

Policy	Privacy
<b>Purpose</b>	1.1 This policy outlines the privacy obligations of the Victorian Legal Services Board and Commissioner (“the VLSB+C”).
<b>Introduction</b>	<p data-bbox="491 528 1461 775">2.1 The VLSB+C regulates the legal profession. The Victorian Legal Services Board and Victorian Legal Services Commissioner are separate entities but under the <i>Legal Profession Uniform Law Application Act 2014</i> and the <i>Legal Profession Uniform Law</i> they function together as the regulators of the legal profession and are allowed to share information to perform their functions. For the purposes of this policy the Board and Commissioner will be referred to together as the VLSB+C, even though certain functions discussed in this policy may be specific functions of the Board or the Commissioner only.</p> <p data-bbox="604 790 1461 880">This policy sets the framework for information privacy and outlines the structures for managing information privacy within the VLSB+C, particularly the handling of personal information.</p> <p data-bbox="604 913 1461 976">The VLSB+C is committed to the protection of the community’s information privacy through compliance with:</p> <ul data-bbox="604 992 1461 1149" style="list-style-type: none"> <li>• the <i>Privacy and Data Protection Act 2014</i> (“the PDP Act”);</li> <li>• the <i>Health Records Act 2001</i> (“the Health Records Act”); and</li> <li>• the <i>Legal Profession Uniform Law Application Act 2014</i> (“the Application Act”), and the <i>Legal Profession Uniform Law</i> (“the Uniform Law”).</li> </ul> <p data-bbox="491 1182 1461 1216">2.2 The VLSB+C will ensure that:</p> <ul data-bbox="604 1232 1461 1402" style="list-style-type: none"> <li>• the collection and handling of personal information is responsible, transparent and secure; and</li> <li>• individuals are provided with information about their right of access to, and correction of, information about them held by the VLSB+C, and any other organisations that provide services to the VLSB+C.</li> </ul> <p data-bbox="491 1435 1461 1585">2.3 The Application Act and Uniform Law primarily guide the way in which the VLSB+C will collect, use and disclose information. Section 462(1) of the Uniform Law places a prohibition on disclosure, to any person, directly or indirectly, of any information obtained in the execution or administration of the Uniform Law or Uniform Rules unless permitted to do so under section 462(2). These exceptions are:</p> <ul data-bbox="604 1601 1461 1933" style="list-style-type: none"> <li>• where the disclosure is reasonably required to exercise legislative functions; or</li> <li>• where there is express authorisation in the Uniform Law or Rules to do so; or</li> <li>• where prior consent has been obtained in writing from the person to whom the information relates; or</li> <li>• to a court or tribunal or pursuant to an order of a court or tribunal; or</li> <li>• where reasonably required to enable the enforcement or investigation of criminal or disciplinary proceedings; or</li> <li>• where the disclosure is to the Attorney-General of any jurisdiction.</li> </ul>

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The persons and organisations subject to the prohibition under section 462 are wide ranging and include delegates, external interveners and examiners, other regulatory authorities with functions under the Uniform Law and all individual staff and former staff, as set out in section 462(3) of the Uniform Law. Further information about this may be found at section 3.6 of this Policy.

Where the Application Act and Uniform Law are silent regarding the collection, use or disclosure of information, the VLSB+C will collect, use and disclose information in accordance with the PDP Act and the Information Privacy Principles ([Schedule 1 of the PDP Act](#)) (“IPPs”).

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3.1

**Description of the types of information**

**personal information** is defined to mean information or an opinion about an individual whose identity is apparent or can reasonably be ascertained:

- that is recorded in any form; and
- whether the information or opinion is true or not;

**health information** which relevantly includes information or an opinion about the physical or mental health or disability of an individual; and

**sensitive information** which is defined to mean information or an opinion about an individual relating to their:

- racial or ethnic origin;
- political opinions;
- membership of a political association;
- religious beliefs or affiliations;
- philosophical beliefs;
- membership of a profession or trade association;
- membership of a trade union;
- sexual preferences or practices;
- criminal record.

3.2

The VLSB+C may collect different types of information about an individual to fulfil its functions under the Application Act and the Uniform Law. Personal information is the most routinely collected type of information. The VLSB+C does not routinely collect health information or sensitive information as this type of information is rarely required to fulfil our functions. The VLSB+C cannot prevent other people from providing personal, health or sensitive information about you. However, any such information will only be used or disclosed where it is required to fulfil a function under the Application Act or Uniform Law, with your consent or otherwise in accordance with section 462 of the Uniform Law and the PDP Act.

Accordingly the main focus of this policy concerns the VLSB+C’s compliance with the IPPs in the PDP Act. Section 3.14 of this policy sets out when sensitive information may be collected. Section 3.15 sets out when health information may be collected and how it will be handled.

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**3.3 Collection of Personal Information (Information Privacy Principle 1)**

The VLSB+C will only collect personal information necessary to fulfil its statutory functions and responsibilities. Personal information will only be collected, where it is reasonable and practical to do so, directly from the individual to whom that information relates. All reasonable steps will be taken to inform the individual of the purpose for which the information is collected and the third parties to which it is usually disclosed. Where information is received from a third party, reasonable steps will be taken to inform the individual to whom the information relates of the above matters.

**3.4** The kind of information to be collected depends on the statutory function being fulfilled. The VLSB+C will collect the following kinds of personal information:

- name, address, contact information, date of birth – required for inclusion in the register of Australian legal practitioners and law practices;
- bank account details associated with an Australian legal practitioner;
- personal bank records and information about dealings with lawyers for individuals making a claim on the Fidelity Fund or in the process of the resolution of a complaint;
- information relevant to a person's fitness to hold a local practising certificate;
- information required for the handling or investigation of complaints about lawyers including personal information relating to complainants; and
- any other information required to regulate the legal profession.

**3.5** Sometimes the VLSB+C will invite submissions from the general public and will collect contact details for the purpose of responding to submissions. Contact details, usually work details, are collected from individuals interested in receiving publications or being consulted about policy or legislative matters.

**3.6 Use and disclosure (Information Privacy Principle 2)**

The VLSB+C will generally only use and disclose personal information for the purpose for which it was given with consent of the individual to whom the information relates or when otherwise authorised by law in accordance with section 462 of the Uniform Law as set out in section 2.3 of this Policy.

The VLSB+C may also delegate certain functions or activities to authorised bodies, for example the Law Institute of Victoria or the Victorian Bar. These authorised bodies assume the same authority and obligations under the Application Act and the Uniform Law and Rules including in relation to disclosure of information under section 462 of the Uniform Law in relation to these delegated functions and activities.

The VLSB+C may appoint an external intervener to take over operational responsibility for some or all of a law practice and will have access to law practice files. Such examiners are also subject to the prohibition on disclosure set out in section 462 of the Uniform Law and are additionally required to maintain confidentiality in accordance with section 362 of the Uniform Law.

Any records created by an authorised body for the purposes of the delegated function are treated as corporate records of the VLSB+C. An authorised body's access to corporate records of the VLSB+C will be determined by the relevance of the records to the contract, privacy considerations, legal professional privilege and commercial

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sensitivity.

In certain circumstances and in accordance with the Application Act and the Uniform Law personal information relating to disciplinary actions of both lawyers and non-lawyers may be used to publicise the outcomes of reported cases.

Some de-identified personal information about enquiries, complaints and from practising certificate applications may be used for training, research for planning and process improvement, awareness programs and in public statements, but never in a way that would compromise privacy. This information may also be shared with other regulators for joint awareness and reporting functions.

### 3.7 **Data Quality (Information Privacy Principle 3)**

The VLSB+C takes reasonable steps to ensure the personal information it collects and uses is accurate, complete and up-to-date. Where possible we will check the accuracy of personal information before we use it.

Lawyers have a responsibility under the Application Act and Uniform Law to notify the VLSB+C of their principal place of practice if they are moving from another jurisdiction to Victoria, or when they are applying for or renewing a practising certificate.

### 3.8 **Storage and information security (Information Privacy Principle 4)**

The VLSB+C takes reasonable steps to protect all information it holds from misuse, loss, unauthorised access, modification or disclosure. Personal information is stored in secure premises and in electronic databases that require a login and password for access only by authorised staff.

The VLSB+C is bound by the *Public Records Act 1973* and standards established under this Act, which set out the minimum period of time records should be retained and how they may be destroyed. The standards that apply to the VLSB+C regarding information retention and disposal are:

- *PROS 08/11 Retention and Disposal Authority for Records of the Legal Services Commissioner*
- *PROS 09/02 Retention and Disposal Authority for Records of the Victorian Legal Services Board*
- *PROS 07/01 Retention and Disposal Authority for Records of Common Administrative Functions*
- *PROS 10/01 Retention and Disposal Authority for Records of Converted Source Records*

Subject to these standards, the VLSB+C will take reasonable steps to destroy or de-identify personal information when no longer needed.

### 3.9 **Openness (Information Privacy Principle 5)**

This document sets out the policy of the VLSB+C on its management of personal information and is publicly available on the VLSB+C website or by making contact with the VLSB+C using the contact details below.

You may make a request to the VLSB+C to obtain further general information about how it manages personal information.

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**3.10 Access and Correction (Information Privacy Principle 6)**

The VLSB+C relies on you to ensure that any personal information you provide to us is accurate, current, complete and relevant. We also rely on you to advise us of any changes to such personal information.

You can request access at any time to personal information held about you, or to make corrections to such information. All requests should be addressed to:

Privacy Coordinator, Victorian Legal Services Board and Commissioner, GPO Box 492, Melbourne VIC 3001.

The VLSB+C may refuse to provide access to case related personal information in certain circumstances and in accordance with the Application Act and the Uniform Law or the *Freedom of Information Act 1982* (FOI Act).

If access is refused, reasons will be provided for the refusal. An example of where refusal may occur is where a third party's privacy is involved.

Lawyers may update their details relating to their employment online through LSB Online or in writing.

**3.11 Unique Identifiers (Information Privacy Principle 7)**

The VLSB+C only adopts unique identifiers in relation to law practices and lawyers for whom Victoria is their home jurisdiction. The assignment of unique identifiers is necessary in order to carry out the efficient administration of the legislative functions of the VLSB+C, such as the issuing of practising certificates. Case numbers are allocated to enquiries and complaints but not to the individuals making them or subjected to them.

**3.12 Anonymity (Information Privacy Principle 8)**

Where lawful and practicable, individuals have the option of not identifying themselves when dealing with the VLSB+C.

**3.13 Transborder data flows (Information Privacy Principle 9)**

The VLSB+C may transfer information about an individual to a third party outside of Victoria if the person consents to that transfer where the VLSB+C reasonably believes that the third party is bound by laws or a scheme similar to the PDP Act. The VLSB+C may transfer details of a complaint it receives about a legal practitioner whose home jurisdiction is outside of Victoria to a corresponding regulator in that jurisdiction in accordance with the Application Act and the Uniform Law.

The Application Act and Uniform Law also specify a number of circumstances in which the VLSB+C is obliged to provide information to corresponding authorities in relation to the regulation of the legal profession.

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### 3.14 **Sensitive Information (Information Privacy Principle 10)**

The VLSB+C will not collect sensitive information (as defined by the PDP Act) about an individual except with their consent or where the collection is required by law or otherwise in accordance with the PDP Act.

Examples of sensitive information that may be collected by the VSLB+C in performing its statutory functions includes:

- an individual's membership of a professional or trade association (for example their professional accreditation); or
- a person's criminal record (for example in the consideration of suitability matters).

### 3.15 **Health information and the Health Records Act**

Health information is not often collected directly by the VLSB+C, but may be collected where necessary for certain functions, such as assessing an individual's fitness to hold a practising certificate. The VLSB+C occasionally also receives health information in the course of processing complaints about lawyers.

The VLSB+C will not collect health information about an individual unless that individual has consented or the collection is otherwise authorised or required.

The VLSB+C handles health information in accordance with the Health Privacy Principles (Schedule 1 of the Health Records Act) ("HPPs").

### 3.16 **Administration of a public register**

The VLSB+C must keep a register of Australian legal practitioners whose home jurisdiction is Victoria ("the Victorian Register") and make that information available to members of the public.

The VLSB+C is also required to provide the Legal Services Council with information that must or may be included in the Australian Legal Profession Register ("the Australian Register").

Both the Victorian Register and the Australian Register must:

- include the information required under the Uniform Law; and
- specify whether each practitioner is or is not a barrister; and
- include any other information prescribed under the Application Act.

Collection, use and disclosure of information for these public registers is to:

- enable the effective regulation of the legal profession through the maintenance of an up-to-date record of local legal practitioners;
- protect consumers by enabling members of the public to check whether lawyers with whom they are dealing have a current practising certificate, and
- provide a mechanism for members of the public to ascertain other relevant information including names of principals of law practices, the employer of employee legal practitioners and whether or not the legal practitioner is a barrister.

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### 3.17 **Administration of a register of disciplinary action**

The VLSB+C is required by the Application Act to keep a register of disciplinary action.

This register includes any disciplinary action taken under the Application Act and Uniform Law, the *Legal Profession Act 2004* before its repeal and action taken under a corresponding law against a lawyer who is or was admitted or practising in Victoria when the conduct that is the subject of that action occurred.

Information included in the register is the lawyer's:

- full name
- address for service
- home jurisdiction
- particulars of the disciplinary action
- any other information required by the Application Act and Uniform Law.

This information is kept for five years after the disciplinary action is taken, or the period for which the action has effect, if this is longer than five years.

This register is available on the website of the VLSB+C, and may be provided to members of the public in any other form approved by the VLSB+C.

Disciplinary action will not be recorded on the register if it is pending re-hearing or appeal. If a lawyer has a mental or physical illness which was a factor in the disciplinary action then they, their legal practitioner or the VLSB+C are able to apply to VCAT for an order that the action is not to be recorded in the register.

### 3.18 **Complaints Regarding Breach of Privacy**

If you wish to make a complaint against the VLSB+C for a breach of privacy under the PDP Act you should first contact the VLSB+C's Privacy Coordinators on 03 9679 8001, or visit our offices at Level 5, 555 Bourke Street, Melbourne.

If you feel your privacy concerns have not been addressed you can make a complaint by contacting the Office of the Commissioner for Privacy and Data Protection, at PO Box 24014, Melbourne, Victoria, 3001 or by telephone on 1300 666 444 or by visiting their website at [www.cdp.vic.gov.au](http://www.cdp.vic.gov.au).