

LEGISLATION REVIEW TERMS OF REFERENCE

My Health Records Act 2012

The reviewer is to provide a report to the Minister by 1 December 2020.¹ The reviewer must:

- a) Consider the extent to which the purpose of the Act is enabled by the legislation (including its rules and regulations), particularly in regard to:
 - i. improved continuity and coordination of healthcare for healthcare recipients accessing multiple providers; and
 - ii. enhanced availability and quality of a consumer's health and medicine information and its relationship to:
 - reducing duplication of treatment;
 - avoiding adverse events; and
 - the ability for consumers to participate more actively in their own healthcare.
- b) Advise how the Act might be improved to better address:
 - i. how consumers use the MHR system;
 - ii. how health service providers and consumers interact with the MHR system and each other;
 - iii. use of MHR data for research and public health purposes (with particular reference to the *Framework to guide the use of My Health Record system data for research and public health purposes*); and
 - iv. trust and confidence in the system including appropriate exclusions for, and practical issues arising from, access by law enforcement and government agencies, employers and insurers.
- c) Consider how the Act and its rules and regulations support:
 - i. compliance and enforcement activities, and the effectiveness of penalties where these have been enforced;
 - ii. the handling of complaints where these have been made;
 - iii. the operation of the Act within the scope of the *Privacy Act 1988* and related laws; and
 - iv. the effectiveness of the oversight role of the COAG Health Council.
- d) Address the appropriateness, effectiveness and efficiency of the legislation and make particular reference to issues which have arisen as a result of the legislation, including but not limited to:
 - i. the role of the Office of the Australian Information Commissioner, including its functions in overseeing the privacy and data handling aspects of the MHR system;

¹ This date was determined by the Act as the latest possible date for a review report to be provided to the Minister. 1 December 2020 is three years after the Minister made a Rule under Clause 2, Schedule 1 of the Act. The My Health Records (National Application) Rules which rendered the My Health Record (MHR) an opt-out system commenced on 2 December 2017.

- ii. how the provisions regarding minors' information are addressed under the Act and the extent to which the Act interacts with related national, state or territory legislation;
 - iii. whether the System Operator has sufficient authorisations to carry out its functions;
 - iv. the interaction of the Healthcare Identifiers Service with the MHR system (taking into account the findings of the 2018 Healthcare Identifiers Act and Service Review); and
 - v. access for healthcare providers whose ability to author Shared Health Summaries and become nominated healthcare providers in the MHR system is currently restricted.
- e) Consult with and/or invite submissions from stakeholders with a demonstrated interest in the Act and the effect of its operation within healthcare settings.
- f) Make recommendations for changes to the Act, or its rules and regulations, to support the MHR system enabling improved healthcare outcomes in line with the objective of the Act.
 - i. Outline where changes outside of the scope of MHR legislation review might be considered in order to better enable the MHR legislation to achieve its objectives, whether those changes are legislative or achievable through other means, regardless of whether those changes are solely a matter for Commonwealth action or not.
 - ii. Make interim recommendations during the review period if serious concerns or significant barriers are identified and such recommendations would enable urgent action to be considered by Government.
- g) Any other matter that the reviewer considers relevant to the purpose of the review.