2026

Remaking the My Health Records (Information Commissioner Enforcement Powers) Guidelines

AUSTRALIAN GOVERNMENT – OFFICE OF THE AUSTRALIAN INFORMATION COMMISSIONER

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australian college of nurse practitioners

Supporting Nurse Practitioners through advocacy, resources, networking and professional development

ACKNOWLEDGEMENT OF COUNTRY

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The Australian College of Nurse Practitioners acknowledges the Traditional Custodians and Owners of the lands upon which we live, work and provide person-centred care. We recognise Aboriginal and Torres Strait Islander Peoples as Australia's first health practitioners and knowledge holders, and acknowledge their continuing contributions to health, wellbeing, and community connectedness, as well as their deep and enduring connection to Country. We pay respects to their Elders – past, present and emerging. We recognise and celebrate that Australia is home to many distinct Aboriginal and Torres Strait Islander nations, each with unique cultures, languages and traditions.

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12 February 2026

Simin Sadrzadeh
Director, Policy and Statutory Functions
Office of the Australian Information Commissioner (OAIC)
Canberra

By email: consultation@oaic.gov.au

Dear Simin,

The Australian College of Nurse Practitioners (ACNP) welcomes the opportunity to provide feedback on the draft My Health Records (Information Commissioner Enforcement Powers) Guidelines 2026 (the draft Guidelines).

Nurse Practitioners (NPs) are daily users of the My Health Record (MHR) system across both public and private healthcare settings. They rely on the system to access and upload clinically significant information including discharge summaries, medicines information, pathology and diagnostic imaging results, and shared health summaries. The integrity, privacy, and regulatory clarity of the MHR system are therefore critical to safe patient care.

The ACNP:

1. Supports the remaking of the Guidelines and the incorporation of updated Privacy Act enforcement mechanisms.
2. Supports the OAIC's commitment to a consistent and proportionate regulatory approach.
3. Recommends additional clarification to assist frontline clinicians and small healthcare provider organisations to understand enforcement thresholds, proportionality considerations, and the interaction between the MHR Act and Privacy Act.

Our submission focuses on ensuring that the Guidelines promote public trust in digital health while maintaining clinician confidence and participation.

Background

Nurse Practitioners are regulated by the Nursing and Midwifery Board of Australia (NMBA) and work across diverse healthcare settings and specialty areas, ranging from metropolitan hospitals to remote primary healthcare clinics. Their practice spans a wide spectrum of specialties, including accident and emergency, primary healthcare, palliative care, and condition-specific areas such as diabetes and mental health.[1-5]

Research consistently demonstrates high levels of patient satisfaction with care delivered by NPs, which contributes to improved treatment adherence and better health outcomes.[1,3,5-8] This success highlights the invaluable role of NPs within the Australian healthcare landscape and represents a significant step towards more effective and cost-efficient healthcare delivery.

The *Nurse Practitioner Workforce Plan*[9], released by the Department of Health in May 2023, outlines strategies to remove systemic barriers to the NP clinical scope of practice. Eliminating legislative and operational barriers that lack a clinical basis, which corrects misalignment with federal and state legislation across the Commonwealth, is essential for consistency across jurisdictions and enabling NP scope of practice. National uniformity in legislation, which harmonises and enables NP practice across state and Commonwealth instruments is imperative for the safe, effective and timely diagnosis and treatment of diverse health conditions in our communities.

The ACNP strongly advocates for the recognition of the independent and collaborative role of NPs, and their capacity to lead healthcare teams across various contexts. This recognition is essential to advance the nursing workforce, support the modern nursing role, and dispel outdated perceptions.

Our responses to the consultation questions are as follows:

1. Are the draft Guidelines clear, relevant and practical?

The ACNP considers the draft Guidelines to be legally clear and aligned with contemporary regulatory practice. The updated structure and consolidation of enforcement tools improve coherence compared to the 2016 instrument.

We particularly support:

- The clarification of investigative powers under both the MHR Act and Privacy Act (Part 2) .
- The structured explanation of enforcement mechanisms including enforceable undertakings, determinations, injunctions, civil penalties, compliance notices and infringement notices (Part 3).

- The recognition that the Information Commissioner will have regard to broader regulatory policies and principles of proportionality (s 6.1; s 7.1).

However, from the perspective of practicing NPs, particularly those in small practices, Aboriginal Community Controlled Health Organisations, and sole practitioner settings, the document remains primarily regulatory in tone and audience.

Recommendation 1

Consider publishing a short, clinician-focused companion summary that:

- Explains the graduated enforcement model;
- Clarifies when matters are likely to remain complaint-based versus escalated;
- Illustrates the interaction between compliance notices and civil penalties.

2. Do the draft Guidelines sufficiently assist participants in understanding their obligations and how enforcement will be approached?

The Guidelines provide a comprehensive outline of powers. However, several areas would benefit from additional practical clarification.

2.1 Interaction Between the MHR Act and Privacy Act

Sections 11.3–11.4 recognise that certain conduct may contravene both the MHR Act and the Privacy Act and that civil penalties may be sought under the Privacy Act.

For healthcare providers, including NPs, this raises questions about:

- How the Commissioner will determine which legislative pathway to pursue;
- Whether dual exposure affects penalty quantum;
- How proportionality will be applied in cases involving clinical error versus deliberate misuse.

Recommendation 2

Include clarification (for example, in explanatory notes or guidance material) regarding:

- Factors influencing the choice of enforcement pathway;
- How proportionality is applied where conduct arises from systemic or technical failures rather than intentional misuse.

2.2 Monitoring and Investigation Warrants

The new reference to monitoring and investigation warrants under Part VIB of the Privacy Act (s 5.10) reflects expanded enforcement capability.

Given that healthcare premises contain highly sensitive therapeutic information:

Recommendation 3

Clarify in guidance material:

- The threshold for seeking judicial authorisation;
- How proportionality will be assessed in clinical environments;
- Safeguards protecting unrelated clinical records.

2.3 Compliance Notices

The introduction of compliance notices (s 12.1–12.2) is welcomed as a graduated enforcement mechanism. For many NP-led services, particularly in primary care and rural practice, staged and corrective approaches are essential.

Recommendation 4

Clarify:

- Typical remediation expectations and timeframes;
- The relationship between compliance notices and mandatory data breach notifications;
- The circumstances in which a matter may escalate from compliance notice to civil penalty.

2.4 Publication of Enforcement Outcomes

Section 7.6 allows public communication of enforcement outcomes.

While transparency is important, publication involving individual clinicians may have disproportionate reputational consequences, particularly where breaches are not reckless or repeated.

Recommendation 5

Clarify that publication decisions will consider:

- Whether conduct was systemic or individual;
- Whether it was deliberate, reckless, negligent or inadvertent;
- Whether prompt self-reporting and remediation occurred.

7. **Matters That Should Be Covered in Greater Detail**

7.3 **Individual vs Organisational Accountability**

NPs practise across diverse models. They are employees of public health services, work within corporate structures, in Aboriginal Community Controlled Health Services, and as private sole practitioners.

Greater clarity is required regarding:

- When enforcement is directed to a registered healthcare provider organisation;
- When individual healthcare providers may be personally liable;
- How shared or vicarious responsibility is treated.

7.3 **System Operator and Software Interface Issues**

Section 7.3 permits disclosure of investigation information to the System Operator.
Many access breaches arise from:

- Software configuration errors;
- Poor user interface design;
- Inadequate credential management processes.

Recommendation 6

Acknowledge that enforcement decisions may consider upstream system design factors where relevant.

3.3 Vulnerable Populations

Section 7.1 appropriately recognises risk of harm to vulnerable individuals as a factor in enforcement decisions.

The ACNP strongly supports this emphasis. Misuse of digital health information can disproportionately affect:

- Aboriginal and Torres Strait Islander peoples;
- Victim-survivors of family and domestic violence;
- Young people;
- People in rural and remote communities.

Explicitly acknowledging these contexts strengthens the regulatory framework.

4. Additional Enhancements

The ACNP recommends:

1. Inclusion of short illustrative scenarios demonstrating how enforcement tools may be applied in practice.
2. Explicit reference to proportionality principles, including consideration of:
    - Whether conduct was deliberate or inadvertent;
    - Whether the entity self-reported promptly;
    - Whether remediation was immediate and comprehensive.
3. Recognition of clinical workflow realities and the need to balance enforcement with patient safety imperatives.

The ACNP supports the remaking of the *My Health Records (Information Commissioner Enforcement Powers) Guidelines 2026* as described in the Consultation Paper.

A strong and transparent regulatory framework is essential to maintaining public trust in Australia's digital health system. Equally, regulatory clarity and proportionality are critical to ensuring clinicians, including Nurse Practitioners, remain confident participants in the My Health Record system.

We respectfully submit that incorporating the recommendations outlined above would enhance the practical utility of the Guidelines while preserving their legal integrity.

The ACNP would welcome the opportunity to engage further with the OAIC on these matters.

Yours sincerely,

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