



**Australian  
Privacy  
Foundation**

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July 15 2009

To: NRAIP

**Submission: Exposure draft of the Health Practitioner Regulation National Law 2009**

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. I am writing in my capacity as Chair of the Health Sub Committee of the APF.

We are pleased to note that the exposure draft of the Health Practitioner Regulation National Law 2009 empowers patients with access to key information designed to establish the bonafides of the health professionals they consult.

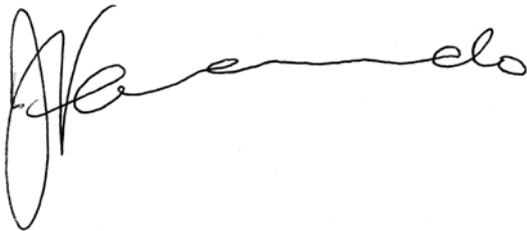
At the same time, key APF issues do not seem to have been considered. These include the increased risk of medical identity theft, the publication of information that is irrelevant to practice concerns, the risk of public dependence on the register where updates are not contemporaneous, and the duplication of existing registers (<http://www.privacy.org.au/Papers/NRAS-0902.pdf>). In short, as an all-volunteer organisation we are concerned to note that comments made in our earlier submission to the National Registration enquiry of February 2009 have been overlooked without explanation, while the exposure draft generates further questions.

The APF is concerned the register will harm the privacy interests that are protected by National Privacy Principle 1 (NPP1), "1.1 An organisation must not collect personal information unless the information is necessary for one or more of its functions or activities." For instance, the publication of each practitioner's home postcode and suburb in the register means it will be a simple matter for disgruntled patients or vigilante groups to employ modern information tools to locate an individual or their family. Even if there may be a case for holding additional information in some instances, it should be in a different 'layer' with additional access controls centred on a need to know basis. Yet alarmingly, the Board is empowered "to do anything necessary or convenient ... in the performance of its functions" (Section 22c). These functions are clearly high level but are expressed in vague motherhood statements that manage to overlook the concerns we expressed earlier this year. The APF would feel more comfortable if these were detailed and bounded by the legislation.

Documentation supporting the exposure draft suggests the NPPs (Guide to the Exposure Draft, p.5 of 5) will ensure best practice privacy protections for registrants and members of the public. However Australian privacy regimes pertaining to health service providers are inconsistent precisely because some legislators believe the NPPs do not provide required additional detail at the service provider level. Consequently many state governments, such as the ACT, NSW and Victoria, have moved to augment federal legislation with their own in an attempt to clarify the federal provisions. For example, the broad aim of achieving additional detail and consistency in legislation fostered the development of the Victorian Health Records Act 2001 (VHRA). The VHRA 2001 was devised to bolster and complement the Privacy Act by regulating the way in which health information is controlled across the private and public sectors (Privacy Management Pty. Ltd. (2002\_). Is it only naughty if you get caught? Complying with new privacy laws. South Yarra, Australian ComputerSociety, Victoria: p.6.). Successors to the Commonwealth privacy principles proposed by the ALRC have yet to be agreed so we have not commented on it/them. Thus, there is no evidence to suggest best practice privacy protections feature in an Australian health context. The APF is worried that if the public and practitioners do not believe the NPPs represent "best practice privacy protections" then they may not have confidence in the new registration system.

Finally, the APF remains anxious that the public will be encouraged to rely on a potentially out of date register, either in hard copy or on the web, thus leaving them vulnerable to the risk of consulting a de-registered clinician or one where conditions of practice have been imposed.

We are happy to reply to questions or clarify any point made herein.

A handwritten signature in black ink, appearing to read 'Juanita Fernando', written in a cursive style.

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