

# MEDICAL DIVULGENCE (Pre-Employment)

## DISCLAIMER

This infosheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information. This infosheet is designed for Victorian and national system employees in Tasmania and Queensland only. If you are not a Victorian employee or a Queensland or Tasmanian national system employee, you should obtain specialist legal advice about your case as soon as possible.

## Introduction

This infosheet is designed for Victorian job applicants who have or may be asked to disclose personal medical information to their prospective employer.

## Who can use this infosheet?

This infosheet is designed for **Victorian** and national system employees in **Tasmania** and **Queensland** only.

If you are a **Victorian** employee, you can use this infosheet unless you were employed in a sector that provides essential services of core government functions, including state infrastructure services such as electricity and gas, and your employer is not covered by a nationally registered collective agreement.

If you are a **Tasmanian** employee, you can use this infosheet unless you were a State public sector employee not covered by a nationally registered collective agreement.

If you are a **Queensland** employee, you can use this infosheet unless you were a State public sector or local government employee not covered by a nationally registered collective agreement.

## Glossary

**Inherent Requirements**- Generally, the **inherent requirements** of a job are the core activities, tasks or skills that are essential to a specific position and possibly the workplace in general.

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**Employment Rights Information for Workers** – Job Watch Inc is an independent, not for profit, employment rights legal centre. It provides a free, confidential telephone information and referral service and other assistance to workers.

Hours: Mon-Fri 9am-5pm (Weds until 8:30pm)

## Disclosure during recruitment

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You are not obliged to **volunteer** your medical information to a prospective employer. Although when you apply for a job, you may be asked to disclose whether you have an existing injury or medical condition. It is your choice whether or not you disclose your condition. If the request is **reasonable** and you do not give the information, this could result in being excluded from the recruitment process.

If you get the job and you were not honest about your condition your employer may treat this as misconduct and dismiss you or take other disciplinary action. You may also have difficulties obtaining workers injury compensation if your condition is worsened by your work and your employer never knew about your condition.

### What is a “reasonable request” for medical information?

A request to disclose personal medical information may be reasonable if:

- your condition will affect your ability to carry out the **inherent requirements** of the job;
- your condition will affect your health and safety and/or the health and safety of co-workers; for example, if you are on medication that interferes with your ability to drive or operate heavy machinery; or
- your condition is affected, or could be affected by the nature of the employment (for example, a person applying for a job as a fire fighter may be required to disclose any history of breathing difficulties).

An employer may also request disclosure of medical conditions for the purposes of workers’ injury compensation insurance.

### What questions can my prospective employer ask me?

Any questions asked in an interview should be about your ability to perform the job and not your general health.

An employer may ask for your consent to get a copy of your claims history from a workers compensation authority.

Any request for information that is irrelevant to the inherent requirements of the position may breach anti-discrimination laws.

**Example: An inappropriate question would be: “does your family have a history of mental illness”?**

### What is a pre-employment medical assessment?

A pre-employment medical assessment may be lawful as long as it relates to the inherent requirements of the job and/or a workers’ injury compensation insurance.

Employers should use pre-employment medical assessments as part of the recruitment process and not rely on them solely. An employer should not use information from medical assessments to reject applications during the pre-interview stage. Pre-employment medical assessments should be given to **all** prospective employees and the results of the medical assessment must be kept confidential.

## **Can a prospective employer assess your employment application based on your medical information?**

An employer may be able to assess your application based on your medical information if:

- Your medical condition prevents you from performing an inherent requirement of the job even if reasonable adjustments were made;
- It would be unreasonable for an employer to accommodate your condition for economic or other reasons; and/or
- Employing you would breach Occupational Health and Safety Laws.

It is unlawful for prospective employers to refuse to employ you just because you have told them that you have a medical condition.

## **I think I've been discriminated against, what should I do?**

If you think you may have been excluded from employment because of a medical condition, you may be able to make a disability discrimination complaint.

You have **6 months** to file a discrimination claim with either the Australian Human Rights Commission ('AHRC') or, in Victoria, the Victorian Civil and Administrative Tribunal (via the Victorian Equal Opportunity and Human Rights Commission) or, in Tasmania, Equal Opportunity Tasmania or, in Queensland, the Anti-discrimination Commission from the date of the discriminatory conduct.

Alternatively, you have **6 years** to file a General Protections Dispute – Non-Termination Claim at the Federal Court or the Federal Circuit Court regarding any refusal to employ you due to disability discrimination.

You should obtain specific legal advice before filing any claim as each jurisdiction has different processes and remedies. For further information, 'Where to get help' below.

**If you are unsure about any information in this infosheet, it is important to obtain legal advice as soon as possible.**

## Where to get help

ORGANISATION	PHONE	WEBSITE
Australian Human Rights Commission	Complaints Infoline: 1300 656 419 General enquiries: 1300 369 711	<a href="https://www.humanrights.gov.au">https://www.humanrights.gov.au</a>
Fair Work Commission Helpline	1300 799 675	<a href="https://www.fwc.gov.au/">https://www.fwc.gov.au/</a>
Fair Work Infoline (Office of the Fair Work Ombudsman)	13 13 94	<a href="http://www.fairwork.gov.au/">http://www.fairwork.gov.au/</a>
Job Watch Inc	Metro:(03)9662 1933 Rural: 1800 331 617	<a href="http://www.jobwatch.org.au">www.jobwatch.org.au</a>
Victorian Civil and Administrative Tribunal	(03) 9628 9900	<a href="http://www.vcat.vic.gov.au">http://www.vcat.vic.gov.au</a>
Victorian Equal Opportunity and Human Rights Commission	1300 292 153	<a href="http://www.humanrightscommission.vic.gov.au">http://www.humanrightscommission.vic.gov.au</a>
Anti-discrimination Commission Queensland	1300 130 670	<a href="https://www.adcq.qld.gov.au/">https://www.adcq.qld.gov.au/</a>
Equal Opportunity Tasmania	1300 305 062	<a href="http://www.equalopportunity.tas.gov.au/">www.equalopportunity.tas.gov.au/</a>
WorkSafe Victoria	Metro: (03) 9641 1444 Rural: 1800 136 089	<a href="http://www.vwa.vic.gov.au/home">http://www.vwa.vic.gov.au/home</a>
WorkSafe Tasmania	1300 366 322	<a href="http://www.worksafe.tas.gov.au">www.worksafe.tas.gov.au</a>
WorkSafe Queensland	1300 362 128	<a href="http://www.worksafe.qld.gov.au">www.worksafe.qld.gov.au</a>

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JobWatch acknowledges and is grateful for the financial and other support it has received from both the Commonwealth of Australia Attorney-General's Department, the Victorian State Government and Victoria Legal Aid.

JobWatch acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which we are located and where we conduct our business. We pay our respects to ancestors, and Elders, past, present and emerging.