

Australian Privacy Foundation

Supplementary Submission

1. The Process

- (1) The Bill and Explanatory Memorandum provide no evidence that any of the submissions made to the agency in relation to the initiative's privacy impact have been reflected.
- (2) The PIA was conducted behind closed doors, resulting in a failure by the agency to assimilate the messages being provided by representatives of patients' interests.
- (3) The agency had indicated that it would not be releasing the PIA Report. It then did so, but in such a manner that it could not be reflected in Submissions to the Senate Committee.
- (4) As far as the APF can see, the PIA was performed without the assistance of anyone with appropriate expertise in the area. This is evident because far better balanced design features and amelioration measures could have been devised, so that the aim of more effective auditing could be achieved without such substantial privacy breaches.

2. The Product

- (1) The Bill would create powers to expropriate sensitive patient data.
- (2) The exercise of the powers could be justified merely by 'reasonable concern that there may have been an over-payment', but this is far from sufficient justification for such breaches.
- (3) The Bill would overturn the existing privacy protections.
- (4) The Bill fails to specify appropriate security safeguards for the data, in transit, and in storage.
- (5) The individuals who would access the data need not be medically qualified, which undermines both their capacity to understand the data, and their ethical obligations in relation to patient privacy.
- (6) There is no requirement that the patient be notified of the expropriation of their sensitive personal data.
- (7) There is no requirement to minimise the privacy-intrusiveness of the actions taken using the power.
- (8) For example:
 - there is no requirement that the data acquired by the agency be de-identified;
 - copies can be made of the data; and
 - there is no preclusion of the production of identified patient data in court, which would then result in that data escaping into the public sphere.
- (9) If the Bill were passed in its present form:
 - it would erode public confidence in the privacy of patient data;
 - patients would suppress information; and
 - providers would fail to record information.

Passage of the Bill would therefore result in an adverse impact on the quality of care.

3. Next Steps

- (1) The APF submits that the Senate Committee should find that the Bill, in its current form, fails to reflect serious privacy concerns and fails to propose a balanced solution.
- (2) The APF submits that the Bill should be withdrawn, and if it is not withdrawn then it should be rejected; and it should re-submitted only once it has been significantly amended, to reflect the serious privacy concerns it gives rise to, and to implement appropriately balanced measures.