



## Board

### Agenda Item 8

## Releasing My Health Record data for regulatory purposes

Meeting: 14 June 2018

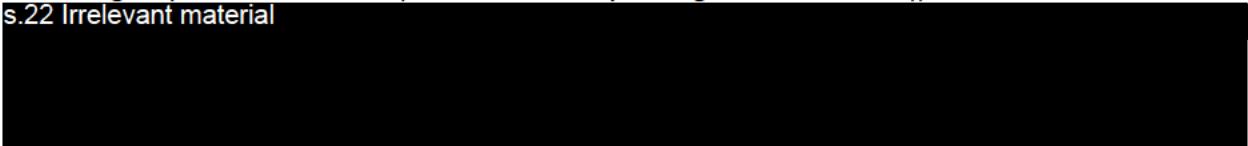
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### RECOMMENDATIONS

1 That the Board note:

- a the Australian Digital Health Agency, as My Health Record System Operator, has powers to release data from the My Health Record to support regulatory and legal purposes;
- b this is separate to the Australian Digital Health Agency's authority to release data from the My Health Record system for secondary use, subject to the Secondary Use Framework;
- c the Australian Digital Health Agency has taken a position not to exercise this power when it is at our discretion; reserving this authority to release data to only those circumstances where the Agency has no discretion (such as when responding to a Court Order); and

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2 That the Board provide advice on whether it supports this position going forward.

### PURPOSE

To obtain the Board's advice on the Australian Digital Health Agency's (the Agency) disclosure of My Health Record (MHR) data for regulatory purposes.

### BACKGROUND

The *My Health Records Act 2012* authorises the System Operator to disclose information for a range of purposes to support regulator and law enforcement purposes:

#### 70 Disclosure for law enforcement purposes, etc.

- (1) The System Operator is authorised to use or disclose health information included in a healthcare recipient's My Health Record if the System Operator reasonably believes that the use or disclosure is reasonably necessary for one or more of the following things done by, or on behalf of, an enforcement body:

- (a) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
  - (b) the enforcement of laws relating to the confiscation of the proceeds of crime;
  - (c) the protection of the public revenue;
  - (d) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
  - (e) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.
- (2) So far as subsection (1) relates to paragraph (1)(e), it is subject to section 69.
- (3) The System Operator is authorised to use or disclose health information included in a healthcare recipient's My Health Record if the System Operator:
- (a) has reason to suspect that unlawful activity that relates to the System Operator's functions has been, is being or may be engaged in; and
  - (b) reasonably believes that use or disclosure of the information is necessary for the purposes of an investigation of the matter or in reporting concerns to relevant persons or authorities.
- (4) If the System Operator uses or discloses personal information under this section, it must make a written note of the use or disclosure.
- (5) This section does not authorise the System Operator to use or disclose healthcare recipient-only notes.

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## SUMMARY OF ISSUES

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While the powers to release data for law enforcement are distinct from the Agency's secondary use powers and process (to be set up), this distinction would not be recognised by the broader community. If the Agency were to release MHR information for law enforcement purposes, it is possible that the community could confuse this with our commitments about implementing the Framework for Secondary Use with the Australian Institute of Health and Welfare (AIHW), including governance and other protections.

On this basis, management has taken the position that the Agency will not release any MHR data under s70 of the *My Health Records Act* unless we are legally compelled to do so.

The Board's view is sought on whether this is an appropriate position.

## FINANCIAL IMPLICATION

None.

## LEVEL OF RISK

Disclosure of MHR data could risk the community's confidence in the MHR and the Agency as System Operator.

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Lack of disclosure could risk the effectiveness and expedition of regulatory or investigative processes into potential breaches of other legislation or claims of professional misconduct.

**PRIORITY AREA OR STRATEGIC INITIATIVE**

Not applicable.

**ACTION OFFICER**

Bettina McMahon

Chief Operating Officer

**CLEARED BY**

Tim Kelsey

Chief Executive Officer