



Australian Government  
Australian Digital Health Agency

# My Health Record: Privacy, Consent and Provider Obligations

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# Objectives

- Refresh your knowledge of Australian privacy laws, principles and requirements
- Understand how they apply to My Health Record
- Be able to reassure your patients and advise them on how they can protect their privacy can control access to their My Health Record
- Understand the rules around My Health Record for children and young people and others who may need assistance in managing their affairs



# Privacy Overview- from the office of the Australian Privacy Commissioner

- The Privacy Act 1988(Privacy Act) is an Australian law which regulates the handling of personal information about individuals.
- Personal information is information or an opinion about an identified individual or individual who is reasonably identifiable.
- The Privacy Act included thirteen Australian Privacy Principles (APPs) – these set out standards, rights and obligations for handling, holding, use accessing and correction of personal information.
- The APPs place stringent obligations on handling sensitive information such as health information.



## Privacy overview – jurisdictional cover

The Privacy Act regulates the handling of personal information by Australian Government agency's (and the Norfolk Island administration), and some private sector organisations, including healthcare providers. Professional codes also apply.

Other Australian states and territories have supplementary laws for example - *The Queensland Office of the Information Commissioner receives privacy complaints under the Information Privacy Act 2009 (Qld) which covers the Queensland public sector.*



## Privacy overview – My Health Record

- The My Health Records Act 2012 outlines when and how health information included in a My Health Record can be collected, used and disclosed.
- Unauthorised collection, use or disclosure of My Health Record information is both a breach of the My Health Records Act and an interference with privacy.
- The Office of the Australian Information Commissioner(OAIC) regulates the handling of personal information.



# Frequently asked questions

1

Patient  
Control

2

Consent to  
upload and  
view

3

Provider  
Obligations

4

Medico-Legal  
issues



# Patient control

Can a patient edit a document?



A patient is not able to edit any document uploaded by a provider. A patient can remove a document – and will be warned of the impact to their care

Do I get a notification if a document has been removed?



The provider is not notified that a document has been removed or access to a document is restricted



# Consent

Consent to access



A provider is authorised by law to view a My Health Record without seeking consent each time, if:

1. The provider is permitted by the organisation to access the My Health Record
2. The provider is accessing in order to provide healthcare to the patient.

Consent to upload



A provider is authorised (by law and through a patient's 'standing consent' given at registration) to upload clinical documents without gaining consent of the patient each time





# Provider obligations

Existing professional/legal obligations



Use of My Health Record does not affect existing professional and legal obligations

My Health Record Security Policy



Requirement of participation to have and operationalise a My Health Record security policy

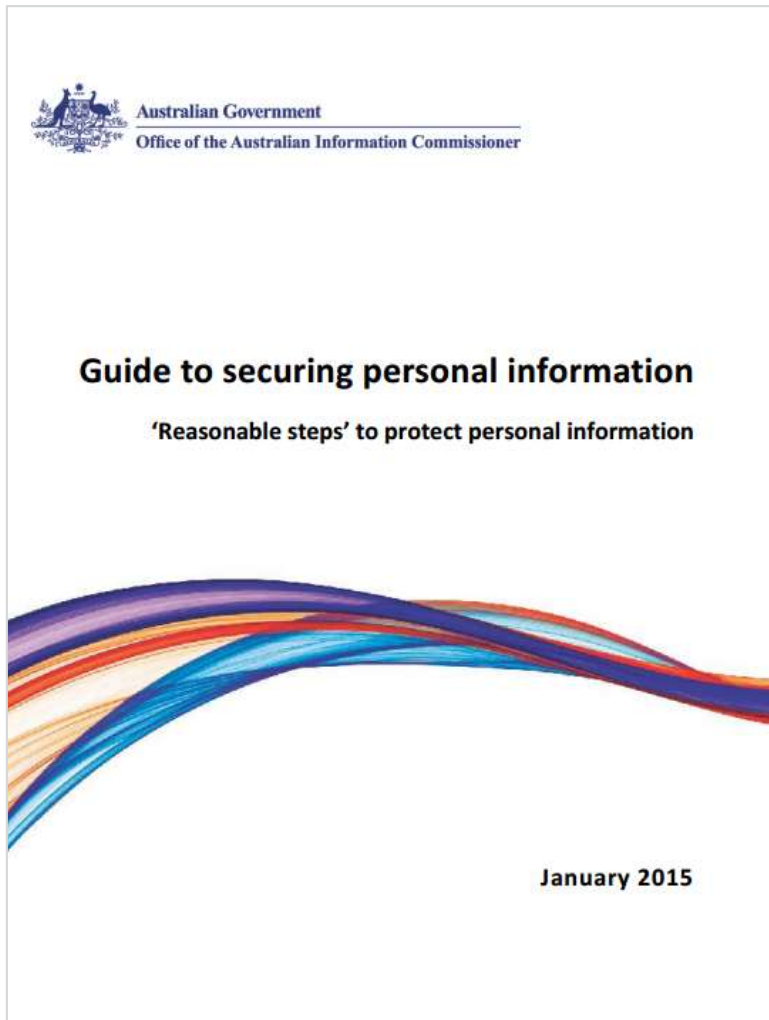
Template policy available on the Agency website

Data breaches

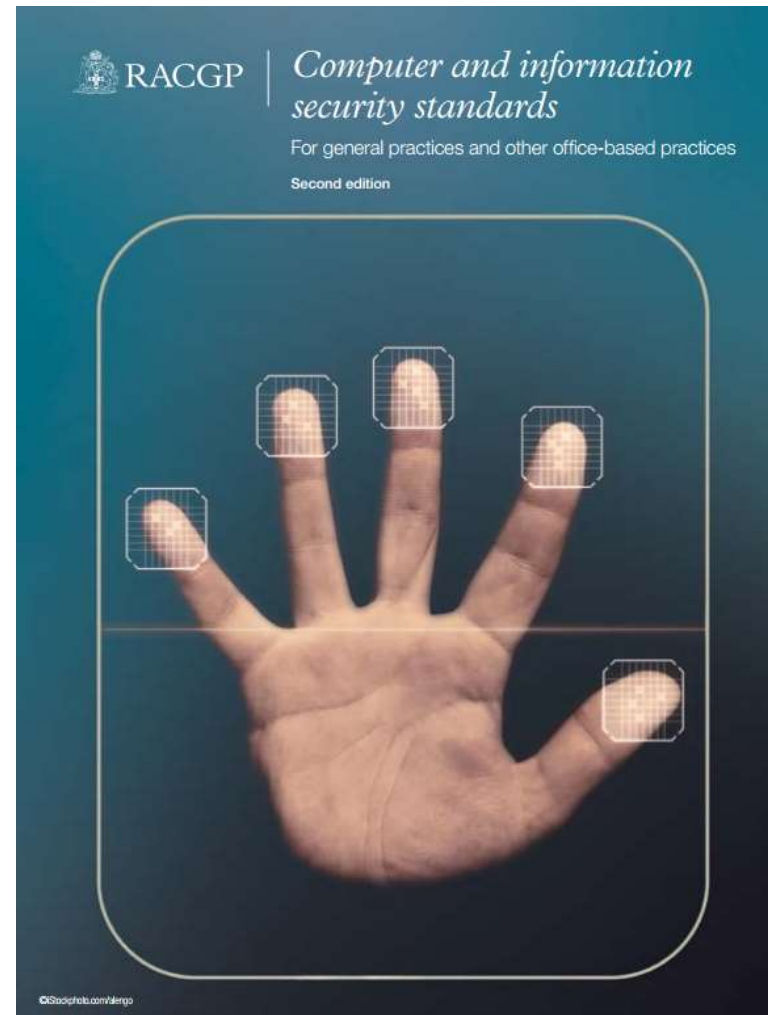


Requirement of participation to notify the System Operator of an actual or suspected data breach





<https://www.oaic.gov.au/resources/agencies-and-organisations/guides/guide-to-securing-personal-information.pdf>



[http://www.racgp.org.au/download/Documents/Standards/2013\\_ciss.pdf](http://www.racgp.org.au/download/Documents/Standards/2013_ciss.pdf)

# Medico legal issues

## Penalties



Providers who have a legitimate reason to access the system (e.g. provide care to a patient) are authorised to do so

Reckless or intentional misuse may be subject to penalties up to \$108,000 for individuals; \$540,000 organisations

## Uploading inaccurate information



Providers are under an obligation to take reasonable steps to upload accurate and up-to-date information (this is an obligation that exists already when sharing patient information with other providers)



# Medico legal issues

Acting on incorrect  
information



Information in the My Health Record is to aid clinical decision-making

Providers should rely on their own clinical judgement when using third party information

The My Health Record does not replace existing communication methods with the patient or other healthcare providers



# Medico legal issues

- Legal standards around use of the My Health Record system will develop and be accepted by the clinical community, as the My Health Record is embedded in clinical workflow
- Providers should rely on their clinical judgement about whether and how they use the My Health Record system
- A provider should contact their medical indemnity insurer if they have questions on their liability and coverage for their policies



## Reassuring your patients about Privacy and the My Health Record

If your patients are concerned about the privacy, you can talk about the mechanisms in place to protect their information including:

- The My Health Record system has been designed and built to comply with privacy and other laws.
- The system contains mechanisms to allow patients to control access to particular records or to be notified when a health care provider accesses their record.
- Medical professionals must be authorised by their organisations to access the My Health Record.
- Any access must be connected with the delivering healthcare to an individual – this can include before, during or after a consultation.



# Communicating with your patients about privacy

The Office of the Australian Privacy Commissioner has published a range of fact sheets that you can share with your patients. These cover areas such as:

- Tips for protecting your personal information in your My Health Record
- How to manage your My Health Record
- Consent and the handling of personal information
- Young people and My Health Record
- Emergency access and My Health Record



In the absence of defined standards by the clinical community around use of the My Health Record, the AMA Guide is a helpful tool that demonstrates the medical profession's *expectation* of use of the My Health Record.

<https://ama.com.au/article/ama-guide-using-pcehr>



**AMA Guide to Medical  
Practitioners  
on the use of the  
Personally Controlled Electronic  
Health Record System**

Australian Medical Association Limited ABN 37 008 426 793

Page 1 of 27







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