australian diagnostic imaging association

INQUIRY: PROVISIONS OF HEALTH LEGISLATION AMENDMENT (MODERNISING MY HEALTH RECORD—SHARING BY DEFAULT) BILL 2024

ADIA submission to Senate Standing Committee on Community Affairs

The Australian Diagnostic Imaging Association (ADIA) is grateful for the invitation to make a submission to this Inquiry.

ADIA is the peak industry body representing private and not-for-profit radiology practices in Australia, with member practices providing radiology services in more than 750 locations in community, private and public hospital settings. ADIA promotes the ongoing development of policy, standards and appropriate funding to ensure that all Australians have affordable access to quality radiology services.

ADIA supports the Minister's policy intent and, in principle, the provisions of this Bill.

Since the Minister wrote to ADIA in February 2023 informing us that Government policy would shift to sharing reports to the My Health Record by default, radiology practices have devoted substantial resources to prepare to share their reports to the My Health Record by default. The overwhelming majority of ADIA's members are now uploading most reports, or are advanced in their plans to do so. A minority of practices use Radiology Information System (RIS) software without the capability to share reports to the My Health Record; we understand that vendors of this software are looking to implement this capability in the first half of 2025.

The Department of Health and Aged Care has engaged with ADIA and other stakeholders, including a briefing on the contents of this Bill on 19 November 2024. The Department assured stakeholders that it will work with stakeholders on the scope of mandatory sharing by default and upload exceptions in the Rules made under the *My Health Records Act 2012* and the *Health Insurance Act 1973*; and that the requirements will not commence until the Rules come into force.

ADIA notes that the cost of compliance may be substantial, particularly for smaller providers with fewer resources. Those providers could be exposed to financial and operational strain due to the costs associated with system upgrades if there are no low-cost alternatives in the market. The Government should consider extended timelines and support for these small providers to ensure they are able to successfully make the transition.

The impact of the sharing by default regime will be contingent on the Rules being fit for purpose, in particular:

Significant lead time is required

While we expect that most providers will have the technical capability to share by default by mid-2025, we suggest a longer lead time of at least 12 months before Medicare rebates are tied to sharing reports, as well as application of civil penalty provisions.

This will enable the exceptions to be drafted and extensively tested in provider RIS systems and the My Health Record before sanctions are enforced.

The scope of exceptions to sharing by default should be clarified in the Rules

ADIA agrees with the Department's Impact Analysis that up to 10% of relevant diagnostic imaging reports may be subject to exceptions. This means that several million reports each year might not be shared to the My Health Record, so the scope of exceptions needs to be clear to radiology providers.

Healthcare recipient's preference exception

The proposed Section 10B(b) of the *My Health Records Act 2012* sets out an exception when the patient has express a preference that the report is not shared: "the individual, or their authorised or nominated representative have advised the entity, or the entity has otherwise been informed, that the individual, or their authorised or nominated representative has advised that the information must not be uploaded to the My Health Record system".

A common scenario in hospital radiology settings, which should be captured by the Rules, is where the radiology provider is unable to determine whether the patient wishes to advise that they do not consent to uploading the report. In acute outpatient and inpatient hospital settings, there is a portion of patients unable to make an informed choice at the time of the radiology examination due to being acutely unwell, confused, on medication, unconscious, in severe pain, or anaesthetised.

ADIA considers that the sharing by default policy should include the opportunity for patients to make the choice to opt out, so this scenario should be covered by an exception.

Clinical exception

The proposed Section 10B(c) sets out a clinical exception: "an individual healthcare provider reasonably believes that the information should not be shared with the My Health Record system because of a serious concern for the health, safety or wellbeing of the individual".

To implement use of clinical exceptions, most radiology providers will establish rule sets in their RIS, so that certain tests and services provided to some patient populations are not shared to the My Health Record.

ADIA understands that the Clinical Reference Group (CRG) is preparing advice on which tests and/or patient populations should be automatically excepted from the sharing requirement. To support radiology providers, we strongly recommend that the CRG's advice is incorporated into the Rules, or circulated to the industry as official guidance. This will:

1. Remove the need for each radiology provider (or radiologist) to develop their own set of clinical exceptions, thereby harmonising approaches across Australia and reducing the administrative burden.
2. Give radiology providers, patients and referrers certainty on the scope of clinical exceptions.

Technical exception

The proposed Section 10B(d) sets out a technical exception: "the information cannot be shared with the My Health Record system due to circumstances beyond the reasonable control of the entity.".

This exception is important, and should be further clarified in the Rules. The most prevalent scenario that radiology providers encounter is identified in the Explanatory Memorandum: where a provider is "unable to achieve an Individual Healthcare Identifier match for the purposes of the *Healthcare Identifiers Act 2010*" (page 13).

To minimise the administrative burden, upload exceptions need to be automated

The proposed section 78C requires healthcare providers to keep evidence that an exception which meets the requirements has been applied.

It is critical that the process of applying exemptions is mostly automated, so that radiologists do not have to make a decision on whether to share each report to the My Health Record; and if not sharing, manually determine the reason for applying an exemption. This would add significantly to radiologist workload and introduce the risk of errors.

In a small number of cases however, radiologists will manually determine whether to share the report using their own judgement derived from knowledge of the patient, for example in circumstances when they consider that the patient's safety is at risk.

The entity responsible for uploading reports needs to be clear

A very common operational model in both public and private hospitals is to engage teleradiology providers to report radiology examinations. Where Medicare-eligible (for example, the patient chooses to be treated as a private patient in a public hospital), the reporting radiologist's provider number is used for billing.

Teleradiology providers do not have the ability to upload reports, so the Rules should make clear that the hospital is responsible for uploading the report to the My Health Record.

All providers of diagnostic imaging services should be sharing by default

While radiologists provide the bulk of diagnostic imaging services funded by Medicare, other specialists also deliver substantial volumes, both requested and self-determined. For example, cardiologists, O&G specialists and vascular surgeons perform a significant portion of total ultrasound services relevant to their own specialty.

The policy arguments for mandatory sharing by default set out in the Explanatory Memorandum apply equally to services performed by radiologists and non-radiologists, so ADIA expects the Rules to clarify that all providers of diagnostic imaging services are in scope.

Separately, the introduction of sharing diagnostic imaging reports to the My Health Record by default leaves unresolved the most significant patient data access challenge: the lack of a single, efficient method to access historic images. When they do not have direct electronic access to the historic images required to manage their patients, GPs, specialists and radiologists must manually request access to images, which is time consuming and often unsuccessful. An additional barrier which needs to be addressed is privacy concerns, which impede the sharing of images amongst radiology providers to enable comparison between current and historic studies.

Government is bearing the cost of duplicate examinations and sub-optimal care when historic images are required but not available. Alongside other stakeholders, ADIA has promoted this reform vociferously to Government, the Department of Health and Aged Care and the Australian Digital Health Agency repeatedly over many years. We urge the Government to prioritise better access to digital images.

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