AUSTRALIAN MEDICAL ASSOCIATION
ABN 37 008 426 793
T I 61 2 6270 5400
F I 61 2 6270 5499
E I ama@ama.com.au
W I www.ama.com.au
39 Brisbane Ave Barton ACT 2600
PO Box 6090 Kingston ACT 2604

SUBMISSION

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AMA submission to the My Health Records (Information Commissioner Enforcement Powers) draft guidelines

Extended to midday 20 February 2026

By email: consultation@oaic.gov.au

The Australian Medical Association (AMA) welcomes the opportunity to comment on the Office of the Australian Information Commissioner's (OAIC) consultation to remake the My Health Records (Information Commissioner Enforcement Powers) Guidelines 2026, which will replace the 2016 instrument scheduled to sunset on 1 April 2026. The AMA supports regulatory guidance that is clear, proportionate, and workable in clinical settings, noting the Information Commissioner must have regard to these Guidelines when exercising relevant functions and powers under the *My Health Records Act 2012* and the *Privacy Act 1988*.

The Guidelines should remain clear, relevant and practical, particularly where they describe newer regulatory tools. The OAIC's approach should be proportionate and improvement-focused, supporting safe care and compliance without creating avoidable administrative burden for participants. The Guidelines should also more clearly explain coordination across the My Health Record (MHR) ecosystem, including interactions with the System Operator, and clarify how the OAIC will apply discretion in MHR matters. Finally, the Guidelines would benefit from clearer boundary-setting so participants understand what the Guidelines cover and what they do not.

In this submission, the AMA responds to the OAIC's consultation considerations set out in the consultation paper.

Response to the Consultation Considerations

The AMA considers the draft Guidelines broadly clear and relevant, particularly in explaining the role of the Information Commissioner in the MHR system and in consolidating the Commissioner's powers across the *My Health Records Act 2012* and the *Privacy Act 1988*. The re-organisation and streamlined language described in the consultation paper should assist accessibility for regulated entities.

Section 5.10 describes monitoring or investigation warrants under Part VIB of the Privacy Act, including the requirement for consent or judicial authorisation and the proportionality constraints. This content is relevant and important, but it would benefit from a short explanatory note or example to help regulated entities understand what kinds of circumstances might trigger consideration of a warrant, and how proportionality will be assessed in the health context.

The new sections on compliance notices (s 12) and infringement notices (s 13) are useful but would benefit from more practical guidance for participants. The AMA recommends including brief, practical guidance on what this means for participants — particularly by describing the expected timeline, the type of practical and measurable steps that might be required, and how these steps will be tailored to different participant types (for example, small practices versus large repository operators).

The complaint-handling section notes early resolution approaches and when matters may proceed to investigation or enforcement. A simple one-page, plain language process summary would significantly enhance usability, especially for frontline services that are time-poor.

Assisting participants to understand privacy obligations and how the Commissioner will approach enforcement issues

The draft Guidelines appropriately explain that complaints may be handled under the Privacy Act (including Parts V and VIB) unless there is reason to proceed under the My Health Records Act, and they outline the OAIC's preference for early resolution where suitable. The draft also sets out high-level factors that may inform enforcement decisions, including systemic harm, public interest, and the educative/deterrent effect, which supports transparency and predictability.

The AMA notes two contextual realities that heighten the importance of practical guidance. Patient safety and continuity of care risks increase when information becomes available without clinical context, and the AMA has previously warned that removing default delays can contribute to patient stress, misinterpretation and fragmented care pathways. Administrative burden and system usability also remain barriers to effective engagement, and the AMA has consistently advocated for stronger workflow integration, interoperability and reduced manual processes in the operation of My Health Record.

For clinician-led and frontline participants, the Guidelines will be most useful where they help participants anticipate how the OAIC will apply discretion in common operational scenarios. While the Guidelines do not regulate clinical workflows, the AMA encourages the OAIC to make explicit in the enforcement principles (s 7) that proportionality and enforcement choices will consider patient safety and continuity of care, alongside practical implementation realities for participants, as well as privacy harms.

Matters the draft Guidelines should cover

The AMA identifies four areas where additional detail would improve usefulness without turning the Guidelines into a substitute for primary legislation.

(a) Interaction with the System Operator and other oversight levers

The AMA supports transparency about when the OAIC may share information with the System Operator (ss 7.3–7.4). The Guidelines would benefit from a brief clarification (high level) of when such sharing may occur, and how confidentiality and procedural fairness considerations will be managed, particularly where operational security issues overlap with privacy risks.

(b) Use of compliance notices as a "fix-first" tool

The AMA supports the inclusion of compliance notices as an improvement-focused tool that can promote timely remediation where appropriate (s 12). The Guidelines could usefully clarify, in plain

terms, the intended role of compliance notices in lifting practice and preventing recurrence before escalation to more punitive options.

(c) Cyber security expectations and consistency across participants

The AMA supports consistent regulatory expectations across participants and notes the importance of strong cyber security for maintaining trust in digital health systems. The Guidelines could briefly clarify how cyber security failures affecting MHR data will be assessed when considering seriousness and enforcement responses, including risk of harm, systemic impact, and whether reasonable safeguards were in place.

(d) Boundary-setting within the broader privacy landscape

The consultation paper notes the Guidelines summarise existing law and do not create new rights, obligations, or penalties. The AMA supports this framing and recommends a short "scope" statement clarifying what the Guidelines cover (the OAIC's approach to complaints, investigations and enforcement in the MHR context) and what they do not cover (a restatement of all participants' substantive privacy obligations).

To further support time-poor participants, the AMA encourages the OAIC to include a short, plain-language overview of complaint pathways and available regulatory tools relevant to the MHR context.

Enhancing the draft Guidelines

In summary, the AMA recommends the OAIC:

- Include brief plain-language explanation of newer tools relevant to MHR oversight (including monitoring/investigation warrants and compliance and infringement notices).
- Clarify in the enforcement principles that proportionality will consider patient safety and continuity of care, alongside practical implementation realities and privacy harms.
- Provide brief clarification (high level) of information-sharing coordination with the System Operator, including confidentiality and procedural fairness considerations.
- Clarify how cyber security failures affecting MHR data will be assessed when selecting regulatory responses, including risk of harm and systemic impact.
- Include a short scope statement clarifying what the Guidelines cover and what they do not cover.
- Include a short plain-language overview of complaint pathways and regulatory tools to support time-poor participants.

The AMA appreciates the OAIC's work to update these Guidelines and remains committed to constructive engagement to ensure My Health Record settings support privacy, trust and clinically safe practice.

Contact

president@ama.com.au