

TAKE NOTE! A PRACTICAL GUIDE TO WRITING CASE NOTES

A COMPARISON WITH THE NSW JURISDICTION.¹

Disclaimer – This information sheet is provided for information only and as a general guide when reading the document *Take Note! A practical guide to writing case notes* (J. Cameron & J. Murray) in NSW and does not in any way constitute legal advice. Any individual, corporation or body corporate relying on the document should seek individual legal advice for their specific situation and workplace.

The document *Take note! A practical guide to writing case notes* (J. Cameron & J. Murray) has been prepared by Turning Point Alcohol and Drug Centre, an organisation based in Victoria. All references in that document are to the legislative framework currently operating in Victoria.

Drug and alcohol workers based in New South Wales must be aware that the legislation operating in Victoria is different to NSW. This summary aims to identify the differences between the laws operating in those states and provide a guide to readers about where to locate the relevant NSW legislation.

Each individual reader is encouraged to seek their own legal advice and refer to their own organisation's privacy manuals and other policy guidelines.

Note: The text of the Victorian edition has **not** been amended; therefore the text and commentary may not be relevant or applicable in NSW. The summary below indicates the legislative differences to take into account when reading the above document.

Summary of the differences between Victorian legislation described in *Take note! A practical guide to writing case notes* (J. Cameron & J. Murray) and NSW legislation.

PAGE	VICTORIAN LEGISLATION	NSW LEGISLATION
6	Please refer to Section 3: Legal Framework for Case Notes.	See later comments p.35 - p.47.
7	<p><u>Client access to case notes:</u></p> <ul style="list-style-type: none"> • <i>Freedom of Information Act</i> (1982) (Vic) public sector and private institutions established by statute. • <i>Health Records Act</i> (2001) (Vic); • <i>Privacy Act</i> (1988) (Cth) private sector. 	<p><u>Client access to case notes:</u></p> <p>Public Sector²:</p> <ul style="list-style-type: none"> • <i>Government Information (Public Access) Act</i> (2009) (NSW) [GIPAA]; • <i>Privacy and Personal Information Protection Act</i> (1998) (NSW) [PPIPA]; • <i>Health Records and Information Privacy Act</i> (2002) (NSW)[HRIPA] <p>Private Sector:</p> <ul style="list-style-type: none"> • <i>Privacy Act</i> (1988) (Cth); • <i>Health Records and Information Privacy Act</i> (2002) (NSW) [HRIPA].
35	National Privacy Principles (NPPs): <i>Privacy Act</i> (1988) (Cth).	National Privacy Principles (NPPs): <i>Privacy Act</i> (1988) (Cth) applies to private sector and Australian Government agencies.

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² <http://www.health.nsw.gov.au/gipaa/faq.asp>.

**Summary of the differences between Victorian legislation described in *Take note!*
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	<p>Information Privacy Principles (IPPs): <i>Information Privacy Act (2000) (Vic).</i></p> <p>Health Privacy Principles (HPPs): <i>Health Records Act (2001) (Vic)</i>, 5 HPPs in total – relates to "Health Information".</p>	<p>Information Protection Principles (IPPs): applies to NSW public sector agencies as defined by s.3 of the PPIPA.</p> <p>Health Privacy Principles (HPPs): 15 HPPs in total set out in Schedule 1 of the HRIPA; relates to "Health Information" defined by s.6 – applies to both public sector agencies and private sector persons as defined by s.4. [See Attachment A for definitions]</p>
36	<p>HPPs govern health information management for public sector. NPPs and HPPs apply to private sector agencies.</p> <p><i>Victorian Charter of Human Rights and Responsibilities Act (2006) (Vic);</i></p> <p><i>Mental Health Act (1986) (Vic);</i></p> <p><i>Health Services Act (1988) (Vic);</i></p> <p><i>Freedom of Information Act (1982) (Vic)</i> public sector and private institutions established by statute.</p> <p><i>Health Professionals Registration Act (2005) (Vic).</i></p>	<p>For the situation in NSW re HPPs and NPPs see discussion above.</p> <p>There does not appear to be an equivalent charter of Human Rights in NSW.</p> <p><i>Mental Health Act (1990) (NSW) – s289;</i></p> <p><i>Health Administration Act (1982) (NSW);</i></p> <p><i>GIPA Act – replaces FOI Act for public sector agencies in NSW</i></p> <p><i>Health Practitioner Regulation (Adoption of National Law) (2009) (NSW).</i></p>
37	<p><i>Health Records Act (2001) (Vic);</i></p> <p><i>Privacy Act (1988) (Cth) – for private sector bodies.</i></p>	<p>HRIPA - both public sector agencies and private sector persons as defined by s.4;</p> <p><i>Privacy Act (1988) (Cth) – for private sector bodies.</i></p>
38	<p><i>Health Records Act (2001) (Vic) – 5 Health Privacy Principles (HPPs). This is a discussion of the HPPs that apply in Victoria – it should only be read as information specific to VIC.</i></p>	<p>HRIPA - 15 HPPs in total set out in Schedule 1 of the Act – whilst the legislation in NSW is similar to that in Victoria please refer to the 15 HPPs set out in the NSW Act. [See Attachment B for a summary of the 15 HPP's]</p>
39	<p><i>Health Records Act (2001) (Vic);</i></p> <p><i>Mental Health Act (1986) (Vic);</i></p> <p><i>Health Services Act (1988) (Vic).</i></p>	<p>HRIPA;</p> <p><i>Mental Health Act (1990) (NSW).</i></p>
40	<p><u>Access and Correction:</u> <i>Freedom of Information Act (1982);</i></p> <p><i>Health Records Act (2001) (Vic); Privacy Act (1988) (Cth).</i></p>	<p><u>Access and Correction:</u> Public Sector - GIPAA ; HRIPA; PPIPA.</p> <p>Private Sector - Privacy Act (1988) (Cth); HRIPA.</p>

**Summary of the differences between Victorian legislation described in *Take note!*
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PAGE	VICTORIAN LEGISLATION	NSW LEGISLATION
41	Legal FAQ for case notes: <u>Policy and Legal Requirements re case notes:</u> the Common Law, professional obligations, <i>Health Insurance Act</i> (1973) (Cth).	<u>Policy and Legal Requirements re case notes:</u> This would also apply in NSW – please refer to your own organisations' policy and professional obligations regarding keeping case notes.
42	<u>Consequences of not keeping adequate notes:</u> refers generally to professional obligations and codes of conduct of registered practitioners. <u>Consent:</u> refers to Victorian HPP1 and Commonwealth NPP10.	<u>Consequences of not keeping adequate notes:</u> for situation in NSW please refer to your own profession's / organisation's code of conduct. <u>Consent:</u> see NSW HPP 1 – 4 regarding the collection of information; see also NPP10.
43	<u>Sensitive client information:</u> No specific legislation cited.	<u>Sensitive client information:</u> <i>Public Health Act</i> (1991) – see in particular s.17 relating to HIV / AIDS related information.
44	<u>Child Protection:</u> <i>Children, Youth and Families Act</i> (2005) (Vic) – describes when mandatory reporters must notify the DOHS Victoria.	<u>Child Protection:</u> <i>Children and Young Persons (Care & Protection) Act</i> (1998) (NSW) – see in particular s.27 and s.248 regarding mandatory reporting if reasonable grounds to suspect child is at risk of harm. See NSW Child Protection Guide FACS ³ .
45	<u>Domestic Violence:</u> No obligation to report in Victoria. <u>Drink and Drug Driving:</u> no obligation to report medical conditions including drug and alcohol dependence; legal protection for report made in good faith; drivers must notify VicRoads of any long term injury or illness that may impair driving ability – <i>Road Safety Act</i> (1996) (Vic). <u>Death:</u> Notification of death and other reporting obligations; <i>Births Deaths and Marriages Regulations</i> (2008) (Vic); <i>Coroners Act</i> (2008) (Vic).	<u>Domestic Violence:</u> NSW Health Policy (public sector) may require reporting of suspected Domestic Violence to the Police (see also discussion below re s.316 <i>Crimes Act</i> (1900) (NSW)). <u>Drink and Drug Driving:</u> no mandatory reporting of medical conditions; protection from liability for reports made in good faith; <i>Road Transport (General) Act</i> (2005) (NSW), s. 243 (3) & (4); <i>Road Transport (Driver Licensing) Act</i> (1998) (NSW), s. 20; <i>Road Transport (Driver Licensing) Regulation</i> (2008) (NSW), clause 50. Drivers must report injury or illness that may impair driving ability; <i>Road Transport (Driver Licensing) Regulation</i> (2008) (NSW) clause 117 (5). <u>Death:</u> Notification of death and other reporting obligations: <i>Births, Deaths & Marriages Registration Act</i> (1995) s.39; <i>Births, Deaths and Marriages Registration Regulation</i> (2011) clause 15; <i>Coroner's Act</i> (2009) s.6, s.18, s.21, s.23, s.24 s.35, s.38.
46	<u>Death:</u> see above.	<u>Death:</u> see above.

³http://www.community.nsw.gov.au/preventing_child_abuse_and_neglect/resources_for_mandatory_reporters/when_must_i_make_a_report.html?s=259294852#mrg

Summary of the differences between Victorian legislation described in *Take note! A practical guide to writing case notes* (J. Cameron & J. Murray) and NSW legislation.

PAGE	VICTORIAN LEGISLATION	NSW LEGISLATION
	<u>Disclosing Criminal Acts</u> : In Victoria there is no obligation to report criminal acts.	<u>Disclosing Criminal Acts</u> : In NSW see s.316 <i>Crimes Act</i> (1900) – penalty for concealing a "serious indictable offence" – that is an offence that carries a maximum penalty of 5 years or more (murder; robbery; kidnapping) it would not include a common assault or minor drug possession – seek legal advice on this issue. Please note <i>Crimes Regulation</i> (2010) clause 4 - prescribed vocations including psychologists, nurses and social workers; can only be prosecuted with approval of the NSW Attorney General.
47	<u>Disclosing Criminal Acts</u> : In Victoria there is no obligation to report criminal acts.	NSW - <i>Crimes Act 1900</i> s.316
63	Appendix 5: Legal Framework References - specific to Victoria.	All legislation has been cited above in this document – you can find all NSW legislation at www.legislation.nsw.gov.au and all Commonwealth legislation at www.comlaw.gov.au .
64	Appendix 6: Other Relevant Policies and Legislation - Privacy Act, Health Records Act, etc.	All legislation has been cited above in this document – you can find all NSW legislation at www.legislation.nsw.gov.au and all Commonwealth legislation at www.comlaw.gov.au
66-67	References – Nos. 49 to 52	See above references.

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This comparison with the NSW jurisdiction has been produced as part of a partnership project, *Networking for Court Support: Collaboration, Confidence, Court Support and Case Notes* between the Network of Alcohol and Drug Agencies (NADA), Legal Aid NSW and Turning Point Alcohol and Drug Centre, Victoria. The project was funded through the Foundation of Alcohol Research and Education and the NADA Practice Enhancement Program 2012.

Note: See Attachment A for definitions of *health information* and *health service provider*.
See Attachment B for Summary of the 15 HPP's under HRIPA (NSW).

ATTACHMENT A – Definitions

What is health information?

Health information includes personal information that is information or an opinion about the physical or mental health or a disability of an individual.

Health information *also* includes personal information that is information or an opinion about:

- a health service provided, or to be provided, to an individual
- an individual's express wishes about the future provision of health services to him or her
- other personal information collected in connection with the donation of human tissue
- genetic information that is or could be predictive of the health of an individual or their relatives or descendants.

If your organisation is a health service provider, 'health information' includes all of the above *plus* any other personal information collected to provide, or in providing a health service.

What is a health service provider?

A health service provider is an organisation that provides a health service. According to the definitions outlined in the HRIP Act, a health service includes the following services, whether provided as public or private services:

- (a) medical, hospital and nursing services,
- (b) dental services,
- (c) mental health services,
- (d) pharmaceutical services,
- (e) ambulance services,
- (f) community health services,
- (g) health education services,
- (h) welfare services necessary to implement any services referred to in paragraphs (a)–(g),
- (i) services provided by podiatrists, chiropractors, osteopaths, optometrists, physiotherapists, psychologists and optical dispensers in the course of providing health care,
- (j) services provided by dietitians, masseurs, naturopaths, acupuncturists, occupational therapists, speech therapists, audiologists, audiometrists and radiographers in the course of providing health care,
- (k) services provided in other alternative health care fields in the course of providing health care,
- (l) a service prescribed by the regulations as a health service for the purposes of this Act.

For more information see the definitions in Part 1 of the HRIP Act.

What is a private sector person or organisation?

The HRIP Act applies to both individual people and organisations in the private sector. The types of organisations covered are bodies corporate, partnerships, trusts and unincorporated associations.

Individuals and organisations that will be regulated by the HRIP Act are:

- health service providers of any size (for example, an individual GP, a partnership of physiotherapists or a large private hospital), and
- organisations that handle health information and have a turnover of more than \$3 million per annum (for example, an insurance company).

ATTACHMENT B – Health Privacy Principles at a Glance

Collection

1. **Lawful** – when an organisation collects your health information, the information must be collected for a lawful purpose. It must also be directly related to the organisation's activities and necessary for that purpose.
2. **Relevant** – the organisation must ensure that your health information is relevant, accurate, up to date and not excessive. The collection should not unreasonably intrude into your personal affairs.
3. **Direct** – your health information must be collected directly from you, unless it is unreasonable or impracticable for the organisation to do so.
4. **Open** – you must be told why your health information is being collected, what will be done with it, and who else might see it. You must also be told how you can see and correct your health information, and any consequences if you decide not to provide it.

Even if an organisation collects health information about you from someone else, they must still take reasonable steps to ensure that you are aware of the above points.

Storage

5. **Secure** – your health information must be stored securely, not kept any longer than necessary, and disposed of appropriately. It should be protected from unauthorised access, use or disclosure.

Access and Accuracy

6. **Transparent** – the organisation must provide you with details about what health information they are storing about you, why they are storing it and what rights you have to access it.
7. **Accessible** – the organisation must allow you to access your health information without unreasonable delay or expense.
8. **Correct** – the organisation must allow you to update, correct or amend your health information where necessary.
9. **Accurate** – the organisation must make sure that your health information is relevant and accurate before using it.

Use

10. **Limited** – the organisation can only use your health information for the purpose for which it was collected, or a directly related purpose that you would expect. Otherwise they can only use it with your consent (unless one of the exemptions in HPP 10 applies).

Disclosure

11. **Limited** - the organisation can only disclose your health information for the purpose for which it was collected, or a directly related purpose that you would expect. Otherwise they can only disclose it with your consent (unless one of the exemptions in HPP 11 applies).

Identifiers and Anonymity

12. **Not identified** – an organisation can only give you an identification number if it is reasonably necessary to carry out their functions efficiently.
13. **Anonymous** – you are entitled to receive health services anonymously, where this is lawful and practicable.

Transfers and Linkage

14. **Controlled** – your health information can only be transferred outside New South Wales in accordance with HPP 14.
15. **Authorised** – your health information can only be included in a system to link health records across more than one organisation if you expressly consent to this.