

Information Commissioner
Office of the Australian Information Commissioner

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Dear Information Commissioner

SUBMISSION ON NATIONAL HEALTH (PRIVACY) RULES 2018 REVIEW

Thank you for the opportunity to make comments on the review of the *National Health (Privacy) Rules 2018 (the Rules)*.

Why are the Rules important to us?

The Professional Services Review (**PSR**) PSR Agency is a small Commonwealth agency in the health portfolio. The Agency exists to provide administration and support services to the Director of PSR, PSR peer review Committees and the Determining Authority in performing their legislated functions under the *Health Insurance Act 1973 (the HI Act)*.

In its administration of the PSR Scheme established under the HI Act, the PSR Agency is responsible for reviewing and examining possible inappropriate practice by practitioners when they provide Medicare services, dental benefit services or prescribe Government subsidised medicines under the Pharmaceutical Benefits Scheme (**PBS**). PSR examines suspected cases of inappropriate practice which have been referred by delegates of the Chief Executive Medicare. PSR cannot initiate its own reviews of a practitioner.

Under the PSR Scheme there is a two-pronged approach to safeguard the integrity of the Medicare program and the PBS. This involves protecting the public from:

1. inappropriate practice, by ensuring that the Commonwealth funded services delivered by practitioners are medically necessary and clinically relevant
2. the consequences of inappropriate practice, by ensuring that payments to claimants are made in accordance with the regulations for the Medicare and PBS.

Performing this role often involves considering interactions between practitioners and their patients which involve both services subject to MBS claims, and the prescribing of medicines subject to the PBS (by the same practitioner, but not necessarily in relation to the same patient). Accordingly, the core business of the PSR agency involves considering MBS and PBS claims data together, which is sourced from the Chief Executive Medicare. For examples of some of the outcomes from PSR processes and how they involved MBS and PBS items, please see the PSR Director's update reports at <https://www.psr.gov.au/publications-and-resources/case-outcomes> .

In 2011, the Australian Privacy Commissioner conducted an own motion investigation report into the way the PSR agency manages MBS and PBS claims data. In response, the PSR agency made a significant investment in information technology (**IT**) and process re-engineering. This is consistent with the premium we place on the privacy of both patients and practitioners whose information is considered under the PSR scheme.

Why is the review important to us?

The PSR Agency is subject to the obligation in the Rules to store MBS and PBS claims information in separate databases (section 7 of the Rules) only.

The PSR Agency has sophisticated IT and process arrangements designed, which are purpose built to support the current scope of the Rules as they apply to agencies other than the Department of Health and Services Australia. Any change to the Rules which increased the scope or complexity of obligations for the PSR Agency have the potential to:

- require redesign and build of existing IT systems;
- require review and re-engineering of processes.

In addition to the cost implications of this for the PSR Agency, there are flow on impacts for practitioners and the community, to the extent that these might make the PSR processes slower or more complex.

As an agency that holds a very small amount of MBS and PBS data at any given time – particularly compared to the Department of Health and Services Australia – the PSR Agency considers that the Rules currently have the balance right in terms of what obligations apply under the Rules to Commonwealth agencies generally. The PSR Agency considers that greater regulation of its data handling under the Rules would represent a disproportionate cost, for no real gain in privacy protection for individuals.

In forming its view about the value to the public, the PSR Agency has taken into account that (in addition to the Rules), the information it handles is also subject to other significant regulation, as:

- “sensitive information” under the *Privacy Act 1988*;
- information protected by sections 130 and 106ZR of the HI Act; and
- information protected by section 135A of the *National Health Act 1953 (NH Act)*.

In complying with these secrecy and privacy obligations for the information it holds, the PSR Agency maintains a very high baseline for the protection of patient and practitioner information, even without the requirements in the Rules.

As a result, the PSR Agency requests that you consult with us directly and specifically, if there is any proposal to alter the obligations in the Rules, as they apply to agencies other than the Department of Health and Services Australia.

The contact at the PSR Agency is Margaret Parker, Special Counsel who is contactable at margaret.parker@psr.gov.au.