



Guidance note: Privacy and confidentiality

1. Context

Nurses and midwives have ethical and legal obligations to safeguard the privacy of people in their care. Failing to do so can lead to serious issues with significant consequences such as disciplinary action and a notification to the Australian Health Practitioner Regulation Agency (AHPRA).

2. Purpose

This guidance note aims to help members understand their essential privacy and confidentiality obligations and recognise breaches.

3. Key definitions

Health information: Oral or documented information (including photos and images) or opinion about a person's physical or mental health.

4. Guidance

4.1 The legal framework

Privacy and confidentiality are regulated by codes, legislation, guidelines and policies, including:

- Nursing and Midwifery Board of Australia (NMBA) [codes of conduct and standards of practice](#)
- *My Health Records Act 2012 (Cth)*
- *Healthcare Identifiers Act 2010 (Cth)*
- *Privacy & Data Protection Act 2014 (Vic)*
- [Health Records Act 2001 \(Vic\)](#) which includes the [Health Privacy Principles \(HPPs\)](#)
- *Health Services Act 1988 (Vic)* section 141
- *Mental Health Act 2014 (Vic)* section 140-141
- *Health Complaints Act 2016 (Vic)*
- *Charter of Human Rights and Responsibilities Act 2006 (Vic)* section 13
- *Children, Youth and Families Act 2005 (Vic)*
- *Freedom of Information Act 1982 (Vic)*
- *Public Records Act 1973 (Vic)*
- *Individual health service's privacy policy and statement*

You can't learn all of these by heart, but you must know and understand:

- your employer's privacy policy and statement which details how your employer – and you – will give effect to the legislation
- the [Health Privacy Principles \(HPPs\)](#) in the [Health Records Act 2001 \(Vic\)](#)
- the NMBA codes of conduct for nurses and midwives which explicitly reiterate these obligations:

‘Nurses/midwives have ethical and legal obligations to protect the privacy of people/women. People/women have a right to expect that nurses/midwives will hold information about them in confidence, unless the release of information is needed by law, legally justifiable under public interest considerations or is required to facilitate emergency care...’.

4.2 Key rule

The [HPPs](#) regulate how health information is collected, stored, accessed and disclosed. Under the HPPs, a person’s health information can only be accessed, used and disclosed for the primary purpose for which it was collected – that is, to provide a health service to that person. This means members must only access, use and disclose someone’s health information when they need to do so to provide care to that person.

4.3 Breaches

Breaches, including breaches of your employer’s privacy policies and procedures, could result in disciplinary action, including employment termination or a notification to AHPRA. The NMBA will also investigate and act where necessary.

For example, the breaches below could all lead to a notification and/or disciplinary action:

- You look up the health information of someone you know, even though you aren’t providing care to them.
- You walk away from your work computer without signing out of your patient’s health record.
- You post a photo of the adorable baby in the maternity ward on social media.
- You look up the record of a ‘celebrity’ in care at your workplace to see why they’re there – or you watch while a colleague does it.
- The media asks you a question about a person in your care and you answer with health information.
- You take your handover sheet home by mistake and get rid of it by putting it in your recycling bin.
- You access and review a patient’s medical imaging for education purposes, but the patient is not in your direct care.
- You ask questions out of curiosity about a patient who is not in your direct care.
- Another patient asks you about a patient in your care and you answer, providing health information.
- You debrief about a patient to your family or friends.
- You look up health information to help a friend or a family member.

5. ANMF (Vic Branch) support

We recommend members exercise extreme caution before accessing, using, and disclosing health information. If you are unsure, seek advice – do not make the decision on your own. Discuss it with a senior colleague or supervisor or contact [ANMF Member Assistance](#)

If your employer invokes a performance disciplinary process, contact [ANMF Member Assistance](#) as soon as possible for advice and support.

6. Other useful documents

Office of the Victorian Information Commissioner [IPP Guidelines](#)

Department of Health and Human Services [Mandatory reporting](#)