CSC's Submission to the Standing Committee on Community Affairs

Inquiry into the provisions of the Personally Controlled Electronic Health Records Bill 2011 and a related bill

December 2011

Inquiry into the provisions of the Personally Controlled Electronic Health Records Bill 2011

CSC Healthcare Submission

CSC is pleased to have the opportunity to provide a written submission to the inquiry into the Personally Controlled Electronic Health Records Bill 2011. We welcome the opportunity to present to the Community Affairs Legislation Committee, should this be required.

CSC's approach to the interpretation of the Personally Controlled Electronic Health Records Bill 2011 includes significant consideration to what an underpinning framework should comprise, to ensure an optimal outcome for all users of an Australian electronic health record.

Sound legislation is imperative to deliver a comprehensive foundation for introduction of electronic health records for potentially all Australians. CSC is supportive of the legislation as it provides a solid foundation upon which a national eHealth framework can evolve.

The legislation is cognisant of the requirements of today, with consideration of the future. We have included comments where the legislation may be able to be improved to adapt to the rapidly changing technology sector, which necessarily evolves faster than legislative processes can often accommodate.

This Bill has achieved a balance of flexibility while recognising the change and adaptation of future electronic information requirements.

We would like to acknowledge that all the progress with respect to the creation of a Personally Controlled Electronic Health Record for every Australian who wants one is positive and it is especially heartening to see that all contributions have been in the forward, rather than backward direction.

Summary View

Overall, the Personally Controlled Electronic Health Records Bill 2011 is consistent with our view of what the legislation should encompass to achieve a reasonable balance between supporting the safe and secure existence of electronic health records and providing users with privacy and autonomy and enhancing healthcare for all Australians.

Our submission provides commentary on a limited number of sections where we perceive a broader perspective may be required, or that an omission or semantic concern exists.

One of the key challenges with the legislation is the need to build in sufficient flexibility to adapt to the rapidly evolving technology environment. The legislation somewhat implies an automated version of a currently manual process and does not yet contemplate purely electronic style interactions such as touch-and-click and Bluetooth data transfers between devices such as between clinicians and consumers, which may be envisaged in the near term.

The legislation also appears to bind the *creating, updating and moderating* of the health summary (by a healthcare provider) with the *uploading* of the health summary. It is easy to envisage a situation whereby a healthcare provider confirms a health summary (and its provenance) and it is uploaded by the consumer who can then control access to that summary.

Some of the issues raised may result in an increase in the complexity of the legislation, CSC believes further consideration should be given to the wording and subsequent interpretation, to ensure straightforward administration and application of the Act, post-gazettal.

CSC Healthcare

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General Comments on Sections of the Personally Controlled Electronic Health Records Bill 2011

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10	**Definition of *shared health summary*** **The *shared health summary* of a registered consumer, at a particular time, is a record that:** **(a) was prepared by the consumer's nominated healthcare provider and described by him or her as the consumer's shared health summary; and** **(b) has been uploaded to the National Repositories Service; and** **(c) at that time, is the most recent such record to have been uploaded to the National Repositories Service.** **Note: This means that there is only one shared health summary for a 13 consumer at a particular time.** **CSC Comment** The intention of the shared health summary only being prepared by a consumer's nominated healthcare provider is noble. However, this process may cause significant delays in uploading of important healthcare information. We can foresee situations where there is a delay in transfer of information to the nominated healthcare provider who then has a delay in moderating prior to 'uploading' or modifying the summary. Any delays in uploading of information to the PCEHR in the early stages of implementation may risk causing a loss of confidence in the system. Further, the policy to only create shared health summaries if a consumer has a nominated healthcare provider may discriminate against consumers who choose not to nominate a single healthcare provider yet whose health needs would be improved through the existence of a health summary. The concept of the summary as in the legislation appears to bind the *creating, updating and moderating* of the health summary (by a healthcare provider) with the *uploading* of the health summary. It is easy to envisage a situation whereby a healthcare provider confirms a health summary (and its provenance) and it is uploaded by the consumer who can then control access to that summary. As these scenarios eventuate and are expected or demanded by consumers, the legislation may need to be interpreted or changed to accommodate these scenarios in a pragmatic and efficient manner.
Div 2	**Division 2 – Jurisdictional advisory committee, and**
Div 3	**Division 3 – Independent advisory council**

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	CSC Comment There appears to be a predominant focus on the government part of the Australian healthcare sector, with influence being bestowed through the Jurisdictional advisory committee in contrast to a small independent advisory committee. It is not clear how the private health industry including the not for profit healthcare sector is actively involved and represented other than potentially through the Independent advisory committee.
45	**Condition of registration – uploading of records, etc.** **It is a condition of registration of a healthcare provider organisation that the healthcare provider organisation does not, for the purposes of the PCEHR system:** **(a) upload a record that includes health information about a registered consumer to a repository other than:** **(i) a repository that forms part of the National Repositories Service; or** **(ii) a repository to which a registered repository operator's registration relates; or** **(b) upload to a repository a record:** **(i) that purports to be the shared health summary of a registered consumer, unless the record would, when uploaded, be the shared health summary of the registered consumer; or** **(ii) that is a record of a kind specified in the PCEHR Rules for the purposes of this paragraph, unless the record has been prepared by an individual healthcare provider to whom a healthcare identifier has been assigned under paragraph 9(1)(a) of the *Healthcare Identifiers Act 2010*; or** **(c) upload a record to a repository if uploading the record would involve:** **(i) an infringement of copyright; or** **(ii) an infringement of a moral right of the author; within the meaning of the *Copyright Act 1968*; or** **(d) upload to a repository a record that includes health information about a registered consumer if the consumer has advised that the record is not to be uploaded.** **CSC Comment** In the title to this section, the word 'etc' as a term is non-specific and may be problematic. Would a doctor be in breach of the Act if they were a registered health provider in the context of PCEHR and at the request of a patient, the healthcare provider

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	uploaded the data to *another* non-PCEHR system? Would the healthcare provider be in breach (e.g., if a clinician was asked by a patient to link their data to a private online health application?) There remain challenges in this section with regards to setting strict and appropriate guidelines for healthcare providers yet allowing sufficient flexibility for the range of data sharing situations that may evolve as consumers seek to access and share their own healthcare data.
46	**Condition of registration – no-discrimination in providing healthcare to a consumer who does not have a PCEHR etc.** **CSC Comment** As above, in the title to this section, the word 'etc' as a term is non-specific and may be problematic.
75	**Certain participants in the PCEHR system must notify data breaches etc.** **(1) This section applies to an entity if:** **(a) the entity is, or has at any time been, the System Operator, a registered repository operator or a registered portal operator; and** **(b) the entity becomes aware that:** **(i) a person has, or may have, contravened this Act in a manner involving an unauthorised collection, use or disclosure of health information included in a consumer's PCEHR; or** **(ii) an event has occurred or circumstances have arisen (whether or not involving a contravention of this Act) that compromise, or may compromise, the security or integrity of the PCEHR system; and** **(c) the contravention, event or circumstances directly involved, may have involved or may involve the entity.** **(2) If the entity is a registered repository operator or a registered portal operator, the entity must:** **(a) in the case of an entity that is a State or Territory authority or an instrumentality of a State or Territory - notify the System Operator as soon as practicable after becoming aware of the contravention, event or circumstances referred to in subsection (1); or** **(b) otherwise - notify both the System Operator and the Information Commissioner as soon as practicable after becoming aware of the contravention, event or circumstances referred to in subsection (1).** **Civil penalty: 100 penalty units.** **(3) If the entity is the System Operator, the entity must notify the Information**

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Commissioner as soon as practicable after becoming aware of the contravention, event or circumstances referred to in subsection (1).

(4) The entity must also, as soon as practicable after becoming aware of the contravention, event or circumstances, do the following things:

(a) so far as is reasonably practicable, contain the contravention, event or circumstances and undertake a preliminary assessment of the causes;

(b) evaluate any risks that may be related to or arise out of the contravention, event or circumstances;

(c) if the entity is the System Operator:

(i) notify all affected consumers; and

(ii) if a significant number of consumers are affected, notify the general public;

(d) if the entity is not the System Operator - ask the System Operator:

(i) to notify all affected consumers; and

(ii) if a significant number of consumers are affected, to notify the general public;

(e) take steps to prevent or mitigate the effects of further contraventions, events or circumstances described in paragraph (1)(b).

Note: A contravention of this subsection is not a civil penalty provision. However, contraventions of this Act may have other consequences (for example, cancellation registration).

(5) The System Operator must comply with a request under paragraph (4)(d).

CSC Comment

As above, in the title to this section, the word ‘etc’ as a term is non-specific and may be problematic.

There is no reference we can discern on how this data is to be used or categorised under the term breach. What constitutes the breach? Is this as per section 74?

77 Requirement not to hold or take records outside Australia

CSC Comment

CSC understands the intent of this section to limit storage of records in repositories overseas, however, as written; this section will evolve to become problematic with the proliferation of devices used by consumers. Consumers will access their data via mobile devices overseas and this will result in data, de facto, being accessed and potentially held or cached, outside of Australia. This may be more effectively

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	managed through the repository operator registration processes. We assume this section does not seek to limit the ability of consumers to access their data from overseas however this section could be implied as such. Note; there may be existing healthcare providers who outsource their technology to otherwise satisfactory technology companies who manage some of the operations offshore.

Appendix

Background to CSC

Our Australian headquarters are in Macquarie Park, Sydney and we have offices in all major Australian cities including several regional cities such as Wollongong and Newcastle. Our global headquarters is in Falls Church, Virginia, USA. We have over 97,000 professionals and we serve our clients in more than 90 countries.

For more than 50 years, we at CSC have developed smart, technology-enabled solutions to solve our clients' toughest challenges, demonstrating a commitment to excellence and a passion for exceeding expectations.

Over the past five decades, technology has radically changed the world we live in. We have remained at the forefront of our business because we have understood how to use technology change and innovation to deliver value to our clients.

We are often asked, "What is it that you do?" We reply, humbly and yet truthfully: we do amazing things. We help solve big challenges which are often technically complex and mission-critical.

In healthcare, we are the world's largest health systems integrator with over 9,000 healthcare professionals, executives and staff serving our healthcare clients.

Around the world and across the healthcare spectrum, we are transforming healthcare with better information for better decisions. Our solutions revolutionize the way physicians deliver services, governments manage public health, experts conduct breakthrough medical research, and institutions provide coverage.

Our Global Institute for Emerging Healthcare Practices is the applied research arm of CSC's Healthcare Group. The mission of the Institute is to track worldwide trends, conduct multi-country studies and evaluate emerging operational practices and technologies that have the potential to improve performance of health industries around the world. By merging trends and experience across geographies, we help healthcare providers learn about and capitalize on best practices no matter where they are developed.

In August 2011, CSC finalised the acquisition of iSOFT, a global healthcare software company, previously headquartered in Sydney, Australia. iSOFT supplies and supports healthcare software to most Australian healthcare provider organisations including all state governments and many private hospital providers.

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