

23 November 2011

Dr Roger Clarke
Chair, Australian Privacy Foundation

Dear Dr Clarke,

Re: Communication between NEHTA and the APF

I refer to your letter to me dated 11 November 2011, in which you raise concerns about NEHTA's engagement with the APF and recent correspondence between you and NEHTA's Head of Policy and Information Services Ms Bettina McMahon.

In your letter, you refer to my letter to you last year that affirmed NEHTA's commitment to the ongoing consideration of privacy throughout the system design process, and our approach to consultation with stakeholders. Your letter claims that NEHTA has not done this.

I strongly reject these claims, which run counter to the evidence of NEHTA's approach in developing the PCEHR over the past 12 months.

In respect of our commitment to privacy, the facts speak for themselves. Key consumer controls in the PCEHR systems design include opt-in registration, access by a consumer to any item in their PCEHR, comprehensive access controls and audit logs and options for allowing (or denying) access to different healthcare providers. These features provide consumers with greater visibility and control over their records than ever before. The fact that some medical groups have claimed that consumers will have too much control demonstrates the strength of privacy and consumer controls in the PCEHR.

In respect of NEHTA's consultative approach, again, the facts speak for themselves. NEHTA has directly consulted with almost 300 organisations on the design of the PCEHR. The combination of reference group forums and focussed workshops with specific stakeholders such as consumers, vendors, youth, and Indigenous groups has formed the basis of the system design. Rather than "side-shows to the main game", this engagement overhauled early versions of the Concept of Operations to produce the current version. It also greatly influenced related activities such as the drafting of legislation by the Department of Health and Ageing.

In your letter, you also express concern about recent communication between NEHTA and the APF. I too am concerned that engagement between our organisations, which had improved significantly over the past year, has recently deteriorated.

I have read the information you provided on the exchange between you and Ms McMahon. I also requested Ms McMahon send me the full correspondence, to provide the full context to the excerpts you provided.

I would like to draw your attention to several points made by Ms McMahon, which I fear have been lost in the dialogue.

NEHTA greatly values the contribution of the APF in progressing eHealth in Australia. Our experience over the past year, in particular, has involved a productive interchange of ideas that has led to strong consumer controls in the system design. It is NEHTA's strong desire to continue this interchange, especially in the lead up to July 2012.

As I noted in my letter to you on 14 November, it is important that the communication between our organisations is conducted in a spirit of cooperation and respect.

After reading the email exchange between you and Ms McMahon, it is apparent that while NEHTA's view is that the initial email to [REDACTED] includes inappropriate communication, you have described this as expressing your views "firmly" and using "direct speech". You state that that you feel you "have to use direct speech" and will continue to submit comments expressed "more firmly". You have reaffirmed this position in your letter to me, where you advise that you will continue to send "firm and direct" communication as you see fit.

This is not a situation that NEHTA can accept and is clearly not one based in a spirit of co-operation and respect. As you have clearly stated that you may continue to send emails to NEHTA staff similar to the offending email, it is reasonable for NEHTA to implement steps to fulfil its duty of care to staff. Ms McMahon's request that you send email correspondence to a central email address is a reasonable step, and does not prevent your submissions being sent to relevant people within NEHTA. I also note that your claim that Ms McMahon's interpretation of your emails is a "misrepresentation" is unsubstantiated, as a reasonable person would draw this conclusion from your correspondence.

It is a requirement that managers within NEHTA ensure that staff are not subjected to inappropriate communication. Having read the full correspondence, I see the steps in place as regrettable, but reasonable. Of course, it is our preference to return to more direct communication, and would welcome an assurance from you that future communication will be conducted in a spirit of cooperation and respect.

I trust this letter confirms NEHTA's acknowledgement of the important role the APF has played in progressing eHealth to date, and our desire to continue to work with your organisation in a meaningful and respectful way.

Yours sincerely



Peter Fleming
Chief Executive Officer