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Dear Dr. Bolevich

Re: State government centralised digital health records plan

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

We are seeking information to help the community to understand and compare how existing local laws affect the emergence of centralised digital health record systems.

Victorian state health authorities are proposing the Health Legislation Amendment (Information Sharing) Bill (2021) (Vic) be used to introduce such a system in Victoria. These authorities have suggested this proposed legislative scheme would bring Victoria into line with New South Wales (NSW).¹

Concerns about the potential for disproportionate privacy, medical confidentiality and data security effects of the proposed legislation have been put to Victorian members of Parliament and the Victorian Department of Health by legal, civil and digital rights organisations, including from the APF.² We understand the Victorian Parliament will shortly debate whether to assign the Bill to the Legal and Social Issues Committee for inquiry, consideration and report by September 15 2022.³

Features of the Victorian Bill relevant to privacy and confidentiality

1. The Amendment is said to aim to improve health outcomes by enabling the electronic sharing of all Victorian patients' data across Victorian public hospitals and certain other health services through a central database.¹⁻²
2. The data collected and linked by the portal would enable users to access each patient's medical and health information, including records collected from mental and ambulance services as well as from other traditional clinical sources. It would include not only current and future information created after the new scheme is established, but also historical information collected under earlier arrangements. It thus appears to involve enabling access to a complete dossier of every Victorian patient's sensitive, personal health information.

3. Patients are to be statutorily precluded from seeing or accessing a copy of their own health record. Two new criminal offences for unauthorised access to information on the health database, with a maximum penalty of two years imprisonment, have been introduced.²
4. Patients will not be able to audit, to give or withhold informed consent for or to opt-out of the scheme.
5. The proposal apparently does not prohibit information stored in the centralised database from being used for purposes beyond the direct clinical care of patients, such as statistical analysis (using identified unit data), law enforcement, other administrative purposes, or even use by political parties.

The APF is reviewing publicly available policies and legislative frameworks in NSW to inform further discussion of the Victorian Bill with relevant authorities, legislators and stakeholders.

There are however substantial differences in how the key documents are named, described and structured in each jurisdiction. This review is a complex task, and time is now of the essence, so we ask whether you can confirm the suggestion made by Victorian agencies that their proposed legislation would result in health sharing information system parity with NSW.

In particular:

- do each of the five features above apply to the equivalent or similar NSW centralised digital health record systems?
- If not, to what extent or how are each of these proposed Victorian system features different in the comparable system in your state?

I look forward to your reply to our enquiry, and would be happy to provide any further information you may require.

Yours sincerely,



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REFERENCES

1. David Estcourt & Rachel Eddie. 'Absolute authority': Call to halt plan to collect all Victorians' medical records. *The Age*, 11 March 2022. <https://www.theage.com.au/national/victoria/absolute-authority-call-to-halt-plan-to-collect-all-victorians-medical-records-20220309-p5a33m.html>
2. Denham Sadler, Push to make Victoria's consent-free digital health database opt-in. *Innovation Aus* (online); 18 May 2022. <https://www.innovationaus.com/push-to-make-victorias-consent-free-digital-health-database-opt-in/>
3. Victorian Legislation. Health Legislation Amendment (Information Sharing) Bill (2021). <https://www.legislation.vic.gov.au/bills/health-legislation-amendment-information-sharing-bill-2021>

Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, Committees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, Committees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by Patrons The Hon Michael Kirby AC CMG and The Hon Elizabeth Evatt AC, and an Advisory Panel of eminent citizens, including former judges and former Ministers of the Crown.

The following pages provide access to information about the APF:

- Policies <https://privacy.org.au/publications/by-date/>
- Media <https://privacy.org.au/home/updates/>
- Current Board Members <https://privacy.org.au/about/contacts/>
- Patron and Advisory Panel <https://privacy.org.au/about/contacts/advisorypanel/>

The following pages provide outlines of some of the campaigns that the APF has conducted:

- The Australia Card (1985-87) <https://privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <https://privacy.org.au/campaigns/consumer-credit-reporting/>
- The Census (2006) <https://privacy.org.au/campaigns/census2006/>
- The Access Card (2006-07) <https://privacy.org.au/campaigns/id-cards/hsac/>
- The Media (2007-) <https://privacy.org.au/campaigns/privacy-media/>
- The MyHR (2012-) <https://privacy.org.au/campaigns/myhr/>
- The Census (2016) <https://privacy.org.au/campaigns/census2016/>