

**FACTSHEET for Healthcare Providers**

**Electronic Health Records and Healthcare Identifiers: Legislation Discussion Paper**

The Australian Government is proposing changes to the personally controlled electronic health record (PCEHR) system and the Healthcare Identifiers (HI) Service primarily as a result of reviews undertaken on their operations and legislation.

The PCEHR review found that there was overwhelming support for continuing the path of implementing a consistent eHealth record system for all Australians, but that a change in approach was needed to correct early implementation issues. The HI Service review found that the core functionality of the HI Service is operating and working effectively, but since it is now impacting on clinical workflow, there are some risks and issues emerging that may require enhancement and adjustment of processes and the legislative framework.

The proposed changes are aimed at bringing forward the benefits including better health outcomes and a more efficient system, by increasing the number of individuals and healthcare providers participating in the PCEHR system and making the system more user-friendly. The changes will result in a system which better aligns with existing clinical workflows in healthcare practices and ensure additional information, such as current medication lists and known adverse drug interactions are easily identified.

The *Electronic Health Records and Healthcare Identifiers: Legislation Discussion Paper* is intended to promote discussion within the community about the proposed changes.

The discussion paper proposes changes to address important aspects of the PCEHR system including:

* preliminary matters;
* governance;
* participation;
* obligations of parties; and
* privacy and security.

**Preliminary matters**

It is proposed to change the name of the PCEHR to better reflect the partnership between individuals and their healthcare providers. The Department of Health undertook consultations and focus group testing and the name ‘My Health Record’ was considered to be a more suitable name.

There is also a proposal to clarify the term ‘healthcare’ in the PCEHR Act and the HI Service Act to explicitly include health-related disability, palliative care and aged services. It is also intended to allow regulations to be made to exclude activities from being ‘healthcare’ because they are performed for reasons other than care or treatment (e.g. the purpose of life, health or other insurance).

The HI Act currently defines ‘healthcare provider’ to include both healthcare provider organisations and individual healthcare providers. As a result both information and identifiers of organisations are given the same level of privacy protection as individuals even though they are not personal information. The HI review recommended that healthcare provider organisations be distinguished from individual healthcare providers. It is proposed that all provisions make clear whether they apply to healthcare provider organisations and/or individual healthcare providers, and that information about healthcare provider organisations, including their healthcare identifier, no longer be treated as personal information.

**Governance**

The PCEHR review identified concerns with the current eHealth governance arrangements. In response to these it is proposed to establish the Commonwealth statutory authority, the Australian Commission for Electronic Health (ACeH).

The establishment of ACeH will strengthen the governance and accountability arrangements across all national eHealth development and implementation and improve key stakeholder involvement. This will involve the transition of the work and functions of the National E-Health Transition Authority (NEHTA), a company owned by the Commonwealth and states and territories, as well as the PCEHR governance and operations of the Department of Health to ACeH.

ACeH would be a separate legal entity to the Commonwealth and would report to health ministers. It will be governed by a skills-based board with an independent chair and supported by a number of advisory committees.

ACeH would assume responsibility for the governance and operation of all national eHealth development and operations in Australia.

To achieve broader eHealth end-user representation in the governance of eHealth, it is proposed the ACeH Board and its advisory committees would include individuals with expertise such as:

1. healthcare provision;
2. consumer of health services;
3. IT systems and innovation including health informatics;
4. governance;
5. clinical safety; and
6. privacy and security.

**Participation**

The primary change being considered is to the participation arrangements for individuals. Currently the PCEHR system operates on an opt-in basis where individuals who want a PCEHR register for one. From 2016, trials of different participation arrangements for individuals will occur in order to inform Government about future approaches to increasing individual participation in the system. The trials will include an opt-out approach where individuals in certain trial regions will be automatically registered for a PCEHR unless they advise that they do not want one.

While the trials are being undertaken the system will continue to operate on an opt-in basis across the rest of Australia.

Healthcare provider organisations, contracted service providers, repository operators and portal operators would continue to participate on an opt-in basis.

**Obligations of parties**

To help reduce red-tape and rationalise core obligations for participants in the PCEHR system, it is proposed to remove the need for healthcare provider organisations, contracted service providers, repository operators and portal operators to enter into participation agreements. Where necessary, requirements such as intellectual property provisions in participation agreements would be transferred into the legislation.

**Privacy and security**

The privacy framework of the PCEHR system and the HI Service is prescriptive in specifying the entities who may collect, use or disclose information and for what purposes. It is proposed to change from this prescriptive approach, which specifies how an entity carries out an activity, to a principles-based approach, which would list the information that is protected, the entities who may collect, use and disclose the purpose for which information can be collected, used and disclosed. This will not relax the privacy framework or change the nature of the authorisations but presents it in a simpler manner and assists the HI Service Operator and the PCEHR System Operator to meet their obligations.

The discussion paper also proposes to clarify through legislation that healthcare providers may include relevant third party personal information in a document to be uploaded to the PCEHR system, and that the System Operator is authorised to collect the information for inclusion in the individual’s PCEHR.

The HI review found that the opt-in basis of the Healthcare Provider Directory (HPD), which lists the details of individual healthcare providers and healthcare provider organisations, is a barrier to effective communications and is adversely affecting other eHealth services that depend on the HPD, such as secure messaging. Given that information about a healthcare provider organisation is not personal information, it is proposed to remove the need for organisations to provide consent before they are listed in the HPD. Any organisation that has an HPI-O would automatically be listed in the HPD.

The HI Act and PCEHR Act, together with the Privacy Act, currently provide penalties for misuse of information and healthcare identifiers. The discussion paper highlights that consideration is being given to increasing the range of enforcement and penalty options available for breach of the PCEHR Act. This includes consideration of introducing criminal penalties for more serious misuses of PCEHR information while retaining the ability to impose civil penalties. This would establish a more graduated framework and enable better response to inappropriate behaviour in a way that is proportional to the severity of the breach.

**Feedback**

Readers are invited to make a submission on the discussion paper. This can be in the form of contributing ideas or responding to the issues and questions raised in the paper.

Submissions must be in writing and identify the names of the parties and/or organisations they represent, as well as respective contact details.

The period for making submissions closes 5:00 p.m. (Australian Eastern Standard Time) Wednesday 24 June 2015.

Submissions can be made by any of the following ways:

1. mail it to PCEHR/HI Discussion Paper Feedback

Department of Health

MDP 1003

GPO Box 9848

CANBERRA ACT 2601

1. email it to ehealth.legislation@health.gov.au
2. upload it at [the eHealth website](https://consultations.health.gov.au/ehealth/ehr-and-hi-legislation-discussion-paper-1)
3. fax it to (02) 6289 5673