VCAT summarily dismissed this complaint brought under the *Health Records Act 2001* (Vic) (**HR Act**) as an abuse of process because the Complainant had previously pursued a complaint about the same circumstances under the *Privacy and Data Protection Act 2014* (Vic) (**PDP Act**) before VCAT.

## Background

The Complainant was an employee of the Respondent who was dismissed following a workplace investigation relating to his use of his work computer.

He made a complaint to OVIC about the handling of his personal information (**PDP Act complaint**) as part of the investigation and the matter was not resolved. The complaint was referred to VCAT and VCAT decided that there had been [no interference with the Complainant’s privacy under the PDP Act.](https://ovic.vic.gov.au/case-note/kerig-v-victoria-university-2020-vcat-469/)

The Complainant then made a complaint under the HRA to the Health Complaints Commissioner (**HCC**) about the handling of his health information (**HR Act complaint**) in the same circumstances. The HCC declined to entertain the complaint because the subject matter had already been dealt with under the PDP Act. The Complainant had the matter referred to VCAT.

## VCAT’s decision

VCAT found the ***Anshun* principle** applied in the circumstances – under this principle a party is prevented from making a new legal claim, when that claim should have been pursued in an earlier legal proceeding.[[1]](#footnote-1)

VCAT was of the view that if the Complainant wanted to pursue his HR Act complaint, he should have done so during his previous VACT hearing relating to his PDP Act complaint. It deemed that there was no barrier preventing him from doing so, noting that :

* Despite personal and health information being governed by separate Acts, the issues raised in the Complainant’s PDP Act and HR Act complaints were the same.
* The relevant HPPs and Information Privacy Principles (**IPPs**) while not identical, are nonetheless substantially similar as they share the same objectives of privacy protection and control of data.

VCAT concluded that the Complainant was effectively trying a re-run of his previous hearing to get a different finding on the same facts. It summarily dismissed the complaint as an abuse of process.

## Lessons

This decision provides some lessons for individuals who wish to make a complaint involving both health and personal information arising from the same set of facts. That is:

* Individuals cannot ‘forum shop’ – where they have pursued their complaint under either the PDP Act or the HR Act, they may be prevented from pursuing a later complaint under the other Act.
* If an individual wants to pursue a complaint under both the PDP Act and HR Act at VCAT, they should do this at the same time.

Further Information

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1. *Port of Melbourne Authority v Anshun Pty Ltd* 1981 HCA 45, 147 CLR 589. [↑](#footnote-ref-1)