

MSIA Response to OAIC

Consultation Paper: National Health (privacy) Rules 2018 Rule

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Why is The Medical Software Industry of Australia Responding to this Consultation Paper?

The MSIA represents the health software providers which power Australia's health system.

This includes the Hospital, General Practice, Specialist, Aged Care, Allied Care, Indigenous care, business systems, research, community services and consumer Apps.

The safety and well-being of Australians depends on trust in our health system. Consequently, as providers of the mechanisms which collect and manage health data, changes to the regulation are of the utmost importance to our members. Given the context of this submission it should be noted that over 95% of MBS/PBS claims are made through MSIA members software.

MSIA member companies work closely with the Department of Health, the Australian Digital Health Agency and Services Australia. As such our industry has a deep knowledge of the processes under consideration and practical understanding of the impact of change on providers and consumers which our industry services. Maintaining trust with our customers is paramount to the ongoing safety and efficiency of Australia's health system. Recently witnessed "vaccine hesitancy", is indicative of the negative impact of loss of consumer confidence.

The Department and Agencies depend on our members software to upload health information to infrastructure they manage. These systems include the MBS, PBS, MyHR and the Australian Immunisation Register, as well as other key industry infrastructure like the Prescription Exchange Services.

Summary of Key Concerns

1. Maintenance and growth of a robust health identification system. Whilst recognising the need to improve co-ordination of aged care, it is critical to avoid the unintended consequences of confusion and dilution of confidence and use of existing health identifiers which could be used in lieu of addition of another level of identification. There is beauty in simplicity;
2. Transparency of data linking rules and processes, &
3. Curb over enthusiastic use of Big Data. This may also destroy the trust of Australians in our health system. We must ensure that the use of technology enables appropriate data interrogation for legal purposes whilst safeguarding consumer and provider privacy, a human right recognised by experts including The Hon Michael Kirby AC CMG

"...protections for privacy arose from the incompatibility of collections with available indexes and the ineffective undiscoverability of most personal data. These practical safeguards for privacy largely disappear in the digital age."¹

The MSIA welcomes this involvement in the evolution of a safe and efficient healthcare system. We recognise the limited scope of this review of the *National Health Privacy Rules 2018 (Rules)* under the auspices of section 135AA of the *National Health Act 1953* and respond accordingly.

¹ Michael D Kirby, 'Privacy in Cyberspace' (1998) 21 (2) UNSWLJ 323, 325.

The MSIA looks forward to contributing to the the broader review of the federal *Privacy Act 1988* later in 2021 in regard to the optimum balance of efficiency, safety, innovation and trust to ensure continual improvement of Australia's world class health system.

Emma Hossack

CEO

MSIA

4 June 2021

General Response to Current Rules Q 1-3

The MSIA has not had complaints and concerns raised by its members in respect of excessive data matching, or conversely concern about excessive use of the exceptions to match data to ensure compliance with regulation.

Our members respond to the concerns of our clients, the health providers, which is the position from which we respond. We would welcome the opportunity to review any specific changes if they are considered.

Form and Function Q 4-5

Community trust in Government is unfortunately not as high as expected according to the Edelman Trust Barometer 2020² and in conflict with the OAIC Community Attitudes to Privacy Survey 2020³ which reflects a greater degree in the Australian Government.

Specific and clear enunciation of the rules dictating how and when the public service can link data are essential. The MSIA accordingly prefers a more prescriptive approach here as it is irrefutable and lacks discretion which may be exercised incorrectly with unintended negative impact.

Technological Specificity versus Technological Neutrality Q 6-7

The speed with which technology advances will always be ahead of regulation and the MSIA supports technological neutrality. If there is a specific issue in respect to data storage and terminology it would be preferable to specifically identify and address that issue.

Interaction with the APPs Q 8-9

The Rules are more prescriptive than the APPs. Accordingly, and as they take precedence over the APPs, the MSIA recommends that until there is the overarching review later in 2021 of the *Privacy Act*, that the Rules remain unchanged in this regard. A slight overlap is not an issue given the Rules are deemed to prevail, thus avoiding confusion about which regime applies.

The Rules in Practice Q 10-11

The MSIA agrees that public health care must have the ability to interrogate data to ensure appropriate allocation of resources and enable policy development. The balance will be critical but is somewhat outside the purview of the MSIA.

It is recommended that views be sought from peak bodies like the RACGP, AMA, PGA, PSA and consumer groups.

Management of Claims by Services Australia Q 12

Only a clear business case for dilution of the safeguards to privacy protection could justify changes given the impact of privacy infringements in this area. Function creep is a serious threat to privacy.

² <https://www.edelman.com.au/research/edelman-trust-barometer-2020>

³ <https://www.oaic.gov.au/engage-with-us/research/australian-community-attitudes-to-privacy-survey-2020-landing-page/2020-australian-community-attitudes-to-privacy-survey/>

Requirements for Services Australia to Maintain Technical Standards Q 13-15

Dedicated technical standards have served Australia well in this regard, with largely unavoidable “dark web”⁴ activity and human error being the subject of concern in very limited circumstances given the billions of transactions processed through MBS/PBS.

Changes to the standards are difficult to implement given our distributed health system and the PRODA system alone is evidence of the time this takes. On balance from a pragmatic and privacy perspective change is not recommended by the MSIA at this stage, particularly given the extensive work being undertaken currently on Web Services which will replace the less secure Adaptor system.

Medicare PINs Q-16-17

Until and unless there is a final overarching overhaul of Australia’s identification system, the strict regulation of the PINs is appropriate.

Disclosure of Information to the Department of Health Q18-19

The MSIA does not have sufficient involvement to comment on this practice.

Linkage of Claims Information Q 20

Australians expect and are accustomed to the existing privacy safeguards. However, if there was a mechanism to enable transparency of where and how data could be linked for approved purposes, e.g. medical research, with consent of affected providers and consumers this would be useful and improve efficacy of the health system and policies.

Retention and Reporting of Linked Claims Information Q 21-22

Linked data should retain its special category of protection unless a mechanism like the model suggested above is implemented whereby individuals could consent to allow greater use of their sensitive data.

Old Information Q 23-24

Comments as per response above.

Disclosure of Claims Information for Medical Research Q 25

This provision is more specific than s95 of the privacy Act and a valuable safeguard, subject to provision of a model as noted in response to Q. 20

Use of Claims Information Q 26-27

The MSIA re-iterates its concerns about erosion of provider and consumer trust in the MBS/PBS system, however other Peak Bodies are better placed to respond.

⁴ The Shergold Review covered this area and made swift recommendations for change resulting in PRODA

Names Linkage Q28

The MSIA re-iterates its concerns about erosion of provider and consumer trust in the MBS/PBS system, however other Peak Bodies are better placed to respond.

Other Matters Including management of Paper Copies Q 29

The Rules may appear outdated but capturing digital data on paper can breach privacy and consequently there is no reason to change this rule particularly with regard to delegated authority reporting to the OAIC.

The MSIA is keen to be actively engaged in the discussions relating to management of Australian's health information. We welcome the opportunity to discuss any of our responses in greater details or engage more generally.