



16 June 2021

Angelene Falk  
Australian Information Commissioner and Privacy Commissioner  
Office of the Australian Information Commissioner  
By email: [privacy.rules@oaic.gov.au](mailto:privacy.rules@oaic.gov.au)

Dear Angelene

Thank you for the opportunity for the Australian Digital Health Agency (the Agency) to comment on the Office of the Australian Information Commissioner (OAIC) consultation paper on the *National Health (Privacy) Rules 2018* (the Rules) review. We welcome this review, and we also appreciate the extension of time that was given for the Agency to respond.

## 1 Application of National Health (Privacy) Rules 2018 to the My Health Record

We understand that the OAIC has limited the scope of the review to the operation of the Rules and has excluded both the *Privacy Act 1988* and section 135AA of the *National Health Act 1953*. As you are aware, the My Health Record System Operator is excluded by the *National Health Act 1953* from the Rules regarding the inclusion of information in the My Health Record of a healthcare recipient.

While the Agency works closely with both Services Australia and the Department of Health, both of whom are explicitly subject to these provisions, we understand that they are providing their own responses to the review. The Agency continues to work collaboratively with its stakeholders, including Services Australia and the Department of Health, on the operation of the My Health Record system.

## 2 General feedback

Although we appreciate this may be out of scope for the review of the Rules, there was feedback from within the Agency that more could be done to support the use of MBS and PBS data for research and policy purposes. This could provide healthcare recipients with greater benefits from their personal information. Such changes would need to be supported by robust frameworks for consent and secondary use so that healthcare recipients have greater control over how their personal information is used.

The Agency is progressing work in this space, including the implementation of the *Framework to guide the secondary use of My Health Record system data* with the Department of Health. Work like this could be supported by the Rules being expanded to include principles that help guide the consistent handling of MBS and PBS data for secondary use.

On a separate matter, some elements of the Rules relate to technological standards that have been either wholly or partially superseded. Similar to the Australian Privacy Principles, we believe there is scope to make the Rules more technologically agnostic. This would help those responsible for MBS and PBS data to keep it protected to the latest standards. We appreciate however that Services Australia and the Department of Health are responsible for managing these systems and are best placed to comment.

We have otherwise included more specific commentary in response to the review questions in the consultation paper in **Appendix A**.

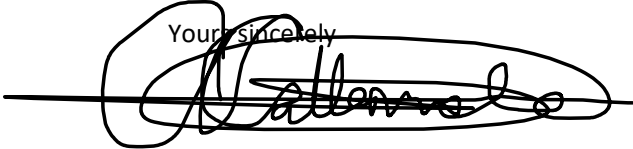
### **3 Further consultation**

We would welcome the opportunity to be involved in the continuing discussion around changes to the Rules and how they impact major stakeholders to the My Health Record system more broadly. We otherwise note that the discussion points in the consultation paper relating to data sharing and research are of ongoing interest to the Agency.

### **4 Next steps**

We again thank the OAIC for inviting the Agency to respond to this review. We would be more than happy to provide information regarding any of these matters or discuss opportunities to continue improving the My Health Record system at your convenience.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Amanda Cattermole', is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Amanda Cattermole  
Chief Executive Officer  
Australian Digital Health Agency

## **Appendix A – Agency responses to specific consultation paper questions**

### **6. How could the Rules be updated to better accommodate current information technologies and modern data practices in a way that continues to protect privacy?**

The Rules could be updated so that they are more technologically agnostic in similar fashion to the Australian Privacy Principles. At the moment there are several elements of the Rules that refer to technological standards that have since been superseded wholly or partially, and those subject to the Rules should have the flexibility to implement the latest controls.

### **8. What additional requirements should apply to MBS and PBS information over and above the APPs? Why?**

From the Agency perspective, MBS and PBS information handled as part of the My Health Record system is already subject to additional privacy and security controls over and above the APPs. Consistency of application is important, and we would welcome discussions with the Department of Health and Services Australia on the implementation of any changes to the Rules as they relate to privacy and security.

### **11. How might the Rules better align with current government policies pertaining to information use, re-use and sharing while still protecting privacy?**

There is work being done across government to enable healthcare recipients to have greater control over their personal information. This is particularly in the context of research and policy purposes, so that healthcare recipients can receive benefits beyond just the encounter with their healthcare provider. Better defining secondary use, and creating principles to support this, could help realise broader public health benefits for the Australian public.

This could also be supported by a consent framework that allows for more granular control by healthcare recipients of the way in which their data is used. The Agency welcomes any discussions for the development of both a consent framework and secondary use framework in relation to the personal information of healthcare recipients, including MBS and PBS data.

### **13. Is having dedicated detailed technical standards for MBS and PBS claims databases necessary given the range of other information security requirements applying to Services Australia?**

Generally speaking, the more prescriptive legislation is on technological matters the greater the risk they will become obsolete or otherwise burdensome. Without commenting specifically on the other information security requirements that apply to Services Australia, focussing on making the Rules more technologically agnostic could provide flexibility to implement stronger and more current security controls.

### **28. Are name linkage provisions appropriate? Should name linkage be allowed in any other circumstances?**

In practice name linkage after the fact can present considerable data quality issues. This includes members of the Australian community who do not conform with what may be perceived as 'conventional' naming standards. More work could be done across government to set standards of comparison for data linkage using government identifiers. The Agency has continued to be involved in such works and welcomes further discussion on the subject both with the OAIC and its stakeholders.