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08 September 2017

**Circumstances in which Australians' personal Medicare
information has been compromised and made available
for sale illegally on the 'dark web'**

Senate Finance and Public Administration Committees
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Via email: fpa.sen@aph.gov.au

Dear Committee Secretariat,

I am writing to you in response to the matters referred to the Finance and Public Administration References Committee for inquiry and report; these being concerned with the ***Circumstances in which Australians' personal Medicare information has been compromised and made available for sale illegally on the 'dark web'***.

My professional experiences are well varied, with long term tenures in both public and private organisations. During my time spent working in the financial sector, I have sponsored national banking infrastructure projects where the standard of privacy for personal data is governed by law, similar to the responsibilities held by Department of Human Services (DHS) for Medicare account holder owned data. There are many challenges faced in protecting these data sets. Fully enforced and auditable standards, legitimacy and a Code of Conduct are key factors in delivery of operationally sound programs with minimal or no data access breaches.

After reading, researching and carefully considering the Terms of Reference, there are several questions and ideas I am submitting to the Secretariat for their perusal. As per the web-published Terms of Reference, these include:

- ***any failures in security and data protection which allowed this breach to occur***

Accountability and standards of practice are key issues that need to be investigated and defined by the committee. This will streamline individual agency responsibility, as well as the role Shared Government Services play (technology generally being in this category). This is an area the Productivity Commission is sure to be able to assist with, if they have not already conducted

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review work. In the case of Standard of Practice, these include both a Code of Conduct as well as a Code of Ethics. The former defines conduct in an assortment of settings which reflect the work of each specific organisation, whereas the latter involves aspirational principles. Together they form a solid foundation for advancing, at all times, public well-being and safety, as well as individuals guaranteed human rights. When these policies are not adhered to, a suitable penalty, commensurate with the loss incurred and liability, should be imposed for breaching organisations.

- ***Australian government data protection practices as compared to international best practice***

Dual layers of law, whereby both state and federal laws in force do not serve well in the protection of privacy and are destined to fail even without any fraudulent activity. It is imperative to acknowledge that government data is constructed of individual population bio markers and other personal diarizing of life events, and it is us, the average citizen, who will be negatively affected by this event and others similar to this. Our Privacy acts make it lawful to be specifically targeted for marketing purposes/ campaigns. Due to reliability, accuracy and detail, government data, such as that held by Medicare, is invaluable. Its use being permissible under law should be scrutinized as it opens the door for many abuses of person. A corporate would find such an offer, for use of personal data in campaigns, irresistible and would seek to capitalise on this opportunity, perhaps unscrupulously since unethical behaviour has, more than once before, been expressed as a matter of concern. International Law, via its human rights applications, grants a greater number of protections for the individual against corporate and state exploitation. These protections must be bestowed on Australia's people as well.

- ***the response to this incident from government – both ministerial and departmental***

I have not seen or could access any information to indicate there has been a response from government. Perhaps a procedure is yet to be set in place that delineates how relevant departments and ministers engage the public and in what time frame. In so far as the legal requirement to do so is concerned, the data breach is notifiable as per section 75 (5) (c) of the My Health Records Act 2012 and the Privacy Amendment (Notifiable Data Breaches) Act 2017. This Senate Committee is the perfect opportunity to address this issue and rectify it by creating a communications strategy.

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- ***the practices, procedures, and systems used for protecting personal Medicare information from misuse, interference, and loss from unauthorised access, modification, or disclosure***

Civil servants and public officials are expected to use delegation and resources for public good, under government policy. They should be accountable for the decisions they make, and be prepared to justify their actions. Negligence or carelessness must be minimised through astringent self-management. The ethics of the organisation should drive the outcomes, not vice-versa.

Another matter for concern that has potential negative bearing on the protection of personal Medicare data is the overlaid state and federal legislation concerning the same subject matter. In the dualist federation ruling system of Australia, there are many instances whereby the treatment of data, its protection and the governing principles of privacy of the individual find these are in contradiction to each other. It is not clear to me if Medicare personal data is a subset generally exempted under the acts as it is required for the provision of health services or can be excluded if used for marketing purposes. If there is an opportunity to clarify, kindly please do so. It is also not clear to me in what respect the well varied qualitative data collected by Medicare is exclusively required for the provision of health services. Per DHS' Privacy Policy, as published on their website, individual information collected is:

- copies of birth certificates
- residency status
- compensation case name and number
- consumer number
- criminal convictions and criminal intelligence
- details of an award or settlement in relation to worker's compensation, third party insurance or common law settlement
- details of people with whom individual usually resides
- entitlement information, including Medicare entitlement start and end dates, concessional status and eligibility date
- Medicare Safety Net Family details including the status of each member of a Medicare Safety Net family registration (family contact, spouse, child dependant and dependant student)
- overpayment details

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- department reference/identification numbers, including Medicare number, Child Support Identified (CSRN), Centrelink Customer Reference Number (CRN), Release of Benefits (ROB) number, Individual Healthcare Identifier number and/or Individual Reference Numbers
- status of eligibility and payments received under the Veterans' Children Education Scheme (VCES) or the *Military Rehabilitation and Compensation Act 2004*, or the Education and Training Scheme (MRCAETS) from the Department of Veterans Affairs
- Tax File Numbers (where collection is authorised)
- travel records and documents, including copies of passports
- veteran's entitlement card number and other associated item numbers specific to DVA claims
- white card holder status and details of related disability
- superannuation fund name(s)
- legal documents, including information about power of attorney, court orders
- for the purpose of administering the Small Business Superannuation Clearing House Program – employee and employer personal information including contact details and the details of superannuation funds
- for the purpose of administering the Cleft Lip and Palate Scheme
- for the purpose of administering the Compensation Recovery program – contact details of insurance providers and solicitors
- salary details.

If the Committee Secretariat could kindly please ask DHS to clarify this matter that would be very useful. Can I also enquire as to why there is a need to have both state and federal laws concerning the same subject: privacy?

- ***any related matters***

The Committee references the term 'dark web' in the naming of this inquiry. This term can cause undue distress to those unfamiliar with the wide range of operating software programs and systems, in use globally, that aid in indexing and the transmission of information. A more specific name should be used in the naming of the Committee and its Terms of Reference. This is also an opportunity to educate the general populace and discontinue the undesirable media's sensationalist practices in service of promoting of public peace and good governance.

As agents of the elected Government, civil servants and departmental heads are required to serve the legitimate needs of the government, other civil servants, and the interests of all Australian citizens. They must do so in a timely manner, with care, respect and courtesy. I look forward to seeing and

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benefiting from new and improved practices that do not endanger the safety of the public, in the way a health information breach does.

I am thankful to you for the opportunity to have my voice heard and for the time you awarded considering my points of view.

Respectfully yours,

Carmen-Emilia Tudorache

Australian citizen

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