



Australian Government

Office of the Australian Information Commissioner

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

Consultation Paper



27 January 2026

OAIC

Purpose of the consultation

The Office of the Australian Information Commissioner (OAIC) is remaking the [*My Health Records \(Information Commissioner Enforcement Powers\) Guidelines 2016*](#) ('the previous Guidelines') which is due to sunset on 1 April 2026. This instrument will be repealed and replaced by the *My Health Records (Information Commissioner Enforcement Powers) Guidelines 2026* ('Guidelines').

The OAIC invites interested stakeholders to provide general feedback on the content, readability and accessibility of the draft Guidelines.

The closing date for submissions is **5 pm AEDT, 17 February 2026**.

Background

The My Health Record (MHR) system is established under and regulated by the *My Health Records Act 2012* (MHR Act). The MHR system seeks to enable the secure sharing of individuals' health information among registered healthcare providers across Australia to facilitate informed medical treatment and care. The Information Commissioner has various complaints handling, investigation and enforcement functions in respect of the MHR system under the MHR Act and the *Privacy Act 1988* (Privacy Act).

Subsection 111(2) of the MHR Act requires the Information Commissioner, by legislative instrument, to make guidelines that outline how they will exercise enforcement powers conferred under the MHR Act or related powers conferred by another Act (including the Privacy Act). The Commissioner must have regard to these guidelines in exercising their regulatory powers and functions in relation to the MHR system. The guidelines summarise existing law and do not create new rights, obligations or penalties.

Consultation materials

Download [the draft Guidelines](#).

Key changes

The draft Guidelines reflect legislative updates to the Privacy Act and MHR Act since the previous Guidelines were made in 2016. They have also been streamlined and simplified in language to improve accessibility, reduce duplication and facilitate regulatory compliance to enhance the privacy of Australian health consumers. This is consistent with modern regulatory practices and the [Australian Government Ministerial Statement of Regulatory Expectations](#).

The draft Guidelines further draw upon additional guidance published by the OAIC which is relevant to the exercise of regulatory powers and functions under the Privacy Act and MHR Act. The Guidelines make clear that the Information Commissioner will have regard to regulatory policies that are publicly available to the regulated community on the OAIC website ([Privacy regulatory action policy | OAIC](#) and [Guide to privacy regulatory action | OAIC](#)). These policies are reviewed and revised to ensure they are fit for purpose and reflect community expectations. The Guidelines also note the Information Commissioner will have regard to the internal operational processes of the OAIC. These help ensure a more consistent regulatory approach to oversight of the MHR system.

The changes introduced in the Guidelines significantly alter the section numbering of the previous Guidelines. Key substantive changes that add or replace information and their new section numbering include:

- [3.2] expands the list of terms used in the Guidelines and their definitions to include ‘Senior Executive Service’.
- [4.3] – [4.4] adds information to briefly clarify the role of different entities under the MHR system including the System Operator, healthcare recipients, and healthcare provider participants.
- [4.8] clarifies the regulatory functions of the Information Commissioner in relation to the MHR system as provided under the MHR Act.
- [5.1] notes that the Information Commissioner has information sharing powers that may be used for the purposes of exercising investigative and enforcement powers in relation to the MHR system.
- [5.2] – [5.5] streamlines and reorders a subsection from the previous Guidelines on the general approach to complaints under the MHR system. It adds information to reflect the Information Commissioner’s updated process around handling complaints for early resolution and inserts a reference to another provision in the Privacy Act related to investigating complaints (Part VIB).
- [5.10] is a new subsection that explains when the Information Commissioner may issue a monitoring or investigation warrant pursuant to Part VIB of the Privacy Act to investigate an offence provision or civil penalty provision.
- [5.11] clarifies that enforcement powers under the MHR Act and Privacy Act – including enforceable undertakings, determinations, injunctions, civil penalties, compliance notices and infringement notices – trigger specified parts of the *Regulatory Powers (Standard Provisions) Act 2014*.
- [5.12] briefly notes that the Information Commissioner may, when appropriate, refer matters to other complaint bodies or, in more serious cases, to law enforcement.
- [6.1] adds information that explains how the Information Commissioner will ensure a consistent regulatory approach to oversight of the MHR system.
- [6.2] inserts a reference to s 40 of the Privacy Act as the legislative provision that empowers the Information Commissioner to initiate investigations of their own initiative.
- [7.1] – [7.7] streamlines sections from the previous Guidelines on general principles for enforcement action.
- [7.1] clarifies that the factors the Information Commissioner may take into account in deciding whether to take enforcement action includes any factors contained in policies on regulatory action set out by the Commissioner’s office.
- [7.6] notes that exceptions may apply to the Information Commissioner publicly communicating information about their use of enforcement powers when a matter is referred to a law enforcement body for criminal investigation.
- [8.1] – [8.5] streamlines and reorders sections from the previous Guidelines on enforceable undertakings. It updates references to the relevant provision under the Privacy Act relating to the acceptance of written undertakings that has been amended (replaces s 80 with s 80V).
- [8.4] clarifies that the MHR Act and Privacy Act do not impose a particular structure for an enforceable undertaking but that any undertaking must be written and expressed to be an undertaking pursuant to s 114 of the *Regulatory Powers (Standard Provisions) Act 2014*.
- [9.1] – [9.6] streamlines and reorders sections from the previous Guidelines on determinations.

- [10.1] – [10.3] streamlines and reorders sections from the previous Guidelines on injunctions. It updates a reference to the relevant provision under the Privacy Act relating to injunctions that has been amended (replaces s 98 with s 80W).
- [11.1] – [11.5] streamlines and reorders sections from the previous Guidelines on civil penalties. It updates a reference to the relevant provision under the Privacy Act relating to civil penalties that has been amended (replaces s 80W with s 80U).
- [11.3] – [11.4] updates references to new or amended civil penalty provisions under the Privacy Act relating to conduct that is an interference with privacy which may be triggered by conduct contravening civil penalty provisions under the MHR Act (s 13G for ‘serious interference with privacy’ and s 13H for ‘interference with privacy’).
- [11.5] clarifies when a civil penalty order cannot be sought in respect of conduct that is subject to certain civil penalty provisions under the Privacy Act.
- [12.1] – [12.2] is a new section that explains when compliance notices may be issued.
- [13.1] – [13.3] is a new section that explains when infringement notices may be issued.
- [14.1] – [14.3] is a new section that explains when matters may be referred by the Information Commissioner to other bodies.

The changes also involve removing content from the previous Guidelines as part of streamlining and minimising duplication in the updated Guidelines.

How to provide comments

Submissions can be made via email at consultation@oaic.gov.au. The closing date for submissions is **5 pm AEDT, 17 February 2026**.

We intend to make all submissions publicly available on the OAIC’s website. Please indicate when making your submission if it contains confidential information you do not want made public and why it should not be published. Requests for access to confidential comments will be determined in accordance with the *Freedom of Information Act 1982*.

Consultation considerations

To assist you in preparing comments for this consultation, we have suggested some questions which are intended to stimulate comments and reflections on the draft Guidelines. You may wish to prepare your comments in consideration of these questions generally or by responding to some or all of the questions directly. You can also provide any other feedback on the content, guidance, readability and accessibility of the draft Guidelines

- Are the draft Guidelines clear, relevant and practical?
- 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?
- Are there any matters that you believe the draft Guidelines should cover that have not been covered or should be covered in greater detail?
- Are there any other ways in which the draft Guidelines could be enhanced?

Privacy collection statement

The OAIC will use the personal information it collects during this consultation for the purpose of informing the development of the Guidelines and considering issues raised by the consultation paper. We may seek further information from you related to your submission.