



information  
and privacy  
commission  
new south wales

Your reference: D17/35139  
Our reference: IPC17/A000779

Mr Bjarne Nordin  
Committee Manager  
Public Accounts Committee  
Parliament of NSW  
Macquarie Street  
Sydney NSW 2001

By email: [pac@parliament.nsw.gov.au](mailto:pac@parliament.nsw.gov.au)

Dear Mr Nordin

### **Inquiry into the Management of Health Care Delivery in NSW**

I refer to your letter of 2 November 2017 in relation to the 30 October 2017 hearing of the Public Accounts Committee Inquiry into the Management of Health Care Delivery in NSW.

Please find attached my response to the questions taken on notice during the hearing and the supplementary questions forwarded by your letter. I trust this information will be of use to the PAC in its deliberations.

Please do not hesitate to contact me if you require any further information. Alternatively, your officers may contact David Marcus, Manager, Performance Reporting and Projects on (02) 8071 7041, or by email at [david.marcus@ipc.nsw.gov.au](mailto:david.marcus@ipc.nsw.gov.au)

Yours sincerely

17. 11. 2017

Samantha Gavel  
**Privacy Commissioner**



**Public Accounts Committee  
Inquiry into the Management of Health Care Delivery in NSW  
Questions on Notice**

**1. In point 23 of your submission you say that you would encourage NSW Health to adopt privacy as a key objective in the performance framework, particularly around the delivery of eHealth. Have you had any feedback on this suggestion? Do you know what NSW Health is doing in relation to this issue?**

I will be engaging with the Secretary and senior officials of the NSW Ministry of Health, as well as the Health Care Complaints Commission and the Health Professions Councils Authority to discuss priorities for privacy protection and promotion, including any options for including privacy in the performance framework.

The Information and Privacy Commission (IPC) tracks and analyses trends in privacy complaints received by the IPC and the oversight of internal reviews by agencies. This analysis will assist in identifying areas for improved performance for agencies across the health sector.

**2. In your submission you talk about the concerns that Aboriginal people have about the level of privacy or lack thereof. You know that privacy concerns are greater for Aboriginal people, as well as for young people. Do you know what Health is doing in relation to the concerns of Aboriginal people?**

I am aware of the NSW Aboriginal Health Plan with its strong focus on health equity and respect. I look forward to engaging with the NSW Ministry of Health on its implementation and ways in which it can enhance privacy in culturally sensitive ways.

**3. If privacy protection were included as a performance marker in the New South Wales health framework, how would this be benchmarked and measured?**

The development of performance benchmarks and measures would be a matter for the NSW Ministry of Health. I would however be happy to consult with the NSW Ministry of Health on this issue should they require advice.

I understand that the NSW Ministry of Health does work with other jurisdictions in relation to performance benchmarking and frameworks. I would encourage this to ensure that any privacy related benchmarks that may be developed are consistent with that of other jurisdictions and that it is possible to compare performance across jurisdictions.

### **Supplementary Questions**

#### ***Existing mechanisms for protecting privacy***

**1. What would you say is the biggest privacy concern that the health system currently does not respond well to?**

I would suggest that patient control of their personal and health data is an area that requires more focus. As noted in my opening statement, one of my key priorities for 2018 will be to develop resources that provide guidance to the public, general practitioners and health care

providers on patient access to medical records. This will help to improve understanding and compliance in what can be a complex area.

**2. Are you aware of the current level of staff training provided within NSW Health addressing how health professionals respond to privacy concerns?**

I understand that all NSW Health staff are required to undertake mandatory on-line training, including modules on privacy obligations, within one month of commencing employment and that there are opportunities for face-to-face training. I also understand each Local Health District across NSW and health organisations have their own designated Privacy Contact Officers who can advise staff.

The NSW Health *Privacy Manual for Health Information* is also available on the NSW Health website and provides staff with more detailed information on privacy obligations.

**3. What is the current responsibility of health professionals to inform patients of their privacy rights?**

- **Do you believe there is a need to ensure patients are made fully aware of their rights to privacy in the health sector?**

Health Privacy Principle (HPP) 4 under the *Health Records and Information Privacy Act 2002* requires that an organisation collecting health information from an individual take reasonable steps (at the time of or before collections or, if not practicable, as soon as possible after collection) to ensure the individual is aware of:

- the identity of the organisation and how to contact it
- the fact the individual is able to request access to the information
- the purpose for which the information is collected
- the person or types of persons to whom the agency usually discloses that kind of information
- any law that requires the particular information to be collected, and
- the main consequences, if any, for the individual if all or part of the information is not provided.

Also of particular relevance in this context are HPPs 7 and 8 which provide the individual with the right to access their health information and to request an amendment to that record to ensure that the information is accurate and up-to-date.

I understand that NSW Health provides patients with information on their privacy rights via leaflets. The NSW Health *Privacy Manual for Health Information* contains a pro-forma information leaflet for patients.

***Public participation and perception***

**4. In your view, public perception of how seriously the health system takes privacy concerns is a significant factor in how consumers view and interact with service delivery.**

- **How would you characterise the current perception of privacy in the NSW Health system?**

I am unaware of any community attitudes surveys that focus specifically on consumer perceptions of privacy in the NSW health system, however recent surveys conducted by the NSW Information and Privacy Commission and the Office of the Australian Information Commissioner suggest that the public has a high level of trust in health organisations.

The most recent OAIC survey from 2017 found that 79% of respondents had a high level of trust in health service providers. Earlier OAIC surveys indicated that reluctance to provide medical information has declined (from 25% in 2001 to 7% in 2013). Related to this, the proportion of respondents prepared to have information shared is rising, with 66% prepared to accept their doctor discussing their health information with other health professionals versus (59%) in 2007.

A 2017 NSW based survey commissioned by the former NSW Privacy Commissioner found that 36% of the 500 people surveyed were concerned about the provision of government health records to other people.

In relation to the disclosure of health information, between 58% and 32% of respondents would agree to their health information being disclosed (where the information was identifiable) for particular purposes:

- 58% for research purposes,
- 56% to help in planning and delivering government services,
- 55% to help government agencies develop new policies,
- 54% to help monitor the quality of government services,
- 34% to monitor their use of particular products or services and
- 32% as part of consulting with the public.

#### **5. Your submission recommends increasing public involvement in the development of the objectives of a 'mandatory data breach scheme'.**

- **How do you see this practically operating and what would be its aims?**

NSW agencies have obligations under the PPIP Act and HRIP Act to take reasonable steps to protect the personal and health information that they hold. A data breach occurs when there is a failure that has caused or has the potential to cause loss of protection of personal or health information. While not required by law, agencies have been encouraged to make voluntary notification of data breaches to the Privacy Commissioner. In 2016/17 103 voluntary notifications were received.

The *Federal Privacy Act 1988* has been recently amended to provide for a Notifiable Data Breach (NDB) scheme to be established, commencing on 22 February 2018. This scheme will operate in addition to mandatory notification schemes already in place under the *My Health Records Act 2012* and the *National Cancer Screening Register Act 2016*. The scheme will require organisations covered by the Federal Privacy Act to notify any individuals likely to be at risk of serious harm by a data breach. This will include some private sector health care providers operating in NSW. Further details of the NDB Scheme can be accessed via the website of the Office of the Australian Information Commissioner [www.oaic.gov.au](http://www.oaic.gov.au).

The IPC is a party to the *Information Sharing and Complaint Referral Arrangements for the Personally Controlled Electronic Health Record System* arrangement between the OAIC and

State and Territory Health and Privacy Regulators. This arrangement assists information sharing in relation to the eHealth record system, describes how appropriate complaints will be referred, and establishes mechanisms to promote effective cooperation between the OAIC, the System Operator and State and Territory regulators on privacy.

In 2018 the Information and Privacy Commission will develop guidance for NSW agencies on responding to data breaches, including private health providers which may be subject to both Commonwealth and state privacy legislation. This guidance will address issues such as defining a data breach, developing a data breach response plan, communicating with those affected and reporting arrangements for making a breach notification.

The IPC will be engaging with agencies and other stakeholders in developing this guidance.