

Australian privacy laws & health information

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Australian Privacy



Australian privacy laws include:

- *Privacy Act 1988 (Commonwealth)* – Commonwealth agencies and private
- *Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth)*
 - will increase penalties to AUD\$340K for individuals and AUD\$1.7 million for some offences for body corporates from 12 March 2014
- *Health Records and Information Privacy Act 2002 (NSW)*
- *Health Records Act 2001 (Vic)*
- *Health Records (Privacy and Access) Act 1997 (ACT)*

Australian Privacy



Special rules for health records:

- Use and disclosure is permitted if there is a serious and imminent threat to the health and safety of an individual or the public
- Use and disclosure for health and medical research if certain conditions are met
- Disclosures to carers for compassionate reasons
- Restrictions on access if providing direct access would pose a serious threat to the life or health of any individual
- Use and disclosure of genetic information to lessen or prevent a serious threat to a genetic relative

Australian privacy key concepts

“personal information” means

“information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion “



Australian privacy key concepts

“health information” means:

(a) information or an opinion about:

the health or disability (at any time) of an individual; or

(i) the health or a disability (at any time) of an individual; or

(ii) an individual’s expressed wishes about the future provision of health services to him or her; or

(iii) a health service provided, or to be provided, to an individual; that is also personal information; or

(b) other personal information collected to provide, or in providing a health service; or

(c) other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body part, organs or body substances; or

(d) genetic information about an individual in a form that is, or could be, predictive of the health of the individual or a genetic relative of the individual



Australian privacy key concepts

“health service” means:

- (a) an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the person performing it:
 - (i) to access, record, maintain or improve the individual’s health; or*
 - (ii) to diagnose the individual’s illness or disability; or*
 - (iii) to treat the individual’s illness or disability or suspected illness or disability; or**
- (b) the dispensing on prescription of a drug or medical preparation by a pharmacist*

Australian privacy key concepts

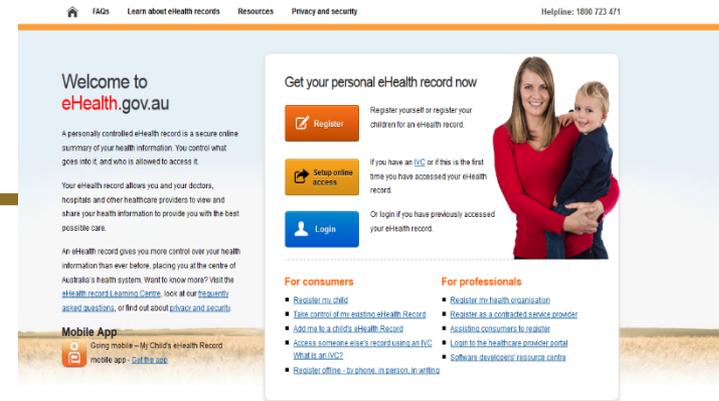
National Privacy Principles (Privacy Act)

- Collection
- Use and disclosure
- Data quality
- Data security
- Openness
- Access and correction
- Identifiers
- Anonymity
- Transborder data flows
- Sensitive information



PCEHR

- Personally controlled electronic health record
- Opt in (for both consumers and health professionals)
- Individuals are able to set their own access controls and may withdraw at any time
- clinical documents such as Shared Health Summaries, Discharge Summaries, Event Summaries, Pathology Result Reports, Imaging Reports and Specialist Letters. It may also include key health information entered by the individual such as over-the-counter medicines and allergies and access information from Medicare Australia such as an individual's organ donor status, dispensed medications funded under the PBS, information about healthcare events from an individual's Medicare claiming history and a child's immunisation history.



PCEHR – key concepts & privacy issues

- Healthcare organisations can choose to participate and will need a healthcare organisation identifier (HPI-O).
- They must agree to use appropriate authentication mechanisms to access the PCEHR and use software that has been conformance tested to be used with the PCEHR system.
- Health information within the PCEHR system is protected through a combination of legislation, governance arrangements and security and technology measures, including under the *Personally Controlled Electronic Health Records Act 2012 (Cth)*.
- Privacy issues include:
 - consent issues (opt-in/opt-out)
 - security at consumer level and health care professional level
 - project administration issues, with cloud computing
 - completeness or lack of completeness of information
 - levels of access and reliance for accuracy



Medical apps

Case study: Black Dog Institute – My Compass

- Medical app for people suffering depression
- In Australia, the medical service is provided where the *patient* is located
- Medical app provides health information
- Monitor's patients mood
- Communicates with treating doctor

Getting help

myCompass

Nearly half of all Australians aged 16 and over will suffer from some form of stress, anxiety or depression in their lifetime and the numbers are growing.

myCompass is an interactive self-help service that aims to promote resilience and wellbeing for all Australians: myCompass is a guide to good mental health – it points you in the right direction. You can track your moods, write about them and view information and tips. You can also choose to do one of the modules designed to help you manage mild to moderate stress, anxiety and depression.

Go to myCompass now

Feeling down? Let your phone pick you up

Try our myCompass program

myCompass

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Medical apps

In Australia, whether or not a mobile health and medical app is a “medical device” and “therapeutic good” (and regulated as such) depends principally upon:

- functionality; and
- the claims made in relation to the product

Additional privacy issues, particularly where health information is transmitted and/or interpreted using medical apps

- Privacy & Security – where consumer devices may not be secure
- Cloud computing – eg icloud
- Transborder data-flows with overseas servers

Duty of care issues where the mobile technology can be interrupted or less reliable

Conclusion & questions

Balancing duty of care & privacy issues with health records:

- Is it acceptable to breach an individual's privacy rights in order to save their life?
- Do health care workers have a right to know if a patient is likely to be violent or has a communicable disease?
- Do you know where your clients operate & what privacy laws apply?



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