



Office of the Australian Information Commissioner (OAIC) Remaking of the My Health Record Guidelines

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Introduction

The Office of the Australian Information Commissioner (OAIC) invited the Australian Digital Health Agency (the Agency) to comment on the draft *My Health Records (Information Commissioner Enforcement Powers) Guidelines 2026*.

Responses to questions

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

Overall, the Agency supports the changes proposed by the OAIC. There are some minor clarifications suggested that may make some of the clauses clearer for participants in the My Health Records system.

2. Do the draft Guidelines sufficiently assist the participants in the MHR system in understanding their privacy obligations and how the Information Commissioner will generally approach enforcement issues in relation to the MHR system?

The draft Guidelines provide useful guidance. There are minor amendments to four clauses the OAIC may consider making it easier for some participants to understand, including:

- 1 Section 4.8 (g) mentions sharing details of investigations with the System Operator. It would be helpful to confirm if the System Operator is authorised to share information in relation to matters being investigated.
- 2 Section 5.3 mentions "*reasons to accept the complaint and act under the My Health Records Act*", rather than the Privacy Act. Further, it may assist participants to provide information on those reasons to help them understand of the types of complaints that are handled *under My Health Records Act 2012* and those managed under the *Privacy Act 1988*. For example, it may assist participants to expand on the reason to treat the complaint under the My Health Records Act 2012 rather than as a privacy complaint under s.36 of the Privacy Act 1988.

- 3 Section 5.5 mentions that Information Commissioner may investigate complaints when "*it is not reasonable for an individual to lodge a complaint with the My Health Record participant*". It would be helpful to confirm if this would apply in scenarios involving complaints against jurisdictional healthcare providers (e.g. state or territory centrally managed public hospitals).
- 4 Section 14.2 covers referrals to other bodies to resolve complaints. It would be helpful to provide additional guidance for consumers reporting suspected unauthorised access to their My Health Record by a public hospital, where to direct their complaints. For example, to state or territory privacy regulators or to the OAIC. Further, OAIC may consider expanding this section to outline the powers state/territory privacy regulators have in relation to My Health Record and the OAIC's powers.

3. Are there any matters that you believe the draft Guidelines should cover that have not been covered or should be covered in greater detail?

The Guidelines could contain information that explains how the *My Health Records Act 2012* interacts with the *Privacy Act 1988*.

The references to the Information Commissioner publicly communicating about their use of enforcement powers under the *My Health Records Act 2012* or the *Privacy Act 1988* could be expanded to detail the exceptions. This may note the use of a recipient's health information is restricted by the *My Health Records Act 2012* and is also sensitive information for *Privacy Act 1988* purposes. The OAIC may wish to add that exceptions will apply if the disclosure of information is prohibited under law or may apply when a matter is referred to a law enforcement body for criminal investigation.

4. Are there any other ways in which the draft Guidelines could be enhanced?

The OAIC might wish to confirm in the Guidelines that the Information Commissioner's powers under the *My Health Records Act 2012* aren't limited to contraventions relating to health information but include participant compliance with obligations. It is possible, the current Guidelines could create a perception the Information Commission's powers are limited to handling of My Health Record information.

The draft Guidelines appear to introduce the OAIC (distinct from the Information Commissioner) without context, function or a clear explanation of its role.

The OAIC may wish to enhance the relevant sections of the Guidelines to make it clearer that section 80 of the *My Health Records Act 2012* and section 80V of the *Privacy Act 1988* do not 'trigger' Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*. Rather, they enable the Information Commissioner to apply to the Federal Court or Federal Circuit and Family Court (Division 2) to issue an undertaking under Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*.

5. Any other input.

In its review the Agency identified some minor editorial errors that the OAIC may wish to correct, including:

- Section- 3.2 includes a definition for a registered repository operator, although this only appears in the definitions section and not the body of the Guidelines.
- Section 3.2 suggest that for greater clarity, the definition of 'My Health Record' refers to 'My Health Record of a healthcare recipient'.
- Section 4.3 refers to the "My Health Records system"; rather than the "My Health Record system".
- Section 4.8 may need to refer to subsection 73(3), which relates to other feedback about the interaction between the *My Health Records Act 2012* interacts with the *Privacy Act 1988*.
- Section 5.2 Consider whether 'APP 1' should be spelled out in full and explaining the purpose of discussing APP1.
- Sections 5.6 and 5.7 refer to a healthcare recipient's "digital health record", rather than "My Health Record"
- Section 5.11 and 5.12 it may be helpful to clarify that the sections being referred to are sections in the Guidelines (rather than legislation).
- Section 6.5 cites the "My Health Record Act"; which is the "My Health Records Act".
- Section 8.1 and 8.2 could benefit by clarifying that the Information Commissioner is an authorised person that may accept a written undertaking.
- Multiple references to "My Health Record participant"; could refer to "participant in the My Health Record system" as defined.
- Multiple references to the 'Information Commissioner' and 'Commissioner' could be reviewed for consistency throughout the Guidelines.

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