

From the President's Office
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10 September 2018

AMA (NSW) submission to the Committee on Community Affairs Legislation Committee Inquiry into the My Health Records Amendment (Strengthening Privacy) Bill 2018

Committee Secretary
Senate Standing Committees on Community Affairs Legislation Committee
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Thank you for the opportunity to make a submission to the Committee on Community Affairs Legislation Committee Inquiry into the My Health Records Amendment (Strengthening Privacy) Bill 2018 (the Bill).

AMA (NSW)'s submission to the Senate Community References Committee Inquiry into the My Health Record system (Attachment A) provides AMA (NSW)'s statement on the My Health Record system and its implementation thus far. This provides the broader policy context of My Health Record system and should be considered in conjunction with our submission on the Strengthening Privacy Bill.

AMA (NSW) is an independent organisation, which represents almost 9000 doctors-in-training, career medical officers, staff specialists, visiting medical officers, specialists and general practitioners in private practice in NSW. As the state's peak medico-political lobbying body, AMA (NSW) serves to represent the interests of its members and plays a pivotal role in the formation of health policy.

We also serve to uphold the integrity and honour of the profession and support the interests of doctors and their patients for the advancement of the health of the community.

As noted in AMA (NSW)'s submission to My Health Records system inquiry, AMA (NSW) strongly supports the formation of a central digital repository of patient health information and recognises that the My Health Record system has potential to significantly improve healthcare delivery in Australia.

AMA (NSW) also supports making the My Health Record system opt-out, as AMA (NSW) recognises that the utility of the system will be enhanced by greater usage and adoption. However, in making the system opt-out, AMA (NSW) suggests the Federal Government has an even greater responsibility to ensure the legislative framework of the system is considerably

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tightened to allay public concerns of the system's privacy controls and ensure trust in the system.

AMA (NSW) suggests that the success of My Health Record hinges on patients' and providers' trust that the data being collected and stored in the system is being used solely for health purposes.

The current My Health Record Act 2012 does not meet AMA (NSW)'s standards of patient privacy. Under the current framework, AMA (NSW) does not support the My Health Record system.

Section 70 of the Act, which authorises the System Operator to release My Health Record data to government agencies for reasons relating to social security, tax and the criminal justice system, is of particular concern to our members.

However, AMA (NSW) acknowledges that the amendments proposed in the Bill will strengthen the privacy framework of the My Health Record System and restrict the My Health Record System Operator's ability to use or disclose information for a range of reasons unrelated to a person's health.

In particular, the addition of section 69A and the deletion of sections 70(1) and (2) effectively removes the ability for the System Operator to disclose health information to law enforcement agencies and government agencies without an order by a judicial officer or the healthcare recipient's consent. This amendment also ameliorates concerns that health record data could be disclosed by a junior public servant or 'any other person with the consent of the Minister', as any delegate would be subject to the same restrictions as the System Operator.

AMA (NSW) also notes significant public concern around the retention of archived patient data in their My Health Record after the decision to opt out and recognises that the Bill amends section 17 to allow for complete destruction of a My Health Record upon cancellation of registration of the healthcare recipient.

Other areas of concern with the current legislation include the potential use of My Health Record data for employment health checks. AMA (NSW) recognises that the Bill prohibits a doctor from accessing a record for purposes unrelated to healthcare provision. In addition, the Healthcare Identifiers Act 2010, subsection 14(2) prohibits the use of healthcare identifiers for employment health checks. AMA (NSW) also notes that use of My Health Record data in relation to a contract of insurance is also prohibited.

In conclusion

AMA (NSW) recognises that the legislative framework must balance patient privacy with access to health information in appropriate circumstances.

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AMA (NSW)'s support of the My Health Record system is contingent on legislative controls that protect patient privacy and ensure the collection and use of health data is solely for health purposes.

AMA (NSW) recognises that the safeguards introduced by the Bill significantly tighten the privacy and security of the My Health Record System in line with community expectations around disclosure of health information.

Yours sincerely,

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