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HHSD/21/778439

Dr Juanita Fernando
Chair, Health Committee
Australian Privacy Foundation

BY EMAIL: Juanita.Fernando@privacy.org.au

Dear Dr Fernando

Thank you for your letter of 19 October 2021 regarding the Health Legislation Amendment (Information Sharing) Bill 2021, and for your time on Friday, 5 November for the briefing.

Reforming the way health information is shared between treating clinicians, for the purpose of patient care, in Victorian public health services is a critical step toward delivering on key recommendations of the review in safety and quality in our healthcare system (Targeting Zero)

This Bill will create a more connected and integrated public hospital system, focused on improving health outcomes, enhancing patient safety and the continuity of care, and delivering a better patient experience.

You have raised several matters in your correspondence. For ease of reference, I refer to those below:

Engagement on the Bill

The Department of Health has engaged consistently with impacted stakeholders on the proposal to reform the legislation and following the Bill's initiation into Parliament. Engagement with a number of peak bodies, statutory authorities and clinical and consumer representatives is ongoing, and will continue during the passage of the Bill through Parliament.

Members of the public can find out more about the Bill through our public website: https://www2.health.vic.gov.au/hospitals-and-health-services/quality-safety-service/digital-health/connecting-care

Victorian Health Privacy Principles

The proposed Bill does not remove any rights to access or correct information as prescribed under Principle 6. The rights to access and correction information should be directed to the relevant health service who hold the complete medical record. Complaints concerning access and correction can continue to be made to the Health Complaints Commissioner and the Office of the Victorian Information Commissioner.

VICTORIA State Government

HPP 1.3 notes that health information about an individual should only be collected from that individual where it is reasonable and practical to do so. We note that in many emergency situations family, friends and carers provide important background information to assist clinicians to treat the patient in front of them. This proposes an additional and safe way to access verified and trusted sources of information.

HPP 1.5 notes that if an organisation collects health information about an individual from someone else, it must take any steps that are reasonable in the circumstances to ensure that the individual is or has been made aware of the collection. The Bill and the associated work program introduce important transparency measures in the form of gazetted notices and other mechanisms to ensure that patients are well aware of which hospitals are part of the health information sharing system and what information is being exchanged. Hospital and health service collection notices will be updated to ensure that patients are fully aware that their hospital participates in these arrangements. Clinicians will receive support to answer any questions their patients many have about the arrangements.

Privacy Impact Assessment

A Privacy Impact Assessment was undertaken as part of the pre planning phase of the health information sharing reforms, in line with existing departmental practice. A further Privacy Impact Assessment will be undertaken during the project delivery phases to ensure strict adherence in respect of the technology to the legislative requirements and policy frameworks.

Operational and security oversight

As a government department, we must operate systems in line with a number of rigorous mandated controls.

The system will operate under a strict set of cybersecurity and information management standards. These include compliance with the Victorian Protective Data Security Standards (VPDSS), established by Victoria's privacy regulator, the Office of the information Commissioner (OVIC).

In addition, the department adheres to the cyber security framework as set out in *Information Security Manual* (ISM) produced by the Australian Cyber Security Centre (ACSC).

Complementing this, the department adopted the National Institute of Standards and Technology (NIST) framework, including a set of baseline controls for all health services, and it has significantly progressed implementing the Victorian Public Health Sector Cybersecurity Uplift Strategy.

The Victorian Auditor General's Office (VAGO) also has powers to conduct assurance reviews of the system and programs of work, to ensure the operation of the system is efficient and effective.

There will also be strong, arm's length ongoing oversight of the system. The Health Information Sharing Review Board will identify any system-wide risks and will support key recommendations. This includes identifying any further amendments to the Act(s) where they need strengthening to reflect best practice.

Secure disposal of information

As a public record, there are regulations regarding how long health information must be stored and how it must be securely deleted after certain time intervals.

These standards are set and governed by the Public Record Office of Victoria (PROV) and subject to the *Public Records Act 1973* (Vic).

The system will adhere to the standards set by the PROV.

Confidentiality of the doctor-patient relationship

Only staff providing medical care and treatment will have access to the Electronic Patient Health Information Sharing System. Further to this, the clinician access is limited to only those patients who are currently being treated in their health service. There is no unfettered access to the system.

Your letter notes the risk that some patients may not choose to seek health attention when needed, or not seek care at all. We would welcome any additional information to support this. Our reviews of similar arrangements both nationally and internationally have not demonstrated that this has occurred.

Access to health records

A patient's right to access information held about them by a public health service under the *Freedom of Information Act 1982* (Vic) remains unchanged. Nothing in the proposed Bill precludes a patient obtaining a copy of their own medical record. Those applications can be made to the public health service who treated the patient. In response to that request, all details of who accessed the patient's information held in the Electronic Patient Health Information Sharing System can be made provided.

The system will be designed to support the provision of information for these purposes by public health services.

Access to the system for other purposes

Only staff providing medical care and treatment will have access to the Electronic Patient Health Information Sharing System, and further, the clinician's access is limited to only those patients who are currently being treated in their health service. There is no unfettered access to the system.

Access to the system is not permitted for insurers, employers and other third parties such as political parties.

The Bill introduces no changes in respect to access by law enforcement authorities. Any such access will be governed by current privacy laws which are not being disrupted by these amendments and the introduction of the system.

Compatibility with human rights

As noted in your letter, the Bill has been subject to scrutiny in relation to the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

It has been found to balance the needs of immediate sharing of information, appropriate protection of private health information, whilst also presenting a clear and definitive statement to healthcare providers, clinicians, and the public alike on those arrangements going forwards.

Potential overreach

In the Department of Health's view, the Bill does not overreach the existing health information sharing provisions contained in the *Health Services Act 1988* (Vic), (HSA).

This is because clinicians are currently able to access the same information through the records of the participating health service, or to seek the information from other health services pursuant to section 141 of the HSA. Section 141 already establishes a framework for sharing information, without patient consent, where it is required in connection with the further treatment of the patient, including permitting the exchange of information ***between*** public hospitals for the treatment of patients at any time. As you would be aware, the HSA also already allows this information to be shared via an electronic records system.

In this way, the Bill simply builds on the existing information sharing mechanisms by creating a single, secure system that will support current practice in line with current legal requirements.

A single, secure and centrally operated system with strong and independent oversight arrangements, as set out in the Bill, is likely to be more effective in facilitating the critical exchange of information than the existing arrangements in accordance with the HSA. Current electronic records systems operated independently by public health services, each have different functions, security controls and access arrangements, and pose no lesser risks to a patient's privacy, safety, and security.

Penalties

Anyone affected or concerned about the privacy of their data can write to the department, the Office of the Victorian Information Commissioner, or the Health Complaints Commissioner for further advice or to make a complaint.

As the Department of Health establishes the framework for the governance and oversight of the health information sharing reform, including the establishment of the Health Information Sharing Review Board, they look forward to engaging with the APF and its members on the role and membership of the Board in due course.

If you do you have any further questions regarding the Bill, we would be very grateful if you could share that with us. Please contact me at the Department of Health on 03 9096 7556 or Neville.Board@health.vic.gov.au.

I trust this information has been of assistance to the Australian Privacy Foundation and thank you again for taking the time to write to me about this matter.

Yours sincerely

Neville Board
Chief Digital Health Officer

19 November 2021