

Authorised Version No. 001
Health Records Regulations 2023

S.R. No. 85/2023

Authorised Version as at
18 August 2023

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1 Objectives

The objectives of these Regulations are—

- (a) to prescribe the maximum fees that may be charged by an organisation when providing individuals with access to health information under Part 5 of the **Health Records Act 2001** and HPP 6 and HPP 11 of that Act; and
- (b) to prescribe the maximum fees that may be charged by a nominated health service provider when performing functions set out in section 42 of the **Health Records Act 2001**; and
- (c) to ensure the fees referred to in paragraphs (a) and (b) are prescribed in a manner that—
 - (i) ensures that any fee charged does not unfairly preclude an individual from requesting access to health information; and
 - (ii) allows reasonable cost recovery for organisations; and
 - (iii) recognises current practice regarding the transfer of health information between health service providers at the request of an individual for the purpose of continuity of care; and

(d) to prescribe the circumstances in which an organisation may collect health information about an individual under HPP 1.1(i) of the **Health Records Act 2001**.

2 Authorising provision

These Regulations are made under section 100 of the **Health Records Act 2001**.

3 Commencement

These Regulations come into operation on 18 August 2023.

4 Revocation

The Health Records Regulations 2012¹ are **revoked**.

5 Definition

In these Regulations—

the Act means the **Health Records Act 2001**.

6 Maximum fee for granting an individual access to health information

For the purposes of section 32 of the Act, the prescribed maximum fee for providing access to health information in a manner specified in column 2 of Schedule 1 is the fee set out in the corresponding entry of column 3 of Schedule 1.

7 Maximum fee for nominated health service provider performing functions

For the purposes of section 42(3) of the Act, the prescribed maximum fee for performing the functions set out in section 42(1) of the Act is the reasonable cost incurred by the nominated health service provider in performing those functions, not exceeding the lesser of—

- (a) 4.7 fee units per quarter hour or part of a quarter hour spent performing those functions; or
- (b) 23.6 fee units.

8 Maximum fee for making health information available to another health service provider

For the purposes of HPP 11.1, the prescribed maximum fee for making health information available to a health service provider in a manner specified in column 2 of Schedule 2 is the fee set out in the corresponding entry of column 3 of Schedule 2.

9 Prescribed circumstances for collection of health information

- (1) For the purposes of HPP 1.1(i), the prescribed circumstances for the collection of health information by an organisation are—
 - (a) the collection is by a health service provider; and
 - (b) the information is about an individual (whether living or deceased); and
 - (c) the information is collected from—
 - (i) a person to whom a health service is being provided; or
 - (ii) an authorised representative, an immediate family member or the primary carer of a person to whom a health service is being provided, if the person is incapable of providing the information; and
 - (d) the information does not contain any more identifying information about the individual referred to in paragraph (b) than is reasonably necessary to ensure that health

services are provided safely and effectively to the person referred to in paragraph (c)(i) or (c)(ii).

- (2) For the purposes of subregulation (1), a person is incapable of providing the information if the person is incapable by reason of age, injury, disease, senility, illness, disability, physical impairment or mental disorder.
- (3) Information collected in accordance with subregulation (1) is exempt health information for the purposes of HPP 1.5.
- (4) In this regulation—

authorised representative has the same meaning as in section 85(6) of the Act;

primary carer means any person who is primarily responsible for providing support or care to a person.

10 GST payable

- (1) A maximum fee prescribed by these Regulations may be increased by an amount not exceeding the amount of GST payable on the supply to which the fee relates.
- (2) In this regulation—

GST has the same meaning as it has in the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth except that it includes notional GST of the kind for which payment may be made under Part 3 of the **National Taxation Reform (Consequential Provisions) Act 2000** by a person that is a State entity within the meaning of that Act.

Schedule 1—Maximum fee for granting an individual access to health information

Regulation 6

<i>Item No.</i>	<i>Manner of access under Part 5 of the Act</i>	<i>Maximum fee</i>
1	Inspecting health information or printout of health information stored in electronic form, with opportunity to take notes of contents	<p>The total of the following amounts—</p> <ul style="list-style-type: none"> (a) 1·2 fee units per half hour (to be calculated in increments of quarter hours or parts thereof) in respect of supervision time of inspection; and (b) the organisation's reasonable costs incurred in assessing and collating the health information, not exceeding 2·5 fee units; and (c) if it is necessary to use equipment that is not in the organisation's possession to inspect the health information, the organisation's reasonable costs incurred in obtaining the equipment; and (d) if the health information is contained in a document not stored at the organisation's usual place of business, 1·2 fee units.
2	Viewing health information, with no explanation of contents	<p>The total of the following amounts—</p> <ul style="list-style-type: none"> (a) 1·2 fee units per half hour (to be calculated in increments of quarter hours or parts thereof) in respect of supervision time of inspection; and (b) the organisation's reasonable costs incurred in assessing and collating the health information, not exceeding 2·5 fee units; and

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Schedule 1—Maximum fee for granting an individual access to health information

<i>Item No.</i>	<i>Manner of access under Part 5 of the Act</i>	<i>Maximum fee</i>
		<ul style="list-style-type: none"> (c) if it is necessary to use equipment that is not in the organisation's possession to inspect the health information, the organisation's reasonable costs incurred in obtaining the equipment; and (d) if the health information is contained in a document not stored at the organisation's usual place of business, 1·2 fee units.
		<p>Note: Section 32(4) of the Act provides that a person who gives an explanation of health information under section 29(1)(d) of the Act may charge a fee for the service that does not exceed the amount of the person's usual fee for a consultation of a comparable duration.</p>
3	Receiving a copy of health information	<p>The total of the following amounts—</p> <ul style="list-style-type: none"> (a) if a copy is in the form of black and white A4 pages, 20 cents per page; and (b) if a copy is in a form other than a black and white A4 page, the organisation's reasonable costs incurred in providing the copy; and (c) the organisation's reasonable costs incurred in assessing and collating the health information, not exceeding 2·5 fee units; and (d) if the health information is contained in a document not stored at the organisation's usual place of business, 1·2 fee units; and (e) if the person requests the copies to be posted, the actual postage costs incurred by the organisation.

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Schedule 1—Maximum fee for granting an individual access to health information

<i>Item No.</i>	<i>Manner of access under Part 5 of the Act</i>	<i>Maximum fee</i>
4	Receiving an accurate summary of health information	<p>The total of the following amounts—</p> <p>(a) if the organisation is a health service provider and an accurate summary does not exist before the request is made, an amount (not exceeding 9.4 fee units) that is calculated by reference to the time taken to prepare the accurate summary—</p> <p>(i) based on the usual fee of the health service provider for a consultation of a comparable duration; or</p> <p>(ii) at the rate of 2.9 fee units per quarter hour (or part of a quarter hour)—</p> <p>whichever is the greater; and</p> <p>(b) if the organisation is not a health service provider and an accurate summary does not exist before the request is made, the organisation's reasonable costs incurred calculated by reference to the time taken to prepare the accurate summary, not exceeding the lesser of—</p> <p>(i) 2.9 fee units per quarter hour (or part of a quarter hour); or</p> <p>(ii) 9.4 fee units; and</p> <p>(c) if the health information is contained in a document not stored at the organisation's usual place of business, 1.2 fee units; and</p> <p>(d) if the person requests the summary to be posted, the actual postage costs incurred by the organisation.</p>

Schedule 2—Maximum fee for making health information available to another health service provider

Regulation 8

<i>Item No.</i>	<i>Manner of access under HPP 11.1</i>	<i>Maximum fee</i>
1	Provision by a health service provider of a copy of health information to another health service provider	<p>If the copy—</p> <p>(a) consists of at least 20 black and white A4 pages, 20 cents per page; or</p> <p>(b) is in a form other than a black and white A4 page, the health service provider's reasonable costs incurred in providing the copy.</p>
2	Provision by a health service provider of an accurate summary of health information to another health service provider	<p>If an accurate summary does not exist before the request is made, and it takes the health service provider at least a quarter of an hour to prepare an accurate summary, an amount (not exceeding 9.4 fee units) that is calculated by reference to the time taken to prepare the accurate summary—</p> <p>(a) at the rate of 2.9 fee units per quarter hour (or part of a quarter hour); or</p> <p>(b) based on the usual fee of the health service provider for a consultation of a comparable duration—</p> <p>whichever is the greater.</p>

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The Health Records Regulations 2023, S.R. No. 85/2023 were made on 15 August 2023 by the Governor in Council under section 100 of the **Health Records Act 2001**, No. 2/2001 and came into operation on 18 August 2023: regulation 3.

The Health Records Regulations 2023 will sunset 10 years after the day of making on 15 August 2033 (see section 5 of the **Subordinate Legislation Act 1994**).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided regulation, rule or clause of a Schedule is amended by the insertion of one or more subregulations, subrules or subclauses the original regulation, rule or clause becomes subregulation, subrule or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original regulation, rule or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any heading inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule.

This includes headings to Parts, Divisions or Subdivisions in a Schedule; Orders; Parts into which an Order is divided; clauses; regulations; rules; items; tables; columns; examples; diagrams; notes or forms.

See section 36(1A)(2A)(2B).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any examples, diagrams or notes inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, form part of that Statutory Rule. See section 36(3A).

- **Punctuation**

All punctuation included in a Statutory Rule which is made on or after 1 January 2001 forms part of that Statutory Rule. Any punctuation inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. See section 36(3B).

- **Provision numbers**

All provision numbers included in a Statutory Rule form part of that Statutory Rule, whether inserted in the Statutory Rule before, on or after 1 January 2001. Provision numbers include regulation numbers, rule numbers, subregulation numbers, subrule numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of a Statutory Rule is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of a Statutory Rule. See section 36(3)(3D)(3E).

2 Table of Amendments

There are no amendments made to the Health Records Regulations 2023 by statutory rules, subordinate instruments and Acts.

3 Explanatory details

¹ Reg. 4: S.R. No. 87/2012 as extended in operation by S.R. No. 65/2022.

Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2023 is \$15.90. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.