

DEPARTMENT OF HEALTH

My Aged Care - Hospital Portal
Privacy Impact Assessment

CLAYTON UTZ

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2. Executive Summary

1. The Department of Health (the **Agency**) is responsible for administering the My Aged Care database (**MAC**), which is a program that enables people who are eligible to access aged care services under the *Aged Care Act 1997* (Cth) (**AC Act**) to apply for and manage their access to services through an online portal.
2. The Agency proposes to alter the existing framework of MAC to include a portal which will provide online access to MAC for certain authorised personnel (Authorised Recipients) in identified public and private hospitals (Health Providers) to view, manage, register and update information in relation to their patients. This proposal is referred to in this PIA as the Hospital Portal proposal.
3. Similarly to the existing Assessor Portal, the Hospital Portal will facilitate access to MAC client information, data and records, including personal Information and protected information (MAC Data) ¹.
4. This Privacy Impact Assessment (PIA) analyses the handling of personal information (as defined in the Privacy Act 1988 (Cth) (Privacy Act)) and protected information (as defined in the AC Act), and considers the potential privacy and secrecy impacts of the Hospital Portal proposal, which will allow for all appropriately Authorised Recipients to access MAC Data.
5. Under the Hospital Portal proposal, Health Providers will enter into a Data Sharing Agreement with the Agency. Upon execution of the agreement, Authorised Recipients of the relevant Health Provider will be able to access MAC Data via the Hospital Portal. This agreement is currently being developed and has been reviewed in the context of the preparation of this PIA.
6. In summary, we consider that the Agency's proposal is broadly privacy positive. Our recommendations are set out at Part 9 of this PIA, and largely relate to the following issues:
 - (a) ensuring that the consents and notifications obtained from MAC clients by Health Providers are appropriate and consistent with the existing MAC privacy notices and intended uses through MAC;
 - (b) ensuring that Hospital Portal access is consistent with the Agency's obligations under its protected information obligations, including that client record access is limited to Authorised Recipients and only for purposes related to the provision of healthcare and aged care services to MAC clients; and
 - (c) ensuring the quality, accuracy, safety and security of the personal information in MAC where it is accessed (and updated) through the Hospital Portal.

¹ The Data Sharing Agreement defines **MAC Data** as 'My Aged Care patient information, data and records (as amended from time to time) entered into, or accessible through, the Hospital Portal, and includes Personal Information and Protected Information'.

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3. Summary of recommendations

RECOMMENDATION 1

The Agency should consider implementing protocols in the Hospital Portal which ensure that only Authorised Recipients have access to the Hospital Portal, and are only accessing MAC Data reasonably required for the purposes of providing better healthcare services to the clients to whom the information relates, or otherwise maintaining the Hospital Portal, and they are not using it for other purposes (for example: to assist with the Health Provider's own reporting or funding requirements).

Agency Response: Agree. Incorporated the Data Sharing Agreement between the Health Provider and the Commonwealth. The Deed specifies that no Authorised Recipients should access the Hospital Portal:

- for any purpose other than an Authorised Purpose;
- to engage in any fraudulent or illegal activity;
- in a manner that interferes with or impedes the Hospital Portal or the use of information resources provided through the Hospital Portal; or
- for commercial exploitation.

RECOMMENDATION 2

The Agency should implement security protocols in the Hospital Portal infrastructure to limit access and ensure security of MAC Data.

Agency Response: Agree. This has been incorporated into Data Sharing Deed between the Health Provider and the Commonwealth. The Deed specifies that the Health Provider must have and maintain sufficient security controls and safeguards to ensure that only Authorised Recipients are able to access the Hospital Portal and MAC Data securely.

RECOMMENDATION 3

The Agency should develop protocols for how it intends to deal with MAC Data in circumstances where a client chooses not to consent fully or to withdraw consent, including in relation to assessments about whether a permitted general situation may otherwise apply in a given circumstance.

This may involve developing systems to ensure that variations in the nature of the consent obtained from clients are recorded and capable of being acted upon when their personal information is being dealt with.

Agency Response: Agree. A pop up screen is built into the portal to indicate whether consent was received. Hospital staff will not be able to access the client record in MAC unless the hospital staff clicks "yes" to consent. A protocol for withdrawing consent should be developed.

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RECOMMENDATION 4

Authorised Recipients collecting personal information for the purposes of accessing MAC Data via the Hospital Portal should be required to undergo basic privacy training, including in relation to the Agency's privacy notices and policy and how to convey notices and obtain consents from vulnerable persons. The content of this training should be provided to Health Providers on the basis that Health Providers will ensure intended Authorised Recipients complete the training prior to being granted access to the Hospital Portal.

Agency Response: Agree. Privacy training will be included in the Hospital Portal training for Health Providers. Privacy refresher training for Health Providers will be provided annually.

This is also incorporated into the Data Sharing Deed between the Health Provider and the Commonwealth. The Deed specifies that the Health Provider must ensure that the Authorised Recipient has successfully completed the necessary Hospital Portal Training and associated Hospital Portal Training declaration.

RECOMMENDATION 5

The Agency should ensure that Authorised Recipients are made aware that any amendments they make to MAC Data via the Hospital Portal must meet certain quality requirements.

This may be achieved by developing verification protocols to ensure that before modifications can be made to MAC Data through the Hospital Portal the source of the information being relied upon to make the modification must meet certain prescribed standards. Such a protocol might require Authorised Recipients to be made aware that modification of MAC Data may only be made using Hospital records, or other verified sources (for example following sighting Medicare card or death certificate).

The Agency may also consider requiring Authorised Recipients to access, and verify the accuracy and correctness of MAC Data from time to time, and to modify it to correct any inaccuracies or omissions, using Hospital records or other verified sources.

Agency Response: Agree. Incorporated into the Data Sharing Deed between the Health Provider and the Commonwealth. The Deed specifies that Health Providers and their Authorised Recipients may only modify or edit MAC Data:

- to correct any inaccuracies or omissions in MAC Data or update it so that it is current; or
- in accordance with all applicable Laws and any Hospital Portal guidelines and Training Materials.

The Deed also states that it is the responsibility of Authorised Recipients to ensure that they verify the accuracy and correctness of all records and data before modifying, editing, or updating any MAC Data.

My Aged Care Hospital Portal PIA**RECOMMENDATION 6**

The Agency should prepare training programs or modules in relation to ensuring, and maintaining, the quality of MAC Data accessed or collected or modified via the Hospital Portal. The training should include protocols about when MAC Data can be uploaded and modified, and the correct process for doing so, and the verification and source documents required to support any change (for example: providing a death certificate or attending doctor's certificate before updating a record to reflect that a client has died). This training should be provided to Health Providers on the basis that Health Providers will ensure intended Authorised Recipients complete the training prior to being granting access to the Hospital Portal.

Agency Response: Agree. Training will be provided to Health Providers with the expectation that Health Providers will train their Authorised Recipients. Hospital Portal Administrator User Guides and Quick Reference Guides will be available online for Health Providers/Authorised Recipients and will be maintained to ensure currency.

RECOMMENDATION 7

The Agency should conduct spot checks and audits of MAC Data that has been accessed or collected or modified by Health Providers via the Hospital Portal to ensure accuracy of information.

Agency Response: Agree. If a client is referred for an in-hospital aged care assessment, the assessor will check client information, including client records as modified by the Authorised Recipient.

This is also incorporated into the Data Sharing Agreement between the Health Provider and the Commonwealth. The Deed specifies that the Health Provider take reasonable steps to ensure MAC Data is protected from unauthorised use and have security controls and safeguards to ensure that access and use of the Hospital Portal and the data is regularly audited and monitored by the Health Provider.

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4. About this PIA

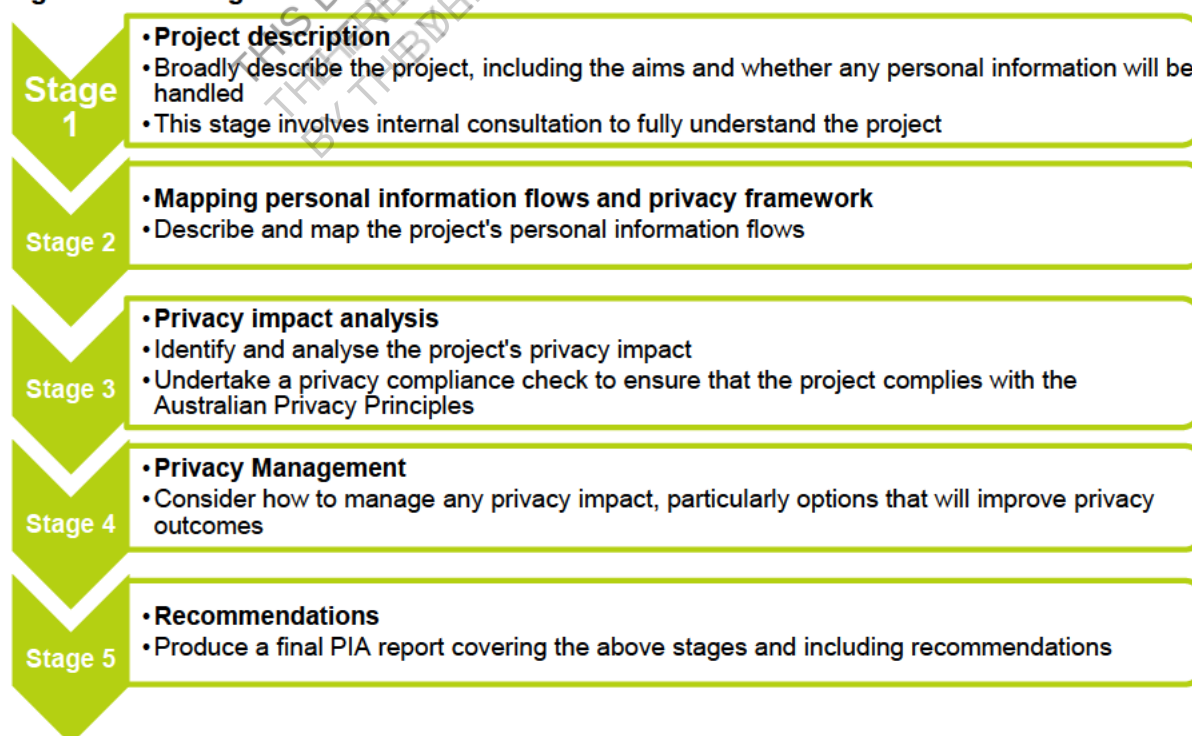
4.1 What is a Privacy Impact Assessment?

7. A PIA is an examination of a project from a privacy perspective. The primary purposes of a PIA are to:
 - (a) examine how personal information (including sensitive information) is collected, used and disclosed by a project;
 - (b) assess the compliance of a project with privacy laws and analyse its impacts on privacy; and
 - (c) identify and recommend options for managing, reducing or removing those impacts.
8. PIAs are conducted to ensure that privacy issues are fully considered in the design and implementation phase of a project. PIAs help ensure that projects meet privacy requirements in legislation and are also consistent with the expectations of the community.

4.2 The approach of this PIA

9. This PIA has been prepared broadly in accordance with the *Guide to undertaking privacy impact assessments* (Office of the Australian Information Commissioner, May 2020) (**PIA Guide**). The PIA Guide recommends that PIAs be conducted in ten steps, but those steps do not need to be undertaken as separate discrete stages (some of them can be done together). Some of those steps involve deciding whether or not a PIA is necessary (a threshold assessment) and planning. This PIA was conducted in five key stages:

Figure 1—PIA stages



10. To aid readability, the privacy impact analysis and privacy management options are dealt with together in this PIA.

4.3 Scope, limitations and assumptions

11. This PIA considers the privacy issues associated with the Hospital Portal proposal, as described in Parts 5, 6 and 7 of this PIA. It assesses the Hospital Portal's compliance with the Privacy Act, the APPs and the AC Act.
12. The Hospital Portal will be operated by the Department of Health (**the Agency**), which is an Agency for the purposes of the Privacy Act. This PIA has been prepared on the basis that the proposed Hospital Portal will provide access to the existing framework of, and information contained in MAC to Authorised Recipients of Health Providers.
13. MAC has been the subject of a Privacy Impact Assessment (**attached**), and a subsequent Addendum following consultation with the Office of the Australian Information Commissioner (**attached**). In preparing this PIA, we have assumed the Agency's functions will operate as described in this PIA.
14. This PIA focuses only on the information flows that are introduced or modified via the proposed Hospital Portal, and does not analyse the broader system of information access, modification and collection for the purposes of administering aged care services and MAC more broadly.
15. This PIA considers the implications of the Hospital Portal proposal on the **Agency's** privacy and protected information obligations only. Considerations of the Health Provider and Authorised Recipients' information handling obligations is outside the scope of this PIA.
16. For completeness, we note that Authorised Recipients may need to search summary records from time to time to identify MAC Data that relates to their patient. This may include reviewing MAC client summaries (which may include personal information, Medicare numbers, and sensitive health information) to verify identity and, on occasion, correct MAC Data via the Hospital Portal.
17. Accordingly, under the Hospital Portal proposal, Health Providers may be:
 - (a) using personal information and Medicare data which is accessed via the Hospital Portal (from time-to-time);
 - (b) collecting information when conducting searches via the Hospital Portal which reveal particular types of information which trigger obligations on the health provider in relation to its personal information handling obligations, or which are subject to further protections beyond the Privacy Act; and
 - (c) disclosing personal information when updating a client's MAC record (via the Hospital Portal) using the hospital records.
18. While outside the scope of this PIA, when using the Hospital Portal for its intended purposes Health Providers and their Authorised Recipients will need to also ensure that they are meeting their own privacy and information handling obligations under:

- (a) the various state and territory privacy acts that apply to them; and
 - (b) the Privacy Act, to the extent that it applies (for example, large Private Hospitals will likely be subject to the Commonwealth Privacy Act)), including in relation to use of Government Related Identifiers in accordance with APP 9; and
 - (c) any other legislation which regulates the use and disclosure of information in the Hospital Portal, for example the *Healthcare Identifiers Act 2010* (Cth); and
 - (d) the Private Health Insurance Act 2007 (Cth) and the Health Insurance Act 1973 (Cth) as relevant.
19. It has been assumed for the purposes of this PIA that Health Providers via their Authorised Recipients will comply with their respective obligations in this regard to the extent that they apply.
20. The Agency is managing the risks associated with providing the Hospital Portal as a the new function to enable Health Providers to update MAC client data by including the following requirement in the Data Sharing Agreement at Clause 3.4:
- Modifying or editing MAC Data***
The Hospital must ensure that Authorised Recipients only modify and edit MAC Data:
- (a) *to correct any inaccuracies or omissions in the MAC Data or to update it so that it is accurate and current; and*
 - (b) *accurately and in accordance with all applicable Laws (including the Privacy Laws) and any Hospital Portal guidelines and Training Materials provided by the Department from time to time.*
21. This requirement within the Data Sharing Agreement is sufficient to manage the Agency's obligations of protecting the privacy positivity of the Hospital Portal. The privacy positivity of the Hospital Portal may be further enhanced by the Agency specifically indicating to Health Providers that to ensure compliance with Clause 3.4 of the Data Sharing Agreement they may wish to obtain an assessment addressing their information handling obligations as set out in paragraph 8 above when using the Hospital Portal.
22. We have assumed for the purposes of this PIA that the Hospital Portal does not involve dealing with a consumer's eHealth record for the purposes of the *Personally Controlled Electronic Health Records Act 2012* (Cth).
23. No external consultation was undertaken as part of the preparation of this PIA.

4.4 Applicable legislation

24. This PIA considers whether the proposed Hospital Portal complies with the:
- (a) *Privacy Act 1998* (Cth) (**Privacy Act**);
 - (b) Australian Privacy Principles (**APPs**); and

- (c) *Privacy (Australian Government Agencies — Governance) APP Code 2017 (Privacy Code)*, which relevantly requires a written PIA to be undertaken in certain circumstances. The Agency has determined that the Hospital Portal Project is a high privacy risk project within the meaning of section 12(1) of the Privacy Code. This PIA satisfies the requirements of the Privacy Code.

25. This PIA also considers the secrecy provisions in the AC Act that relate to protected information, to the extent that they are relevant to the Agency's privacy obligations. It is beyond the scope of this PIA to consider compliance with the secrecy provisions in this Act more generally. These provisions are set out in more detail at Part 8 below.

5. Program description

5.1 My Aged Care (MAC)

26. MAC (**'My Aged Care'**) was implemented following an announcement from the Australian Government regarding reforms to the aged care system in 2012.
27. On 20 April 2012, the Australian Government announced a package of reforms to the aged care system. One of the elements of that package was the development of MAC, which was to be an identifiable entry point to the aged care system. MAC is operated by the Agency and is administered pursuant to the AC Act.²
28. The purpose of MAC is to enable timely and reliable information to be accessed by older people, their families, and carers. It is also designed to help people to navigate the aged care system and provide referrals for assessment and service provision.

5.2 Current assessment framework

29. Assessments for eligibility for aged care services under the AC Act and Commonwealth Home Support Program (CHSP) are currently performed by two workforces, being the Regional Assessment Services (**RAS**) for the CHSP, and the Aged Care Assessment Teams (**ACAT**) for assessments for care under the Act including residential care and Home Care Packages (**HCP**).
30. Presently, ACATs employed by state and territory hospitals have access to MAC as part of their role in providing hospital aged care assessments, through the Assessor Portal. Authorised users of the Assessor Portal are able to view, update and manage MAC Data.
31. Currently, when a MAC client is a patient in hospital and it is identified that they may need aged care services upon discharge, their multi-disciplinary team will refer them for an in-hospital aged care assessment. Hospital staff request patient MAC information from ACATs via the Assessor Portal to determine whether an assessment is necessary.

² Administrative Arrangements Order made on 18 March 2021, as amended.

32. It is currently proposed that hospital assessments will continue to be undertaken following hospital admission, to determine access to Transition Care, Residential Respite, Residential care, Home Care Packages and CHSP. In line with current arrangements, all in-hospital assessments will be comprehensive assessments delivered by clinically trained assessors. Hospital assessments will continue to be conducted with the benefit of the patient's medical records and consultation with the hospital's multi-disciplinary team.

5.3 Hospital Portal Proposal

33. The Agency is working towards the implementation of a new proposal to accompany the current Assessor Portal, being the Hospital Portal proposal.
34. The Hospital Portal will have similar infrastructure and functionality to the existing Assessor Portal, and will be the access point to MAC for both private hospitals and public State and Territory hospitals.
35. The delivery of the Hospital Portal is consistent with matters dealt with by the Agency, namely the delivery of:
- (a) Health promotion;
 - (b) Implementation of the National Health and Hospitals Network; and
 - (c) Services for older people; and
 - (d) Administration of the AC Act.³

Consent in the Hospital Portal

36. Obtaining adequate consent from MAC clients will be key to ensuring that the various information flows contemplated in the proposed Hospital Portal are permissible under the Privacy Act and the AC Act.
37. Under the current model, clients may provide consent to deal with their personal information held on MAC as follows:
- (a) **on registration:** the client (or their authorised representative) will provide consent by, for example, clicking on a checkbox on the website on the Self-Service Portal. Client's may also register using a paper registration which contains a similar consent;
 - (b) **on assessment:** the aged care assessor (**Assessor**) will seek the client's express consent in relation to the collection, use and disclosure of sensitive information at the assessment stage; and
 - (c) **on referral:** consent is obtained from the client (or their authorised representative) by the referrer (for example Health Providers) and is notified to the Agency on the inbound referral forms.

³ Administrative Arrangements Order made on 18 March 2021, as amended.

38. Under current arrangements there are also State and Territory-specific processes and templates used to support the ACAT process. This includes various State- and Territory-specific consent processes outside MAC consent process, and/or use of the MAC 'in-bound web-referral form'.
39. For consent that is obtained at the time of creating a MAC profile (registration), users will be provided with details of how they can access the Privacy Policy governing MAC.⁴
40. For consent that is obtained on referral (by, for example a hospital), consent will be obtained by the referring Health Providers on behalf of the Agency. Accordingly, the Agency will be relying significantly on Health Providers to obtain the requisite consent, to ensure that it meets its privacy obligations.
41. Referrals made using the 'in-bound web-referral form', relevantly requires hospitals to make a declaration that they have obtained consent from the patient to make the referral and that the consent:
- "includes having personal information stored within MAC, and providing it to relevant assessment organisations, service providers and health professionals, and consent to share information back with you (the referrer) about the referral."*
42. Additionally, the Privacy Policy explains that:
- "the Department will collect, hold, use and disclose personal information for reasons including... maintaining a central online client record to improve service delivery and appropriate information sharing, including referrals, by aged care providers, assessment workers, residential care facilities, hospitals, and health professionals".*

Access to and use of the Hospital Portal

43. Unlike the Assessor Portal, the Hospital Portal will facilitate access, modification and creation of MAC Data by Authorised Recipients. The information accessed may include client summaries, assessment outcomes, current aged care provider and, with permission from MAC call centre, 'sensitive' MAC Data.⁵
44. Once fully implemented, the Hospital Portal will contribute to the following outcomes:
- (a) **access to patient information held on MAC by Authorised Recipients on behalf of Health Providers:** Ensuring that hospital staff have access to information about a patient's aged care services and approvals will support decision making on whether a patient requires an aged care assessment and/or can be safely discharged; and

⁴ myagedcare.gov.au/privacy

⁵ Sensitive MAC Data includes information about the client that is stored in MAC as 'sensitive' and may include information about health and medical conditions such as HIV; history of drug or alcohol abuse; and other issues the client may not want disclosed more broadly such as past abuse; financial issues; safety concerns and information about legal situations.

- (b) **capacity to verify, modify and update MAC client records using existing Hospital records:** This will play an important role in ensuring that MAC Data is current and up-to-date, and reflects hospital records and other verified information sources relating to aged care recipients.
45. The Hospital Portal will significantly increases the scope of persons who may access and modify MAC Data, to persons other than ACATs.
46. Under the Hospital Portal proposal, Health Providers will enter into a data sharing agreement with the Agency. Upon execution of the data sharing agreement, authorised personnel of the Health Provider (**Authorised Recipients**) will be able to access MAC Data of patients of the Health Provider via the Hospital Portal.

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BY THE DEPARTMENT OF HEALTH

6. Key concepts and principles

6.1 The Privacy Act

47. The handling of "*personal information*" (including "*sensitive information*") by Australian Commonwealth Government agencies is regulated by the Privacy Act and the APPs.
48. The Privacy Act provides that an "*APP entity*" must not do an act, or engage in a practice, that breaches an APP.⁶ As an "*agency*", the Agency is an APP entity and is therefore bound by the Privacy Act.⁷
49. To the extent that an agency enters into Commonwealth contracts with contracted service providers, section 95B of the Privacy Act requires it to take contractual measures to ensure that a contracted service provider does not take any action which would breach the APPs, if that action were undertaken by the agency.
50. The APPs are set out in Schedule 1 to the Privacy Act. The APPs regulate, among other things, the collection, use and disclosure of personal information and sensitive information by APP entities. This PIA has been prepared having regard to the APPs and other relevant parts of the Privacy Act.
51. This PIA has also been prepared having regard to the APP Guidelines.⁸ The APP Guidelines outline the mandatory requirements of the APPs, how the OAIC interprets the APPs, matters the OAIC may take into account when exercising functions and powers under the Privacy Act, and good privacy practices to supplement minimum compliance with the mandatory requirements in the APPs.⁹

6.2 Personal information

52. The term "*personal information*" is a key concept in the Privacy Act. Whether particular information is personal information is a critical threshold question which determines whether the APPs will apply to the handling of the information.
53. Personal information is defined as "information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not": see s 6 of the Privacy Act.

6.3 Sensitive information

54. Most "*sensitive information*" can be described as a special subset of personal information. The APPs generally afford a higher protection to sensitive information in recognition of the fact that there can be adverse consequences for an individual if their sensitive information is mishandled¹⁰.

⁶ See s 15 of the Privacy Act.

⁷ See s 6 of the Privacy Act.

⁸ OAIC *Australian Privacy Principles Guidelines* (July 2019).

⁹ See the Preface to the APP Guidelines.

¹⁰ See paragraph [B.141] of the APP Guidelines.

55. The term sensitive information is defined in s 6 of the Privacy Act. It relevantly includes:
- (a) information or an opinion about an individual's racial or ethnic origin or sexual orientation or practices that is also personal information; and
 - (b) health information about an individual.
56. Most sensitive information is, therefore, also personal information.

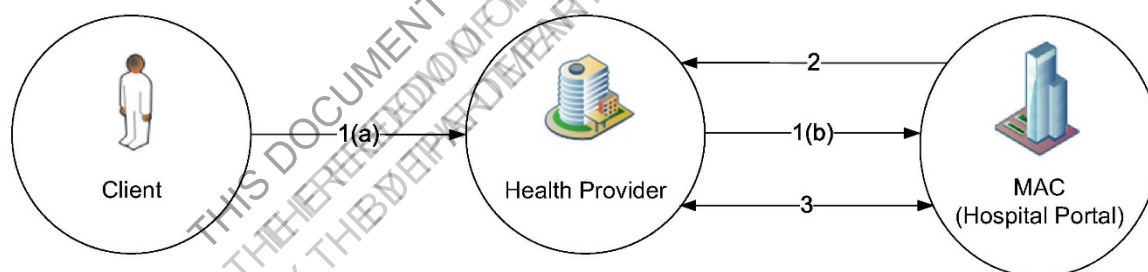
7. Information flows

57. Part 7 of this PIA describes and maps the personal information flows in the proposed Hospital Portal.

7.1 Information flows

58. Figure 2 below illustrates the ways in which personal information about a MAC client is collected, used and disclosed through the proposed Hospital Portal. Table 2 below sets out a detailed description of the information flows along with an outline of the ways in which personal information is collected, used and disclosed in the context of the relevant APPs.

Figure 2: Representation of the information flows set out in Table 1



My Aged Care Hospital Portal PIA**Table 1: Information flows**

| Step | Description of Flow | Outline of the ways in which personal information is collected, used and disclosed |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1(a) | <p>Registration/referral</p> <p>A client's registration/referral on MAC may come from the following sources:</p> <ul style="list-style-type: none"> a) client self-registers or registers through MAC Contact Centre; b) client registers through a Health Provider (for example: hospital or GP). <p>Upon registration, a MAC client record is created in MAC.</p> | <p>For the purposes of this PIA, the only registration pathway considered is referral by hospitals through the Hospital Portal. Existing registration pathways (for example Client self-registration or registration by health professionals through the existing in-bound referral processes) do not involve a new flow of personal information and do not engage the Hospital Portal. These existing registration pathways are outside the scope of this PIA.</p> <p>This flow involves the following collections, uses and disclosures:</p> <p>Collection: Health Providers will collect patient information for the purposes of making a registration or referral for assessment through the Hospital Portal on behalf of the client.</p> <p>Health Providers (and their Authorised Recipients) are not paid to provide a service for registration or referral for assessment through the Hospital Portal on behalf of the client. As such, they will not be contracted service providers for the purposes of the Hospital Portal, and s 95B of the Privacy Act will not apply to those agreements. Accordingly, this collection is outside the scope of this PIA, as this is a matter for the Health Provider, which will need to operate in accordance with applicable state and territory legislation regulating collection of health information.</p> |
| 1(b) | <p>Under the Hospital Portal proposal, Authorised Recipient hospital staff (including both private and public hospitals) will be able to register a client in MAC.</p> | <p>This flow involves the following collections, uses and disclosures:</p> <p>Disclosure: Health Providers will disclose patient information through the Hospital Portal for the purposes of registration or activating a referral for assessment.</p> <p>As above, these disclosures are outside the scope of this PIA as this is a matter for the Health Provider which will need to operate in accordance with applicable state and territory legislation which relates to use and disclosure of personal and health information.</p> <p>Collection: MAC collects patient identity and health information from the Health Provider (hospital) upon receipt of referrals made on behalf of clients.</p> <p>This collection is not materially different to referrals made on behalf of clients through the current Assessor Portal (using an inbound referral form). In those circumstances a further privacy analysis of this aspect of the Hospital Portal is unnecessary.</p> |

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| Step | Description of Flow | Outline of the ways in which personal information is collected, used and disclosed |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | <p>Access/screening</p> <p>Authorised Recipients may access a client's MAC record (through the Hospital Portal) to see if their patient has had an aged care assessment, has approvals and/or services in place. This will help determine if a new assessment in hospital is necessary. They are able to view summary information on the client record, which may be relevant to decisions about patient discharge.</p> <p>This may include access to "sensitive" client records, which includes information about the client's:</p> <ul style="list-style-type: none"> • medical conditions such as HIV • past abuse or concerns, or • Issues the client may not want disclosed more broadly such as a history of drug or alcohol abuse;¹¹ • Financial issues; • Safety concerns; • Health issues; • Legal situations. | <p>This flow involves the following collections, uses and disclosures:</p> <p>Collection and use: The Health Provider (hospital) collects and uses MAC client records including identity, contact, health and information about the outcomes of previous assessments.</p> <p>As above, these collections and uses are outside the scope of this PIA as this is a matter for the Health Provider which will need to operate in accordance with applicable state and territory legislation which relates to the collection of personal and health information.</p> <p>Disclosure: MAC will disclose a MAC client's records to the Health Provider, including: identity, contact, health and functionality information and assessment outcomes.</p> <p>We consider that the disclosure of personal and sensitive information to Authorised Recipients of Health Care providers in relation to provision of appropriate healthcare services for older Australians is directly related to the primary purpose, and will be for the primary purpose for which it was collected and in accordance with APP 6.1</p> <p>Our full analysis in relation to this information flow is at Part 9.2.</p> |

¹¹ MY AGED CARE ASSESSMENT MANUAL For Regional Assessment Services and Aged Care Assessment Teams Version 1.1 June 2018, pg 29.

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| Step | Description of Flow | Outline of the ways in which personal information is collected, used and disclosed |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>Authorised Recipients may also access various clients' record summaries to determine that the correct client record is being identified for full access, before proceeding to access the full client record.</p> | |
| 3 | <p>Updating client MAC Data</p> <p>Authorised Recipients may update a client's existing MAC record if they identify errors in the record, based on their Hospital records.</p> | <p>This flow involves the following collections, uses and disclosures:</p> <p>Collection by Authorised Recipients of patient information and disclosure to MAC via the Hospital Portal.</p> <p>As above, these disclosures are outside the scope of this PIA as this is a matter for the Health Provider which will need to operate in accordance with applicable state and territory legislation which relates to use and disclosure of personal and health information.</p> <p>Collection: MAC collects patient identity and health information uploaded from the Health Provider (hospital) via the Hospital Portal upon receipt of amended client/patient information.</p> <p>These collections will be permitted if adequate consents have been obtained from the individuals to whom the information relates or because the collections are otherwise authorised by law.</p> <p>Consent obtained at the point of client registration or referral may not be sufficient to amend existing MAC Data. This is because, MAC record may have been generated from a different source (for example: client self-registration), in which case the relevant consent may not have been obtained.</p> <p>To strengthen the authority to collect this information, the Agency has implemented a screen in the Hospital Portal which requires Authorised Recipients accessing the Hospital Portal to confirm that they have obtained the necessary consent of the patient before amending a client record or uploading new client information. This is discussed in greater detail at Section 8.2 below.</p> <p>Quality of information: Authorised Recipients may amend and update a client's MAC record through the Hospital Portal.</p> <p>This may involve editing, altering and deleting information which is currently recorded on a client's MAC record. The Agency has obligations under APP 10 to ensure the quality and accuracy of the information that it holds on its records. Allowing Health Providers to update MAC Data may assist with ensuring the accuracy of the information</p> |

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| Step | Description of Flow | Outline of the ways in which personal information is collected, used and disclosed |
|------|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | <p>held on MAC, but it may also expose risks around quality control and verification of the information that is being updated/changed.</p> <p>Processes may need to be developed to ensure that quality control and information verification may be managed, including providing adequate training, restricting permissions and required source document verification uploads to support changes to a client's MAC record.</p> |

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8. Compliance

8.1 Application of the Australian Privacy Principles (APPs)

59. Table 2 analyses the Hospital Portal proposal against the APPs, having regard to the guidance set out in the APP Guidelines.¹²

Table 2

| No. | Privacy Principle | Relevant to |
|-------|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| APP 1 | Open and transparent management of personal information | <p>APP 1 requires that APP entities manage personal information in an open and transparent way. This includes having a clearly expressed and up to date APP privacy policy.</p> <p>We consider that the Agency's compliance with APP 1 is satisfied because:</p> <ul style="list-style-type: none"> the Agency has published a privacy policy specific to MAC which is available online (https://www.myagedcare.gov.au/privacy). where personal information is collected (including sensitive health information), A person's consent is obtained. This is considered in paragraph 9.3. the Agency relies on its powers to handle personal authorisation under sections s 86-2(2)(a) and (d) of the AC Act. This is considered in paragraph 9.2. <p>We have assumed that the Agency will take all steps reasonable in the circumstances to establish processes and procedures to ensure compliance with the APPs, such as maintaining an appropriate privacy policy.</p> <p>We consider that APP 1 is satisfied, but note our recommendations in sections 3 and 9 of this PIA, which are relevant to open and transparent management of personal information.</p> |
| APP 2 | Anonymity and pseudonymity | <p>Where relevant, APP 2 requires APP entities to give individuals the option of not identifying themselves, or of using a pseudonym. Limited exceptions apply.</p> <p>This APP is not relevant to the proposed Hospital Portal, as clients need to deal with the Agency on an identified basis in order to undergo an assessment for aged care services.</p> |

¹² Office of the Australian Information Commission *Australian Privacy Principles Guidelines (APP Guidelines)*. The APP Guidelines outline the mandatory requirements of the APPs, how the OAIC interprets the APPs, matters the OAIC may take into account when exercising functions and powers under the Privacy Act, and good privacy practice.

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| No. | Privacy Principle | Relevant to |
|--------------|---------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| APP 3 | Collection of solicited personal information | <p><i>APP entities must not collect solicited personal information other than as prescribed by APP 3. To comply with APP 3, the Agency can only collect personal information that is reasonably necessary for, or directly related to, one or more of its functions or activities. APP entities must only solicit and collect personal information by lawful and fair means, and directly from the individual, unless an exception applies. Sensitive information can only be collected with the consent of the individual, unless an exception applies.</i></p> <p>We consider that the Agency's compliance with APP 3 is provisionally satisfied subject to the recommendations set out at section 9 of this PIA, which include:</p> <ul style="list-style-type: none"> • ensuring adequacy of consent to collection, including when client MAC records are updated by Authorised Recipients using hospital records and • ensuring that the Agency privacy policy specific to MAC contemplates the information flows of the Hospital Portal and the types of information that are intended to be collected, including sensitive personal information. <p>The collection of the personal information through the Hospital Portal is consistent with matters dealt with by the Agency, namely the delivery of:</p> <ul style="list-style-type: none"> • Health promotion; • Services for older people; and • Administration of the AC Act.¹³ |
| APP 4 | Dealing with unsolicited personal information | <p><i>APP 4 outlines how APP entities must deal with unsolicited personal information.</i></p> <p>We consider APP 4 is satisfied, because unsolicited personal information is not likely to be collected through the Hospital Portal.</p> |
| APP 5 | Notification of the collection of personal information | <p><i>APP 5 outlines when and in what circumstances an APP entity that collects personal information must notify an individual of certain matters. This includes the purposes for which the personal information is collected.</i></p> <p>We consider APP 5 is provisionally satisfied subject to the recommendations set out at section 9 of this PIA.</p> |

¹³ Administrative Arrangements Order made on 18 March 2021, as amended.

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| No. | Privacy Principle | Relevant to |
|--------------|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | <p>We understand that all relevant individuals from whom personal information will be collected will be:</p> <ul style="list-style-type: none"> asked to provide consent to the collection of their information at the time of registration of a MAC client record or referral by a Health Provider (as demonstrated by the declaration on the inbound referral form); notified of the likelihood of that collection prior to the time of collection, through the Agency's Privacy Policy <p>Any collection notices should be reasonably specific regarding the facts, circumstances and purposes of collection. We consider that APP 5 is satisfied, but note our discussions and recommendations in sections 3 and 9 of this PIA which are relevant to notification of collection of personal information.</p> |
| APP 6 | Use or disclosure of personal information | <p><i>APP 6 outlines the circumstances in which an APP entity may use or disclose personal information that it holds.</i></p> <p>We consider APP 6 is provisionally satisfied subject to the recommendations set out at section 9 of this PIA.</p> <p>The Agency will disclose personal information for the purposes of enabling Authorised Recipients to access client MAC records to ascertain whether an assessment needs to be conducted;</p> <p>This disclosure is directly related to the Agency's functions. Namely for the purpose of delivering:</p> <ul style="list-style-type: none"> Health promotion; Services for older people; and Administration of the AC Act.¹⁴ <p>The Agency will need to develop appropriate privacy notices and consents to cover the proposed disclosures of personal information, including as it relates to disclosing personal information to third party hospitals.</p> <p>A written note must be made of each use or disclosure (APP 6.5).</p> |
| APP 7 | Direct marketing | <p><i>APP 7 relates to how an organisation may use the personal information it holds for the purpose of direct marketing.</i></p> <p>This APP is not relevant as the Agency is not an organisation and the Hospital Portal proposal does not involve the use or disclosure of personal information for the purpose of direct marketing.</p> |

¹⁴ Administrative Arrangements Order made on 18 March 2021, as amended.

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| No. | Privacy Principle | Relevant to |
|--------|---------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| APP 8 | Cross-border disclosure | <p>APP 8 protects personal information that is to be disclosed to an overseas recipient.</p> <p>This APP is not relevant as we understand that the Hospital Portal proposal will not involve the disclosure of personal information to an overseas recipient.</p> |
| APP 9 | Government related identifiers | <p>APP 9 relates to the adoption, use and disclosure of government related identifiers by organisations.</p> <p>This APP is relevant to the Health Providers' obligations, as the Hospital Portal proposal may involve patients' Medicare card information being accessed and updated via the Hospital Portal.</p> <p>As set out in section 4.3 above, the Data Sharing Agreement requires Health providers to comply with their privacy and information handling obligations. This may require those Health Providers to assess their obligations under APP 9. This is outside the scope of this PIA, as it does not relate to the Agency's obligations.</p> |
| APP 10 | Quality of personal information | <p>APP 10 requires APP entities to take reasonable steps to protect personal information they collect is accurate, up to date and complete. An entity must also take reasonable steps to ensure the personal information it uses or discloses is accurate, up to date, complete and relevant, having regard to the purpose of the use or disclosure.</p> <p>The Agency has an ongoing obligation to take reasonable steps to ensure that the personal information it collects in the course of administering the Hospital Portal is accurate, up to date, and complete.</p> <p>The methods by which the Agency handles the personal information stored on the MAC will not be altered by the Hospital Portal.</p> <p>However, as the Hospital Portal will involve the capacity for MAC Data to be updated by Authorised Recipients using Hospital records and other verifiable sources, the Agency will have obligations to ensure that the data which is updated by those means are accurate, up to date and complete.</p> <p>We consider APP 10 to be satisfied, if our recommendations are implemented, including:</p> <ul style="list-style-type: none"> ensuring that only Authorised Users can amend MAC Data in the Hospital Portal; and ensuring that appropriate protocols and permissions govern the basis on which data can be amended. |

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| No. | Privacy Principle | Relevant to |
|------------------|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| APP 11 | Security of personal information | <p>APP 11 requires APP entities to take reasonable steps to protect personal information held by them from misuse, interference and loss, and from unauthorised access, modification or disclosure. An entity has obligations to destroy or de-identify personal information in certain circumstances.</p> <p>The Agency will be obliged to take reasonable steps in the circumstances to ensure that the personal information it collects in the course of administering the proposed Hospital Portal is protected from misuse, interference, loss, unauthorised access, modification, or disclosure.</p> <p>We consider APP 11 to be satisfied on the basis that the Hospital Portal will protect MAC client's personal information by:</p> <ul style="list-style-type: none"> • restricting access to the Hospital Portal to persons who are designated Authorised Recipients; • entering in data sharing agreements with Health Providers which sets out their obligations when managing personal information in the Hospital Portal; • providing privacy training, policies and procedures to Authorised Recipients to ensure that they understand their obligations when managing personal information in the Hospital Portal; • storing personal information on servers that are under the control of the Agency. <p>Additional safety measures may include monitoring and reporting procedures designed to detect unauthorised access to the Hospital Portal.</p> |
| APP 12 APP 13 | Access to and correction of personal information | <p>APP 12 and APP 13 set out APP entities' privacy obligations when an individual requests access to, or correction of, their personal information.</p> <p>We consider APP 12 and 13 to be satisfied.</p> <p>The Privacy Policy invites people to contact the Agency in order to access or request the Agency correct its records.</p> |

8.2 Compliance with Agency protected information provisions in the AC Act

60. In addition to compliance with the Privacy Act, the Agency must also comply with the requirements of the AC Act that relate to protected Agency information.

"Protected information"

61. The AC Act regulates dealings with "Protected Information" at Part 6.2.

62. Protected information is defined to mean 'personal information acquired under or for the purposes of the AC Act or the *Aged Care (Transitional Provisions) Act 1997* (Cth)'.¹⁵
63. It is an offence under section 86-2 of the AC Act, if:
- (a) the person makes a record of, discloses or otherwise uses information; and
 - (b) the information is protected information (including personal information); and
 - (c) the information was acquired by the person in the course of performing duties or exercising powers or functions under the AC Act or the *Aged Care (Transitional Provisions) Act 1997* (Cth).¹⁶
64. The penalty for an offence under this section is imprisonment for 2 years.
65. The AC Act provides exceptions to the offences and authorises prescribed dealings with protected information in certain circumstances, including relevantly:
- (a) if done so in the course of exercising duties or functions under the AC Act;¹⁷
 - (b) if the conduct is authorised by the person to whom the information relates;¹⁸ and
 - (c) if the person is conducting an aged care assessment and the making a record of, using or disclosing the protected information is done so for the purposes of making those assessments.¹⁹
66. If the conduct in relation to the protected information is authorised by the AC Act, that authorisation may permit those dealings with that same information in accordance with the Privacy Act, if the dealing would be permitted by the APPs in circumstances where it is required or authorised by or under an Australian law.

Compliance

67. As set out in Part 7 - Information Flows, the Hospital Portal will involve the following new Agency dealings with protected information:
- (a) MAC will disclose a MAC client's records to the Health Provider, including: identity, contact, health and functionality information and assessment outcomes; and
 - (b) MAC collects patient identity and health information uploaded from the Health Provider via the Hospital Portal upon receipt of amended client/patient information.

¹⁵ Aged Care Act, s 86-1

¹⁶ Aged Care Act, s 86-2

¹⁷ s 86-2(2)(a) of the *Aged Care Act 1997* (Cth).

¹⁸ s 86-2(2)(d) of the *Aged Care Act 1997* (Cth).

¹⁹ s 86-4 of the *Aged Care Act 1997* (Cth).

68. The Hospital Portal will handle protected information in a manner compliant with section 86-2 of the AC Act, and in particular this will be authorised as involving the handling of protected information where:
- (a) the conduct is carried out in the performance of a function under the AC Act (s 86-2(2)(a) of the AC Act); or
 - (b) the collection is authorised by the person to whom the information relates (s 86-2(2)(d) of the AC Act).
69. Part 9 provides a more detailed analysis of the Agency's compliance with the protected information provisions in the context of the specific proposed information flows.

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9. Assessment of Privacy Impacts and management strategies

9.1 General observations

70. We consider that overall, the Hospital Portal proposal is a privacy positive project. The main information handling issues associated with the Hospital Portal arise in relation to the following:
- (a) ensuring that the consents and notifications obtained from MAC clients by Health Providers via their Authorised Recipients are appropriate and consistent with the existing MAC privacy notices and intended uses through MAC;
 - (b) ensuring that Hospital Portal access is consistent with the Agency's obligations under its protected information obligations, including that MAC Data access is limited to Authorised Recipients and only for purposes related to the provision of healthcare and aged care services to MAC clients; and
 - (c) ensuring the quality, accuracy, safety and security of the personal information in MAC where it is accessed (and modified) through the Hospital Portal.
71. For the reasons discussed below, we consider that the relevant APPs engaged in relation to the above issues (APPs 3, 5, 6, 9, 10 and 11) are broadly satisfied. We have made some recommendations to assist the Agency to mitigate the privacy issues that arise in these circumstances.

*[Note: as outlined in Part 4.3 above, this PIA considers the implications of the Hospital Portal proposal on the **Agency's** privacy and protected information obligations only. Considerations of the Health Provider and Authorised Recipients' information handling obligations is outside the scope of this PIA, unless otherwise stated.]*

9.2 Authorised Recipient access to MAC via the Hospital Portal

72. Currently under the Assessor Portal, only ACATs have access to MAC. A key feature of the Hospital Portal will be the provision of access to MAC Data via the Hospital Portal to Authorised Recipients of Health Providers.
73. The MAC Data that will be disclosed to Authorised Recipients from MAC via the Hospital Portal will relevantly include: client identity, contact details, health and functionality information and information about the outcomes of previous assessments and aged care services approved. This includes both personal and sensitive information as defined in the Privacy Act.
74. Authorised Recipients may also need to search summary records to identify MAC Data that relates to their patient. These searches may also require Authorised Recipients to review client summaries to determine that they are viewing the correct client record.

75. Privacy risks arise in relation to this expansion of the scope of persons who may access MAC Data. Providing access to MAC Data via the Hospital Portal to Authorised Recipients engages the following APPs:

- APP 6 (use or disclosure of personal information);
- APP 11 (security of personal information)

Disclosing personal information

76. Under APP 6, the Agency must only use or disclose personal information for the purpose for which it was collected.

77. The primary purpose for which information is collected in MAC is to facilitate assessment of need and the provision of aged care services, including aged care assessments, and the implementation of plans and referrals to service providers based upon those assessments.

78. The intended purpose of providing Authorised Recipients with access to a client's MAC record (through the Hospital Portal) is to enable them to determine if a new aged care assessment in hospital is necessary.

79. The disclosure of personal and sensitive information to Authorised Recipients to enable the provision of appropriate healthcare services is directly related to the primary purpose, and will be directly related to the primary purpose for which it was collected and in accordance with APP 6.1.

Protected information

80. The information disclosed via the Hospital Portal will also be "protected information" within the meaning of the AC Act. Section 86-2 of the AC Act creates an offence for disclosing protected information; except, relevantly, where the conduct is carried out in the performance of a function under the AC Act (see s 86-2(2)(a) of the AC Act) or where the disclosure is authorised by the person to whom the information relates (see s 86-2(2)(d) of the AC Act).

81. The purpose for which information is collected in MAC is to facilitate the provision of aged care services and the conduct of assessments. We anticipate Authorised Recipients will need to access a patient's MAC record for reasons including: to inform care and treatment of the care recipient in hospital, to check the individual's existing functional assessment and status of approvals, to enable the making of a referral for an aged care assessment and potentially, to assist with ensuring early implementation of services for the person once discharged.

82. In those circumstances, we consider that disclosure of MAC Data to Health Providers for the following purposes:

- (a) delivering services for older people; and
- (b) enabling the conduct of assessments under the AC Act

will be a disclosure in the performance of a function under the AC Act (for the purposes of s 86-2(2)(a) of the AC Act).

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83. Further, noting their role in the provision of health care services to MAC clients, we also consider that Health Providers will be impliedly authorised by care recipients to access their MAC Data (including the assessments) for expected purposes. In those circumstances the exception contained in s 86-2(2)(d) of the AC Act will permit that disclosure.

Disclosing sensitive files and function creep

84. As noted in the original MAC PIA (**attached**), there are privacy risks associated with 'function creep'. That is, the obvious benefits of a centrally accessible client record in terms of administration of the aged care system may lead to the record being used to record more and more information about clients.
85. In this context we note that MAC Data may contain a 'sensitive file' which may include information about a client's financial issues, safety concerns, sensitive medical diagnosis and domestic circumstances. Some of this information may be 'sensitive' personal information within the meaning of the Privacy Act.
86. We consider that the risk of function creep is heightened in circumstances where the Hospital Portal will enable Health Providers (albeit via their Authorised Recipients) to access MAC Data for the purpose of the provision of health care services to MAC clients. This is because such access brings with it the risk that this information will be accessed for purposes that are beyond facilitating the provision of aged care services and the conduct of assessments. In these circumstances we consider that disclosure may also go beyond what is permitted in APP 6.1 and the protected information provisions in the AC Act.
87. Whether access to this additional 'sensitive file' or other information forming part of the MAC Data, which is not strictly relevant to the provision of aged care services is necessary for the purposes of providing appropriate healthcare services to a client will depend on the client's circumstances.
88. To ensure that access to this type of information by Authorised Recipients is permissible, it may be necessary to foreshadow to MAC clients that this type of information will be accessed from time-to-time for the purposes of providing health care services and maintaining MAC, and to expand the scope of the consents obtained from them. It is also necessary to develop protocols which ensure that the MAC Data is only being accessed by Authorised Recipients on behalf of Health Providers for permitted purposes.

| | |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Privacy positives | Providing Health Providers with access to clients' MAC Data including assessment outcomes, will enable Health Providers to provide a better and more tailored level of care and provide valuable information to assist with their care decisions. |
| Privacy risks | Health Providers' access that goes beyond what is necessary to enable better provision of healthcare services to a client will not be authorised by the Secretary, and as such not permitted by the AC Act. The Data Sharing Agreement between the Agency and Health Providers will mitigate this risk by setting out privacy obligations and terms of access for the Hospital Portal. Recommendation 1 which follows is also made in respect of this risk. |

Ensuring the security of personal information

89. Providing Health Providers with access to MAC via the Hospital Portal may also engage privacy risks associated with ensuring the security of personal information held on MAC.
90. APP 11 requires the Agency to take reasonable steps in the circumstances to ensure that the personal information it collects in the course of administering the proposed Hospital Portal is protected from misuse, interference, loss, unauthorised access, modification, or disclosure.
91. As noted above, the Data Sharing Agreement between the Agency and Health Providers will facilitate access to MAC via the Hospital Portal, providing the terms of the access provided. This will assist the Agency to discharge its obligations in respect of the collection and use of MAC Data by Health Providers and their Authorised Recipients.
92. In addition, the Agency should implement privacy and other training to ensure that Authorised Recipients have the required skills and knowledge to use the Hospital Portal in accordance with the Agency's requirements. This could perhaps take the form of an online module developed and provided by the Agency, or a prescribed unit or course of training which could be rolled out by the Agency under a 'train the trainer' model. Health Providers might then be required to provide assurance to the Agency by maintaining evidence of completion by Authorised Recipients in order to obtain and maintain access to the Hospital Portal.
93. The Agency should consider implementing protocols in the Hospital Portal which ensure that only Authorised Recipients have access to the Hospital Portal.
94. It is also necessary to the Agency to have in place robust cybersecurity measures to protect MAC Data from unauthorised access, disclosure, misuse and loss occurring via the Hospital Portal. Additionally, Health Providers may consider seeking advice from experts in cybersecurity as to the appropriate technical measures to take to ensure compliance with the *Security of Critical Infrastructure Act 2018*. This is not an obligation of the Agency and is outside the scope of this PIA.
95. Other risks include that the Hospital Portal might be used by an Authorised Recipient to access and disclose MAC Data that the Authorised Recipient had no legitimate reason to access or disclose. Measures that it would be appropriate to take to protect the information include:
 - (a) restricting access to the Hospital Portal only to those Authorised Recipients who require access to provide aged care services, including maintaining up to date records of Authorised Recipients for each Health Provider and ensuring the deletion of inactive Authorised Recipients and Authorised Recipients who no longer have a legitimate need to access the Hospital Portal;
 - (b) having in place a system of automatically flagging and investigating unusual patterns of use, for example where an Authorised Recipient accesses a large number of records in quick succession;

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- (c) having in place a system of auditing access to the Hospital Portal and interaction with MAC Data, for example to detect whether there are any systemic or common patterns of use which are not best practice or which expose information on the system to potential misuse;
- (d) restricting access to certain classes of MAC Data only to those Authorised Recipients who are likely to have a need to access those classes of information - for example preventing administrative users from accessing sensitive MAC records and attachments when they require access to biographical data only for the purposes of updating or verifying that data;
- (e) ensuring that Authorised Recipients with the ability to access, enter or amend data in MAC via the Hospital Portal have received appropriate training in their obligations under the Privacy Act and that this training is kept current.²⁰

| | |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Privacy positives | Providing Health Providers with access to clients' MAC Data, will enable Health Providers to provide a better and more tailored level of care and provide valuable information to assist with their care decisions. |
| Privacy risks | Health Providers may have limited control over who within the Hospital Portal system has access to MAC. This may lead to unintended access, or security breaches. |

Recommendation 1

The Agency should consider implementing protocols in the Hospital Portal which ensure that only Authorised Recipients have access to the Hospital Portal, and are only accessing MAC Data reasonably required for the purposes of providing better healthcare services to the clients to whom the information relates, or otherwise maintaining the Hospital Portal, and they are not using it for other purposes (for example: to assist with the Health Provider's own reporting or funding requirements).

Recommendation 2

The Agency should implement security protocols in the Hospital Portal infrastructure to limit access and ensure security of MAC Data.

²⁰ See discussion at Sections 8.2; 8.4.

9.3 Updates to MAC Data using hospital records: Authority to collect

96. Currently under the existing MAC framework, MAC client data is collected from the following sources:
- (a) clients (or their representatives) upon self-registration;
 - (b) health providers, via a referral through an inbound referral form; and
 - (c) assessors, through the Assessor Portal during the conduct of an assessment.
97. The Hospital Portal will provide a further source by which a client's MAC Data may be updated and collected. Specifically, the Hospital Portal functionality will enable Authorised Recipients to update a client's MAC Data using their Health Provider records.
98. Privacy risks arise in relation to enabling Authorised Recipients to edit and update MAC Data, engaging the following APPs:
- APP 3 (Collection of personal information)
 - APP 5 (Notification of collection of personal information)

Collection of personal information

99. Enabling Authorised Recipients to update and amend client MAC Data through the Hospital portal will result on the Agency collecting that personal information of MAC clients.
- APP 3.1
100. APP 3 (collection of personal information) requires that the Agency only collect personal information that is reasonably necessary for, or directly related to, one or more of its functions or activities, and to the extent that the personal information contained in the documents includes sensitive information (for example medical or health information) can only be collected with the consent of the individual, unless an exception applies.
101. The functions of the Agency include dealing with matters such as administration of the AC Act (including the facilitation of assessments), delivery of health promotion and delivery of services for older people (see paragraph 30 above). The proposed Hospital Portal is a feature of MAC, which is operated by the Agency.
102. As the broad purpose of the Hospital Portal is to facilitate the assessment of clients for access to aged care services, as well as screening and updating MAC Data which is relevant for the provision of aged care services, we consider that the information collected through the Hospital Portal in the form of modifications to the MAC Data is reasonably necessary for the Agency's functions.

APP 3.3

103. Enabling Authorised Recipients to modify and update client MAC Data via the Hospital Portal, using hospital records and other verifiable information sources will involve the collection of sensitive information by the Agency, including specifically, health information.
104. The Agency (and by extension, any CSP acting on behalf of the Agency, including in this context Health Providers) must not collect sensitive information about an individual unless:
- (a) the individual consents²¹ to the collection of the information and the information is reasonably necessary for, or directly related to, one or more of the agency's functions or activities; or
 - (b) an exception in APP 3.4 applies, some of which are discussed below.
105. As above, enabling Health Providers to update MAC Data through the Hospital Portal will facilitate the assessment of clients for access to aged care services, as well as screening and updating client information which is relevant for the provision of aged care services. Accordingly the information collected through the Hospital Portal in the form of updates to MAC Data would be considered reasonably necessary for the Agency's functions
- Consent
106. As set out at paragraph 32, the Agency generally obtains consent to collect personal information from MAC clients at the point of registration, assessment or referral.
107. In the case of in-bound referrals, consent for client registration or referral is obtained by hospital staff, and is notified to the Agency on the inbound web-referral forms (not via the Hospital Portal). This collection by MAC will be permissible under APP 3.3(a) of the Privacy Act and s 86-2(2)(a) and (d) of the AC Act if the consents obtained are adequate.
108. However, there will be limitations in relying on this consent where Authorised Recipients of Health Providers are modifying client MAC records through the Hospital Portal. This is because MAC Data may have been generated from a different source (for example: client self-registration), in which case the relevant consent for Authorised Recipients to access and modify MAC Data may not have been obtained at the point of registration.
109. To strengthen reliance on adequate consents having been obtained to deal with the personal information through the Hospital Portal, a screen with a checkbox has been included in the Hospital Portal that Authorised Recipients are required to

²¹ The APP Guidelines provide that consent may be express or implied and has four elements, namely that: (i) an individual must be adequately informed before giving consent; (ii) consent be given voluntarily; (iii) consent must be current and specific; and (iv) an individual must have had capacity to understand and communicate their consent.

complete to confirm they have obtained the necessary consent, before MAC Data is accessed, uploaded, or modified in MAC.²²

110. In addition, a further risk mitigation tool is being developed in the form of a Data Sharing Agreement between the Commonwealth and Health Providers to facilitate their access to MAC via the Hospital Portal, and which prescribes Health Providers' obligations around access and use of the Hospital Portal and obtaining relevant consents on behalf of the Agency.

APP 3.4

111. The relevant exceptions in APP 3.4 include:
- (a) Where the collection of the information is required or authorised by or under an Australian law or a court/tribunal order (APP 3.4(a))
 - (b) Where a "*permitted general situation*" exists in relation to the collection of the information by the APP entity (APP 3.4(b)).
112. Collection may be authorised by or under an Australian law if the AC Act authorises the collection by the Agency. As above information disclosed via the Hospital Portal will also be 'protected information' within the meaning of the AC Act. Relevantly s 86-2(2)(a) of the AC Act authorises the making of a record of protected information where the conduct is carried out in the performance of a function under the AC Act.
113. The purpose for which the Hospital Portal enables MAC Data to be modified or updated is to ensure that MAC Data is up to date and accurate for the purposes of facilitating the provision of aged care services and the conduct of assessments. This is key to the functions of the Agency in administering the AC Act (including the facilitation of assessments), delivery of health promotion and delivery of services for older people (see paragraph 30above).
114. In that context collection of information from hospital records and other verifiable sources for the purposes of verifying and updating MAC Data will be authorised by s 86-2(2)(a) of the AC Act).
115. A number of "*permitted general situations*" are set out in s 16A of the Privacy Act.

²² The screen provides:

"Have you obtained consent to collect this information?"

The Privacy Act 1988 (Cth) requires that you obtain informed consent from an individual before you collect certain information. Because the information will be stored on the My Aged Care platform you must ensure the client understands that this information will be stored and may be used and disclosed to other people in accordance with the Privacy Policy available at myagedcare.gov.au/privacy. You must also comply with the relevant privacy legislation in your jurisdiction, as well as any policies or procedures in place in your hospital. Do not upload to, or alter information on, the My Aged Care platform until you have received this consent."

The screen requires the user to confirm by clicking on a box which states "*I have consent*" or alternatively to click on 'cancel' if no consent has been obtained.

116. Relevantly, a permitted general situation exists in relation to the collection of personal information by an APP entity where:
- (a) it is unreasonable to obtain the individual's consent to the collection; and
 - (b) the entity reasonably believes that the collection, use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual or to public health or safety.
117. Whether this permitted general situation may, in any given case, apply to the collection of personal information and sensitive information by the Agency for the purposes of enabling update of MAC Data (via the Hospital Portal), will depend on the individual circumstances of each case.
118. The APP Guidelines provide guidance on this permitted general situation at paragraphs [C.4] to [C.13] and considers each limb as follows:
- (i) Unreasonable or impracticable to obtain consent: An APP entity should be able to point to one or more clear reasons that make it unreasonable or impracticable to obtain an individual's consent, which may include having regard to the considerations set out at [C.6], which relevantly include:
 - A. the nature of, and potential consequences associated with, the serious threat (e.g. the urgency of a situation and level of threatened harm may require collection before it is possible to seek consent;
 - B. the possible adverse consequences for an individual if their consent is not obtained before the collection;
 - C. the ability to contact the individual to obtain consent (e.g. it may be impracticable to obtain consent if the individual's location is known after reasonable enquiries have been made or if they cannot be contacted for another reason);
 - D. the number of individuals whose personal information is to be collected, used or disclosed (e.g. it may be impracticable to obtain consent from a very large number of individuals—see below as to the relevance of inconvenience, time and costs)
 - E. the inconvenience, time and cost involved in obtaining consent (noting that an APP entity is not excused from obtaining consent by reason only that it would be inconvenient, time-consuming or impose some cost to do so). Whether these factors make it impracticable to obtain consent will depend on whether the burden is excessive in all the circumstances.

(ii) Reasonably believes collection is necessary

- A. *Where it is unreasonable or impracticable to obtain consent, an APP entity must "reasonably believe" that the collection is "necessary" to lessen or prevent a certain kind of serious threat. There must be a reasonable basis for the belief, and not merely a genuine or subject believe, and an APP entity must be able to justify its reasonable belief. A collection would not be considered necessary where it is merely helpful, desirable or convent.*

(iii) Lessen or prevent a serious threat

- A. *This permitted general situation applies to a serious threat to the life, health or safety of any individual, or to "public health or safety". The purpose of the Programs is disease surveillance, aimed at protecting public health and safety. Accordingly, it would appear that serious threats to public health or safety would be more relevant in the Programs than serious threats to the life, health or safety of any individual (which would generally arise in specific incidences and outside of the Programs).*
- B. *A "serious" threat is one that poses a significant danger to an individual or individuals. The likelihood of a threat occurring as well as the consequences if the threat materialises are both relevant. A threat that is likely to occur, but at an uncertain time, may be a serious threat, such as a threatened outbreak of infectious disease.*

119. This permitted general situation *may*, in any given case, authorise the collection of personal information and sensitive information, although it will always depend on the issues set out above and does not provide a general permission in all cases.

APP 3.6

120. While APP 3.6 generally requires collection from the individual directly, exceptions apply in circumstances where it is unreasonable or impracticable to do so, or the individual consents.
121. Given that one information source that will be utilised by Authorised Recipients modifying and updating MAC Data via the Hospital Portal will be hospital records, to which MAC clients are unlikely to have access, it is reasonably clear that it would be unreasonable or impracticable for these updates to come directly from the individual.

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| Privacy positives | Obtaining client consent at the time of hospital registration or referral will give the client an opportunity to understand the nature and type of health information that is being provided as part of the registration/referral process. |
| Privacy risks | As noted in Section 8 above, as the Health Providers will have the direct contact with the MAC clients, the Agency will need to rely on the Health Providers (via their Authorised Recipients) to obtain the requisite consent from them on its behalf to facilitate the flow of information via the Hospital Portal, and the Agency's dealings with that information. In mitigation of this risk a Data Sharing Deed, training and a checkbox in the Hospital Portal will be implemented which confirms that the Authorised Recipient has obtained relevant consents. A recommendation dealing with situations where consent cannot be obtained is included below. |

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| Recommendation 3 | <p>The Agency should develop protocols for how it intends to deal with MAC Data in circumstances where a client chooses not to consent fully or to withdraw consent, including in relation to assessments about whether a permitted general situation may otherwise apply in a given circumstance.</p> <p>This may involve developing systems to ensure that variations in the nature of the consent obtained from clients are recorded and capable of being acted upon when their personal information is being dealt with</p> |
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APP5 – Notification of collection of personal information

122. APP 5 relevantly provides that an agency that collects personal information about an individual must take reasonable steps to notify the individual of certain matters or to ensure the individual is aware of those matters. Those steps must be taken at or before the time of collection (or, if that is not practical, as soon as practicable after). The matters covered by APP 5 include the identity of the collecting agency, the purposes and circumstances of collection, and information about the agency's privacy policy.
123. APP 5 does not require notification every time information is collected (that is, it is not necessary for a client to be informed every time a new piece of information is included in a record). Rather, APP 5 requires that clients be told up-front about the information that will be collected and how it will be used.
124. The privacy notification is an important tool in privacy compliance and managing community expectations in relation to MAC assessment process. As discussed in this PIA, information relevant to the Hospital Portal proposal will be collected from a range of sources other than directly from the individual to whom the information relates.

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125. We understand that the current arrangement is that informed consent for use and disclosure of information is obtained at the time of creating a MAC profile and that this consent also provides users with details of how they can access the Privacy Policy governing MAC (which is available at myagedcare.gov.au/privacy).
126. The Privacy Policy explains that:
- "the Department will collect, hold, use and disclose personal information for reasons including...maintaining a central online client record to improve service delivery and appropriate information sharing, including referrals, by aged care providers, assessment workers, residential care facilities, **hospitals, and health professionals**" (our emphasis).*
127. This is sufficiently clear to be relied upon to meet the Agency's obligations under APP 5 in circumstances where Health Providers, via their Approved Recipients, will collect, use and disclose MAC Data for the purposes of uploading to the Hospital Portal.

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| Privacy positives | Providing MAC clients with information about the Agency's privacy notices and policy gives the community greater confidence in the manner in which their personal information will be managed. |
| Privacy risks | <p>MAC clients referred from Health Provider settings may have capacity issues which inhibit their ability to understand the nature of privacy notices and consents provided to them.</p> <p>Also, the Agency may not have oversight in relation to the privacy notices provided to MAC clients who are referred through the Health Provider pathway, as these processes will be managed by the hospitals. A recommendation to mitigate this risk is set out below.</p> |

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| Recommendation 4 | <p>Authorised Recipients collecting personal information for the purposes of accessing MAC Data via the Hospital Portal should be required to undergo basic privacy training, including in relation to the Agency's privacy notices and policy and how to convey notices and obtain consents from vulnerable persons. The content of this training should be provided by the Agency to Health Providers on the basis that Health Providers will ensure intended Authorised Recipients complete the training prior to being granted access to the Hospital Portal.</p> |
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9.4 Updates to MAC Data using hospital and other verified records: ensuring accuracy

128. The Hospital Portal will provide an opportunity for MAC Data to be modified and verified using the records of the Health Provider and other verifiable information sources. This has the potential to significantly improve the accuracy and currency of MAC Data.
129. However, privacy risks arise in relation to enabling Authorised Recipients to modify MAC Data, engaging APP 10: Quality of personal information.
130. APP 10 requires that an APP entity must take such steps (if any) as are reasonable in the circumstances to ensure that:
- (a) the personal information that the entity collects is accurate, up-to-date and complete; and
 - (b) the personal information that the entity uses or discloses is, having regard to the purpose of the use or disclosure, accurate, up-to-date, complete and relevant.
131. The Agency's intention to enable, and require, Authorised Recipients of Health Providers to modify a client's MAC Data through the Hospital Portal may lead to issues in relation to ensuring the integrity of any updates that are made. As above, to manage this risk, the Agency is requiring Health Providers to enter into a Data Sharing Agreement which requires Authorised Recipients to complete training about when MAC Data can be modified, the correct process for doing so and appropriate verification of information sources.

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| Privacy positives | Enabling the ability to collect and modify clients' MAC Data will enable Health Providers and the Agency to have a more complete and up-to-date understanding of a client's care needs and ensure the accuracy of MAC Data. This will also likely improve the common source of truth in relation to the health and aged care records that are relied upon by the Agency and Health Providers for the purposes of service delivery to MAC clients. |
| Privacy risks | Providing Health Providers with the ability to modify MAC Data carries a risk that the data used may not be of sufficient quality, or that data may be changed by an unauthorised user. |

132. To address the risks outlined in this section, it is recommended that:

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| Recommendation 5 | <p>The Agency should ensure that Authorised Recipients are made aware that modifications they make to MAC Data via the Hospital Portal must meet certain quality requirements.</p> <p>This may be achieved by developing verification protocols to ensure that before modifications can be made through the Hospital Portal the source of the information being relied upon to make the modification must meet certain prescribed standards.</p> |
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| | <p>Such a protocol might require Authorised Recipients to be made aware that modification of MAC Data may only be made using Hospital records, or other verified sources (for example following sighting of Medicare card or death certificate).</p> <p>The Agency may also consider requiring Authorised Recipients to verify the accuracy and correctness of MAC Data from time to time, and correct any inaccuracies or omissions, using Hospital records or other verified sources.</p> |
| <p>Recommendation 6</p> | <p>The Agency should prepare training programs or modules in relation to ensuring, and maintaining, the quality of MAC Data stored in and accessed or collected or modified via the Hospital Portal. The training should include protocols about when MAC Data can be uploaded and amended, and the correct process for doing so, and the verification and source documents required to support any change (for example: providing a death certificate or attending doctor's certificate before updating a record to reflect that a client has died). This training should be provided to Health Providers on the basis that Health Providers will ensure intended Authorised Recipients complete the training prior to being granting access to the Hospital Portal.</p> |
| <p>Recommendation 7</p> | <p>The Agency should conduct spot checks and audits of MAC Data that has been accessed or collected or modified by Health Providers via the Hospital Portal to ensure accuracy of information.</p> |