

Australian Greens Additional Comments

1.1 While not dissenting from the Committee's recommendations, the Australian Greens express caution that this legislation may represent a minor improvement instead of the necessary solution.

1.2 The Committee has heard ample evidence of community concern over issues with the My Health Record (MHR) system. These concerns relate to privacy and security, as well as the authorised handling of sensitive health data by parties for whom it is valuable for reasons other than the protection and promotion of health.

1.3 The purpose of this legislation is to address these concerns.

Record destruction

1.4 Item 6 of the Bill proposes to amend section 17 of the MHR Act through the addition of two new paragraphs which would require the System Operator to permanently destroy any record uploaded to the National Repositories Service, which includes health information that is included in a healthcare recipient's MHR, if that healthcare recipient has requested that the System Operator cancel their MHR.

1.5 The Australian Greens support this amendment in principle.

1.6 The Committee heard evidence that this amendment is valuable but key questions remain over how easily this destruction can be achieved. It is standard database management practice to routinely create backups and cache files that capture and preserve a moment in time, as the database existed at that moment, and retain these backups offline.

1.7 It is unclear if this amendment requires the System Operator to additionally and permanently destroy any saved version of a person's MHR, including in historical backups, although at face value it does not appear to do so. Furthermore, there remain unanswered questions over whether such backups remain accessible to law enforcement agencies, which, if so, would be both inappropriate and unsafe.

Authorised disclosures

1.8 The collection, use, or disclosure of the health information included in health recipients' MHRs is restricted by section 59 of the MHR Act.

1.9 Section 70 of the Act authorises the System Operator to use or disclose information in a recipient's MHR to enable a law enforcement body to undertake specified law enforcement activities. It also authorises the System Operator to use or disclose health information if the System Operator suspects that there has been unlawful activity in relation to its functions, and reasonably believes that the use or

disclosure of the information is necessary for investigation of, or report to, an authority.

1.10 Section 70 of the MHR Act does not currently specify that a court order is required for the System Operator to use or disclose healthcare recipients' MHR information for law enforcement or related purposes.

1.11 Items 10 and 12 of the Bill have the effect of restricting the System Operator from disclosing a healthcare recipient's information to law enforcement or government agencies without an order from a judicial officer, and confirming that MHR information will not be released to law enforcement agencies or government bodies without a court order.

1.12 We support this provision as an improvement on the status quo, but it is an insufficient and disappointing one. There remains significant scope for improvement.

1.13 The University of Melbourne noted that healthcare recipients' trust of disclosure provisions of the MHR system could be enhanced if, under proposed subsection 69A(4), the System Operator was required to notify a healthcare recipient if their MHR information had been disclosed under proposed new section 69A. The Australian Greens support such a requirement, although note that such a notification would require current and up-to-date contact information for a healthcare recipient be maintained, and this is a challenging task.

1.14 Further improvements to recipient privacy should also include making security access PINs the default, opt-out option, restricting all access to a healthcare recipient's MHR. The opt-out period should be extended and a larger investment in community awareness of the program should be rolled out as a matter of urgency.

Conclusion

1.15 The Australian Greens are supportive of the intent of My Health Record, and we share the in-principle belief that there are substantial public health benefits to be gained from such a model.

1.16 Nonetheless, we recognise also that there are legitimate and serious concerns that have not yet been fully addressed. This legislation goes some way to addressing them but in and of itself is insufficient to satisfy these outstanding concerns.

Senator Rachel Siewert
Deputy Chair

Senator Richard Di Natale