
Re-booting eHealth

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In brief

- The uptake of eHealth records has been low, with only 10% of Australians having registered, an insufficient population for an effective national system.
 - The ‘re-booting’ of eHealth, announced by Minister Ley in May 2015, has progressed with the passing of the *Health Legislation Amendment (eHealth) Bill 2015* (Cth) by both houses of Parliament.
 - The most dramatic reform is a shift from an ‘opt-in’ to an ‘opt-out’ approach to enrolment, which is likely to give the system the necessary ubiquity to drive utilisation and innovation.
 - The regulation of the use of health identifiers and health information has been strengthened as a corollary of the adoption of an ‘opt out’ model.
 - Further reform is expected, with the expansion of the role of the National eHealth Transition Authority under a new structure, to be called the Australian Commission for eHealth.
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In detail

Background to eHealth in Australia

The therapeutic and efficiency benefits of electronic sharing of patient health information amongst health professionals are significant and will be one of the key strategies to contain the cost of health care in Australia. It has, however, taken significant time and sustained effort to reach the point at which the benefits of eHealth in Australia may be realised.

Challenges in establishing eHealth infrastructure in Australia

The establishment of a comprehensive eHealth system is complicated by the division of responsibilities for healthcare in Australia between the Commonwealth on the one hand and the States and Territories on the other. The Commonwealth has particular responsibility for system governance and funding through the Medicare Benefits Scheme and Pharmaceutical Benefits Scheme, along with direct involvement in primary, aged and disability care. The States and Territories have primary responsibility for the administration of health professions and the

operation of acute care services. The consequence of the division of health responsibilities for eHealth is that patient data must be able to be exchanged between different systems operated by different governments.

Formation of NEHTA

The National eHealth Transition Authority (NEHTA) was established under the auspices of the Council of Australian Government (COAG) in 2005 to establish consistent standards and protocols across Australian governments in order to facilitate the development of eHealth infrastructure for use by health sector participants throughout Australia.

NEHTA is a unique body; a private company whose members comprise each Australian Government and whose work is highly specialised, operating at the intersection of health, technology and management. Since its inception, NEHTA has collaborated with various parts of the health sector, the information and communications technology industry and consumer representatives to establish and develop the infrastructure needed to facilitate eHealth in Australia.

Launch of the PCEHR

The Personally Controlled E-Health Record (PCEHR) was launched in July 2012 in order to facilitate the collection and sharing of personal health information via an online record. The PCEHR was established with an ‘opt-in’ enrolment approach, requiring Australians to take positive steps to obtain a PCEHR, no doubt influenced by concerns that Australian may have about the privacy and security of sensitive health information – indeed there is an indication of this concern in the inclusion of ‘Personally Controlled’ in the name of the PCEHR system.

Royle Review

The take up of the PCEHR has been low, with around 10% of Australians having enrolled. The Commonwealth Health Minister announced a review of the PCEHR in November 2013, appointing a review panel headed by Mr Richard Royle to conduct the review.

The review panel identified a number of opportunities to enhance the system and improve uptake, including changes to the governance process, stakeholder engagement and integration planning. The review panel recommended a number of changes to the PCHER system in order to expedite realisation of the expected benefits in a shorter time frame, including moving to an opt-out system for individual participation and improving system usability and the clinical content of records.

Re-booting eHealth – Part 1

The Commonwealth Health Minister announced a ‘rebooting’ of the eHealth system in May 2015, backed by an allocation of \$485m over in the 2015-16 Budget.

The first step in the reform process was the introduction of the *Health Legislation Amendment (eHealth) Bill 2015* (the Bill) into Parliament in October 2015. The Bill amends a number of laws governing the eHealth infrastructure and was passed by the Senate on 12 November; it will become law on Royal Assent.

A new brand

The Bill amends the *Personally Controlled Electronic Health Records Act 2012* (Cth) to establish a

new brand for the PCEHR, which will now be known as ‘My Health Record’; indeed the name of the Act will also change to with changes to the *My Health Records Act 2012 (Cth)* (MHR Act).

Adoption of an ‘opt out’ enrolment model

The most substantive change introduced by the Bill is an amendment to the MHR Act to allow the creation of a ‘My Health Record’ for an individual unless they opt out.

The Bill requires that a trial of the ‘opt out’ model must first be undertaken to determine whether the change in model leads to participation in the system at a level that ‘provides value to users of the system’ before the model can be adopted throughout Australia.

The requirement for a trial is an unusual approach; it suggests a degree of uncertainty as to whether the poor take up of the PCEHR is explained by personal choice or apathy. It is also unclear whether anything short of an overwhelming level of ‘opt out’ in the trial would influence the Commonwealth to abandon the rollout, given the clear imperative to establish a functioning eHealth record system in Australia.

Strengthened privacy protection

As a corollary of the adoption of an ‘opt-out’ model, the Bill aims to create a more graduated framework to address concerns the public may have in relation to the use of health information.

The Bill amends both the *Healthcare Identifiers Act 2010 (Cth)* (Healthcare Identifiers Act) and the MHR Act to provide more specific regulation of how healthcare identifiers and information obtained during care may be used, as well as supplementing the existing criminal penalties for misuse of information with civil penalties.

Establishment of the Australian Commission for eHealth

The Minister foreshadowed the imminent transfer of the responsibilities of NEHTA to a new body to be called the Australian Commission for eHealth (ACeH), in her second reading speech to Parliament in respect of the Bill.

The establishment of ACeH, which is expected to assume the role of System Operator of the My Health Record system, is an important milestone and may indicate the success of NEHTA in the initial task of developing a common approach to eHealth across Australian Governments.

The Minister has not yet provided information about the structure and governance of ACeH, although it is clear that there will need to be careful consideration of the needs of various stakeholders, as indicated by the Royle review panel. It will also be important to ensure that the competencies within NEHTA are retained within the new structure.

The takeaway

The amendments effected by the Bill will come into force once the Bill receives Royal Assent, with the ability to commence trials of the ‘opt-out’ model shortly after. The Minister has also indicated that a taskforce has been established to facilitate the establishment of ACeH. In light of these developments, 2016 will be an important year in the development of the eHealth system in Australia.

Let's talk

For a deeper discussion of how the eHealth reform might affect your business, please contact:

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