Health Legislation Amendment and Repeal Bill*. Parliament of Victoria. 27 Aug. 2019.

[2] *Privacy and Data Protection Act 2014*. Parliament of Victoria. 2 Sep. 2014.

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