



New South Wales  
Council for Civil Liberties

**NSWCCL SUBMISSION**

**DEPARTMENT OF HEALTH**

**THE HEALTH LEGISLATION  
AMENDMENT (DATA  
MATCHING) BILL 2019 AND  
ASSOCIATED REGULATIONS**

**11 October 2019**

### **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts; attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

### **Contact NSW Council for Civil Liberties**

<http://www.nswccl.org.au>

[office@nswccl.org.au](mailto:office@nswccl.org.au)

Street address: Level 5, 175 Liverpool Street, Sydney, NSW 2000, Australia

Correspondence to: PO Box A1386, Sydney South, NSW 1235

Phone: 02 8090 2952

Fax: 02 8580 4633

## **THE HEALTH LEGISLATION AMENDMENT (DATA MATCHING) BILL 2019 AND ASSOCIATED REGULATIONS**

### **Introduction**

The New South Wales Council of Civil Liberties (NSWCCL) welcomes the opportunity to make submissions to the Department of Health on the *Health Legislation Amendment (Data-matching) Bill 2019 (Bill)* and the *Health Legislation Amendment (Permitted Information Disclosure) Regulations 2019*. NSWCCL supports the integrity of the Medicare health payments system provided that appropriate safeguards are in place to protect sensitive information and the privacy of Australians is respected.

The main premise of the Bill is that, for the purposes of identifying fraud in the Medicare program, information will be provided by Medicare to other Commonwealth agencies for data-matching. S132B(2) of the Bill states that:

*“the Chief Executive Medicare may ...authorise a Commonwealth entity to match information under subsection (1) on the Chief Executive Medicare’s behalf for a permitted purpose.”*

### **Recommendation 1**

**NSWCCL objects to the sharing of sensitive health information with other Commonwealth entities and opposes the Bill in its current form.**

### **Data sharing with other agencies**

The Bill does not restrict “Commonwealth entity” to those entities mentioned in the Consultation Guide.<sup>1</sup> According to that Guide, Regulations will enable disclosure and sharing of certain information with prescribed government entities, including the Department of Home Affairs. The reference to “Commonwealth entity” is too broad and permits a wide discretion to increase the ambit of government departments involved in data-matching. It should be noted that the Department of Home Affairs includes intelligence services that are exempt from the Privacy Act 1988 and are not required to notify of data breaches.<sup>2</sup>

Any data sharing of health information should require data-matching protocols to be set up prior to matching activities commencing. Protocols should ensure that information and matching results are not further shared and that breaches are notified. As suggested in the Privacy Impact Statement (PIA),<sup>3</sup> a security compliance framework and data destruction

---

<sup>1</sup> Department of Health, Australian Government “Consultation Guide to the Data-matching Bill” (2019) < [https://consultations.health.gov.au/provider-benefits-integrity/draft-health-legislation-amendment-data-matching-b/supporting\\_documents/Consultation%20Guide%20for%20Public%20Consultation.pdf](https://consultations.health.gov.au/provider-benefits-integrity/draft-health-legislation-amendment-data-matching-b/supporting_documents/Consultation%20Guide%20for%20Public%20Consultation.pdf)>

<sup>2</sup> S7 Privacy Act 1988

<sup>3</sup> King & Wood, Mallesons, Galexia, (September 2019) Privacy Impact Statement for the Data Matching Proposal

< [https://consultations.health.gov.au/provider-benefits-integrity/draft-health-legislation-amendment-data-matching-b/supporting\\_documents/Privacy%20Impact%20Assessment%20%20Executive%20Summary.PDF](https://consultations.health.gov.au/provider-benefits-integrity/draft-health-legislation-amendment-data-matching-b/supporting_documents/Privacy%20Impact%20Assessment%20%20Executive%20Summary.PDF)>

requirements should be addressed. It is likely that more information will be collected than necessary. Not enough is done to protect that data. Furthermore, as the matching process becomes more complex “it may produce inaccurate results or results that are misinterpreted”.<sup>4</sup>

Centrelink and Medicare already carry out data-matching for the purposes of tracing welfare fraud. This arrangement was obscured from the public until the Department of Human Services 2019 Matching of Centrelink and Medicare data protocol<sup>5</sup> (*DHS Protocol*) was released by Centrelink in July 2019.<sup>6</sup> The lack of transparency, in that arrangement, has raised concern around the ability of the Department of Human Resources, to manage the provision of personal medical information to third parties.

The DHS Protocol requires that personal information, not leading to a data-match, is destroyed as soon as practicable and no later than 90 days after data-matching occurs. However, the Bill itself should ensure that there are real attempts to minimise data used for matching and that personal information is destroyed in a timely manner (not 90 days).

## **Recommendation 2**

**NSWCCL recommends that, should the Bill be enacted, s132B(2) be amended to:**

**(a) confine Commonwealth entities to those listed in the Consultation Guide, with the exception of the Department of Home Affairs;**

**(b) ensure that any relevant Commonwealth entity, enters into a prescriptive data protocol with Medicare, prior to any data-matching activities commencing;**

**(c) ensure that any data-matching information and results conform to data minimisation and destruction best practices, including minimal data retention periods;**

## **Chief Executives Discretion**

The Bill requires that Commonwealth entities comply with the terms and conditions as determined by the Chief Executive Medicare (s.132B(3)). The drafting of this section gives unconstrained discretion to the Chief Executive Medicare to regulate the sharing of personal information. Instead, a prescriptive approach should be taken, with the main requirements set out in the legislation. This would ensure adherence to appropriate protocols and transparency, in that, important administrative processes would not be made outside the primary legislative framework, or without a high level of scrutiny.

---

<sup>4</sup> Dr Harry Nespolon (RACGP President) from Hendrie, D. (30 September 2019) Proposed data-matching laws could lead to excessive monitoring of GPs:RACGP, *NewsGP*

<sup>5</sup> Department of Human Services, Australian Government (July 2019) “Program Protocol, Department of Human Services, New Compliance Data Sources, Matching of Centrelink and Medicare Data” < <https://www.humanservices.gov.au/sites/default/files/2019-matching-of-centrelink-and-medicare-data-protocol.pdf>>

<sup>6</sup> Crozier, R. (July 29, 2019) Centrelink matches Medicare data in ‘identity fraud’ crackdown *ITNews*

### **Recommendation 3**

**NSWCCL opposes the use, by the Chief Executive Medicare, of discretionary terms and conditions for data matching and recommends that any such terms and conditions be described in detail in the primary legislation.**

#### **Purpose Limitation**

Matching can occur only for certain “permitted purposes” set out in s132A of the Bill. Whilst most of the purposes are confined to a Medicare program, subsection (d) includes the purpose of “detecting or investigating whether a person may have engaged in inappropriate practice.” This purpose is not limited to Medicare programs or health care providers and has the potential for wider applications, other than ensuring the integrity of the system.<sup>7</sup>

### **Recommendation 4**

**NSWCCL recommends that permitted purposes for data-matching be narrowly and consistently defined and limited to legitimate Medicare programs.**

### **Recommendation 5**

**NSWCCL recommends that all reasonable steps be taken to notify individuals that their personal information will be collected and used for different or novel purposes.**

### **Privacy Impact Statement**

The PIA has made findings and suggested recommendations to improve openness and transparency, minimise data collection and expanded data destruction requirements. The Department has committed to adopting most of these recommendations. The PIA recommended in particular that:

*“the Department of Health should formally establish core criteria for privacy governance arrangements including:*

- A. Register of agreements*
- B. Data minimisation*
- C. Openness*
- D. Notice*
- E. Data quality assessment*
- F. Minimum security requirements and independent security risk assessments*
- G. Compliance audits*
- H. Managing data destruction*

*Once established, the Department should review, strengthen and enhance the privacy governance arrangements on a regular basis.”*

### **Recommendation 5**

---

<sup>7</sup> Dr Harry Nespolon (RACGP President) from Hendrie, D. (30 September 2019) Proposed data-matching laws could lead to excessive monitoring of GPs:RACGP, *NewsGP*

**NSWCCL recommends that the Department of Health adopt the PIA findings in full.**

This submission was prepared by Michelle Falstein, Convenor of NSWCCL Privacy Action Group, on behalf of the New South Wales Council for Civil Liberties. We hope it is of assistance to the Department of Health.

Yours sincerely,

A handwritten signature in cursive script that reads "Therese Cochrane".

**Therese Cochrane  
Secretary  
NSW Council for Civil Liberties  
Mob 0402 013 303**

**Contacts in relation to this submission: Co-Convenors of NSWCCL Privacy Action Group, Michelle Falstein email [robmimi1@gmail.com](mailto:robmimi1@gmail.com) mobile 0412980540 and Stephen Blanks email [Stephen.blanks@nswccl.org.au](mailto:Stephen.blanks@nswccl.org.au), mobile 0414 448 654.**