



Australian Government
Australian Digital Health Agency

22 July 2019

Mr Matthew J Collins AM QC
President
The Victorian Bar Inc
Level 5, 205 William Street
Melbourne VIC 3000

Dear Mr Collins

SUBPOENAS FOR PRODUCTION OF DOCUMENTS IN THE MY HEALTH RECORD SYSTEM

In light of a number of subpoenas which have recently been issued to the Australian Digital Health Agency (the Agency), the Agency wishes to draw to the Bar's attention the provisions of section 69 of the *My Health Records Act 2012* (Cth). You might consider it worthwhile to bring this letter to the attention of any relevant committee, or perhaps, to the attention of your members and practitioners who have a practising certificate in your jurisdiction, via a newsletter or similar.

The My Health Record system is the Australian Government's digital health record system. It contains My Health Records which are online summaries of individuals' health information, such as a shared health summary, key medicines they are taking and treatments they have received. A My Health Record allows an individual's doctors, hospitals and other healthcare providers to view the individual's key health information, in accordance with their access controls. Individuals are also able to access their record online.

The *My Health Records Act 2012* (Cth) (the Act) limits when and how health information included in a My Health Record can be collected, used and disclosed. Unauthorised collection, use or disclosure of My Health Record information is both a contravention of the Act and an interference with privacy.

Section 69 of the Act is a relevant matter for consideration by any legal practitioner or party seeking to obtain information in any My Health Record. That section applies to the disclosure of 'health information included in a healthcare recipient's My Health Record'. Relevantly, by subsection 69(3) the Agency (being the System Operator for the purposes of the Act and in all of the circumstances, the 'Proper Officer' to respond to the subpoena) cannot be required to disclose health information included in a healthcare recipient's My Health Record to a court or tribunal or coroner except in the very limited circumstances provided by subsections 69(1) and (2).

The Agency is however authorised by subsection 69(4) to disclose health information included in an healthcare recipient's My Health Record to a court or tribunal where the healthcare recipient consents. If the consent of the healthcare recipient is obtained and that consent is forwarded to the Agency, consideration will be given by the Agency to disclose the information sought under subsection 69(4). In the absence of that consent, practitioners and parties can expect the Agency will apply to have the subpoena set aside. Information on consent and identity checking requirements may be sought from the Agency.

This letter relates to My Health Records and does not concern health information held outside of the My Health Record system. More information on health information and the My Health Record system can be obtained from the websites of the Office of the Australian Information Commissioner (www.oaic.gov.au) and the Australian Digital Health Agency (www.myhealthrecord.gov.au).

Yours sincerely

Livia Bartoletti
General Counsel