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9 October 2010

Mr Peter Batch
The Privacy Team
NEHTA
Level 25, 56 Pitt St
Sydney NSW 2000

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Dear Mr Batch,

Re: The National Security and Access Framework.

Thank you for inviting input from the Australian Privacy Foundation (APF) into the early drafting of the National Security and Access Framework (SAF) project.

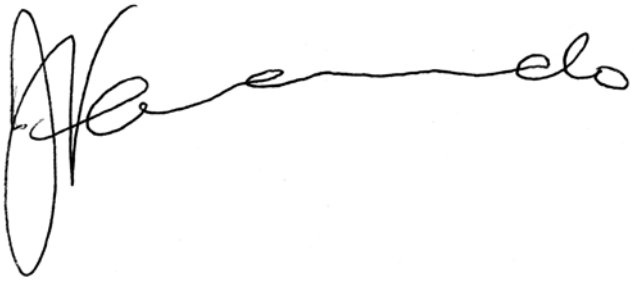
The APF requests clarification of the following matters:

1. The title of the project requires elucidation; it is ambiguous at present. If this is the electronic health record (EHR) privacy framework, the SAF should be renamed to include privacy; i.e. “Privacy, Security and Access Framework”.
2. Is the SAF an overarching electronic EHR privacy framework?
3. If the SAF is not an overarching electronic EHR privacy framework, then privacy issues need to be analysed in the first instance. The SAF will implement the principles implicit or explicit in the privacy model. This consultation should then be deferred until the privacy issues are resolved or changed to include (and start with) privacy issues.
4. Failure to explicitly deal with privacy in the first instance - that is dealing with the SAF implementation level issues of security and access in the absence of any privacy framework – will be a process failure that repeats past failures to grapple with the hard but necessary problems first.

The APF Policy Statement on 'eHealth Data and Health Identifiers' attached to this communication (http://www.privacy.org.au/Papers/eHealth-Policy-090828.pdf) outlines our requirements for the secure access to clinical information.

I look forward to receiving a draft copy of the SAF for review in due course.

Yours sincerely



Chair, Health Sub Committee
Australian Privacy Foundation

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Australian Privacy Foundation

Policy Position
eHealth Data and Health Identifiers

28 August 2009

http://www.privacy.org.au/Papers/eHealth-Policy-090828.pdf

This document builds on the APF's submissions over the last two decades, and particularly during the last three years, in order to consolidate APF's policy position. It presents a concise statement of general Principles and specific Criteria to support the assessment of proposals for eHealth initiatives and eHealth regulatory measures.

The first page contains headlines only, and the subsequent pages provide further explanation.

General Principles

1 **Health Care Must Be Universally Accessible**

2 **The Health Care Sector is by its Nature Dispersed**

3 **Personal Health Care Data is Inherently Sensitive**

4 **The Primary Purpose of Personal Health Care Data is Personal Health Care**

5 **Other Purposes of Personal Health Care Data are Secondary, or Tertiary**

6 **Patients Must Be Recognised as the Key Stakeholder**

7 **Health Information Systems are Vital to Personal Health Care**

8 **Health Carers Make Limited and Focussed Use of Patient Data**

9 **Data Consolidation is Inherently Risky**

10 **Privacy Impact Assessment is Essential**

Specific Criteria

1 **The Health Care Sector Must Remain a Federation of Islands**

2 **Consolidated Health Records Must Be the Exception not the Norm**

3 **Identifiers Must Be at the Level of Individual Applications**

4 **Pseudo-Identifiers Must Be Widely-Used**

5 **Anonymity and Persistent Pseudonyms Must Be Actively Supported**

6 **All Accesses Must Be Subject to Controls**

7 **All Accesses of a Sensitive Nature Must Be Monitored**

8 **Personal Data Access Must Be Based Primarily on Personal Consent**

9 **Additional Authorised Accesses Must Be Subject to Pre- and Post-Controls**

10 **Emergency Access Must Be Subject to Post-Controls**

11 **Personal Data Quality and Security Must Be Assured**

12 **Personal Access and Correction Rights Must Be Clear, and Facilitated**

General Principles

1 **Health Care Must Be Universally Accessible**. Access to health care must not be conditional on access to health care data or on demonstration of the person's status (such as residency rights or level of insurance)

2 **The Health Care Sector is by its Nature Dispersed**. Health care is provided by thousands of organisations and individual professionals, each with a considerable degree of self-responsibility. The sector is far too large, and far too complex to be centrally planned. Instead it must be managed as a large, complex and highly de-coupled system of autonomous entities, each of which is subject to regulation by law, Standards and Codes

3 **Personal Health Care Data is Inherently Sensitive**. Many individuals have serious concerns about the handling of at least some categories of health care data about themselves. Their willingness to divulge important information is important to their health care, but is dependent on them having confidence about how that information will be managed

4 **The Primary Purpose of Personal Health Care Data is Personal Health Care**. The protection of the individual person is the primary function of personal health care data and systems that process it. The key users of that data are health care professionals

5 **Other Purposes of Personal Health Care Data are Secondary, or Tertiary**. Public health is important, but is a secondary purpose. Administration, insurance, accounting, research, etc. are neither primary nor secondary but tertiary uses. The tail of health and public health administration and research must not be permitted to wag the dog of personal health care

6 **Patients Must Be Recognised as the Key Stakeholder**. Government agencies and corporations must directly involve people, at least through representatives of and advocates for their interests, in the analysis, design, construction, integration, testing and implementation of health information systems

7 **Health Information Systems are Vital to Personal Health Care**. People want systems to deliver quality of service, but also to be trustworthy, transparent and respectful of their needs and values. In the absence of trust, the quality of data collection will be greatly reduced

8 **Health Carers Make Limited and Focussed Use of Patient Data**. Health care professionals do not need or want access to their patients' complete health records, but rather access to small quantities of relevant information of assured quality. This requires effective but controlled inter-operability among health care data systems, and effective but controlled communications among health care professionals. Calls for a general-purpose national health record are for the benefit of tertiary users (administration, insurance, accounting, research, etc.), not for the benefit of personal health care

9 **Data Consolidation is Inherently Risky**. Physically and even virtually centralised records create serious and unjustified risks. Services can be undermined by single points of failure; health care data isn't universally understandable but depends on context; consolidation produces a 'honey pot' that attracts break-ins and unauthorised secondary uses and creates the additional risk of identity theft; and diseconomies of scale and scope exceed economies

10 **Privacy Impact Assessment is Essential**. Proposals relating to personal health care data and health care information systems must be subject to PIA processes, including prior publication of information, consultation with affected people and their representatives and advocates, and publication of the outcomes of the study. Designs for systems and associated business processes must be based on the results of the PIA, and implementations must be rejected if they fail to embody the required features

Specific Criteria

1 **The Health Care Sector Must Remain a Federation of Islands**. The health care sector must be conceived as islands that inter-communicate, not as elements of a whole. Health care information systems must be conceived as independent services and supporting databases that inter-operate, not as part of a virtually centralised database managed by the State. Coordinating bodies must negotiate and facilitate inter-operability, not impose central schemes

2 **Consolidated Health Records Must Be the Exception not the Norm**. A small proportion of the population may benefit from linkage of data from multiple sources, primarily patients with chronic and/or complex conditions. Those patients must be the subject of consent-based, specific-purpose data consolidation. This activity must not apply to people generally

3 **Identifiers Must Be at the Level of Individual Applications**. Each of the large number of dispersed health care information systems must use its own identifier for people. A system-wide or national identifier might serve the needs of tertiary users of personal data, but does little for the primary purpose of personal care, and it creates unnecessary risks for individuals

4 **Pseudo-Identifiers Must Be Widely-Used**. Particularly when personal data moves between organisations, the maximum practicable use must be made of one-time-use and other forms of pseudo-identifiers, in order to keep people's identities separate from the data itself, and minimise the risk of personal health care data escaping and being abused

5 **Anonymity and Persistent Pseudonyms Must Be Actively Supported**. Anonymity is vital in particular circumstances such as ensuring that people are treated for sexually transmitted diseases. Persistent pseudonyms are vital in particular circumstances such as for protected witnesses, victims of domestic violence, and celebrities and notorieties who have reason to be concerned about such threats as stalking, kidnapping and extortion

6 **All Accesses Must Be Subject to Controls**. Access to personal data must be subject to controls commensurate with the circumstances, including the sensitivity of the data and the potential for access and abuse of access. This requires identification of the category of person and in many cases of the individual who accesses the data, and authentication of the category or individual identity. However, the barriers to access and the strength of authentication must balance the important value of personal privacy and effective and efficient access by health care professionals

7 **All Accesses of a Sensitive Nature Must Be Monitored**. Non-routine accesses and accesses to particularly sensitive data must be detected, recorded, and subject to analysis, reporting, sanctions and enforcement

8 **Personal Data Access Must Be Based Primarily on Personal Consent**. The primary basis for access to personal data is approval by the person concerned. Consent may be express or implied, and may be written, verbal or non-verbal, depending on the circumstances. All accesses based on consent must be detected, recorded and subject to analysis, reporting, investigation, sanctions and enforcement

9 **Additional Authorised Accesses Must Be Subject to Pre- and Post-Controls**. All accesses that are not based on personal consent must be the subject of explicit legal authority that has been subject to prior public justification. All such accesses must be detected, recorded and subject to analysis, reporting. investigation, sanctions and enforcement

10 **Emergency Access Must Be Subject to Post-Controls**. Health care professionals (but only health care professionals) must have the practical capacity to access data in apparent violation of the personal consent principle, but must only do so where they reasonably believe that it is necessary to prevent harm to some person. All such accesses must be detected, recorded, reported and subject to analysis, investigation, sanctions and enforcement

11 **Personal Data Quality and Security Must Be Assured**. Data must be of a quality appropriate to its uses, and retained only as long as it remains relevant. Personal data in storage, in transit, and in use, must be subject to security controls commensurate with its sensitivity, and with the circumstances

12 **Personal Access and Correction Rights Must Be Clear, and Facilitated**. Each person must have access to data about themselves, and access must be facilitated by any organisation that holds data that can be associated with them. Where appropriate, the access may be intermediated, in order to avoid misunderstandings and misinterpretation of the data. Where data is not of appropriate quality, the person must be able to achieve corrections to it