

Senate Community Affairs Committee inquiry into the *Healthcare Identifiers Bill 2010*

Office of the Privacy Commissioner

Answer to question on notice 11 March 2010

Question: Concerning the Medicare data breaches recently reported in the Australian newspaper and elsewhere, did your office do anything with those reports of data breach? If so, what?

Federal government agencies are required to maintain records detailing information about personal information that they hold. Each year this information is collated into the Personal Information Digest and published on the Office of the Privacy Commissioner's website. Medicare provided our Office with this information and it was published on the website as part of the Personal Information Digest.

While any privacy breach is a concern, Medicare's monitoring and investigation of any breaches of personal information demonstrates that it has systems in place to identify and discourage such breaches. It also demonstrates the seriousness with which the agency takes its obligations under the Privacy Act.

Our Office has a good relationship with Medicare and has an ongoing dialogue with them regarding privacy issues. The Office has been aware of Medicare's program of monitoring access by staff to sensitive information since its inception and has been kept up to date by Medicare on its progress in reducing the incidence of any inappropriate accessing of sensitive information.

In relation to the recent newspaper reports the office spoke to Medicare on the day the reports were published. Medicare was able to assure the Office that there had been no change to the information that the Office was already aware of in relation to inappropriate access trends. On the basis of that the office was satisfied the newspaper reports were somewhat misleading and did not give rise to any need for further action on our part at this time. However, the Office encouraged Medicare to

continue working to maximise the level of privacy protection that they afford their customers.

Regarding the current Bill, there is also range of oversight mechanisms that provide a solid compliance framework against misuse of healthcare identifiers by the Service Operator. In particular, individuals will be able to complain to our Office about the handling of their healthcare identifier and our Office will also be able to carry out proactive compliance activities including own motion investigations and audits.

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Question: There are about 30 recommendations made in the three Privacy Impact Assessments (PIAs) into the Bills which were neither adopted by NEHTA or embodied in the Bill by the government. Do you reject all of those recommendations in the PIAs, or if not, which ones do you support?

A Privacy Impact Assessment (PIA) is an assessment tool that describes the personal information flows in a project, analyses the possible privacy impacts that those flows, and the project as a whole, may have on the privacy of individuals. The purpose of doing a PIA is to identify and recommend options for managing, minimising or eradicating privacy impacts while demonstrating its privacy strengths. A PIA allows agencies to identify and analyse privacy impacts early on, during a project's design phase.

The Office views a PIA as an iterative process during the life of a project from initial conception to implementation and review. The elements that make up a PIA help agencies and organisations to consider good privacy practice and public policy in their projects and are not intended to provide definitive outcomes.

It is not the Office's role to approve PIAs or their recommendations. They are a development tool and one input into the policy development process that goes on in relation to projects that involve the handling of personal information. Our Office understands that a number of recommendations from the PIAs undertaken for NEHTA were referred to the Department of Health and Ageing. After consultation with all of the stakeholders the Department has incorporated aspects of particular recommendations and made policy decisions balancing privacy and other interests in relation to the development of the legislation.

Our Office has examined the final form of the legislation and how, in particular, it provides for appropriate privacy protections for the specific and limited objective of managing the creating and use and disclosure of individual health identifiers. In that regard, the Office considers that the current Bills include appropriate privacy safeguards. In particular, the Bills clearly set out the purposes for which healthcare identifiers can be collected, used and disclosed, and limit those purposes to activities related to managing or communicating health information in a healthcare context.

Different privacy issues will arise if healthcare identifiers are to be used for expanded purposes within the national health system and if clinical information is to be associated, or held, with a healthcare identifier. In particular we would be concerned if healthcare identifiers could be used for expanded purposes without further consultation and Parliamentary scrutiny being required.