

Australian Federal Attorney-General's Department

Privacy Act Review report

March 2023

Advocacy and collaboration to improve access and equity

Royal Australian and New Zealand College of Psychiatrists submission

Privacy Act Review Report

About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is responsible for training, educating and representing psychiatrists in Australia and New Zealand. The RANZCP has more than 7900 members, including around 5700 fully qualified psychiatrists.

Introduction

The RANZCP welcomes the opportunity to contribute to the [Attorney-General's Department's Privacy Act Review report](#) (the report). The recommendations contained within this submission are based on extensive consultation with the RANZCP's Committee for Research, Committee for Evidence-Based Practice, Committee for Professional Practice, Section for Leadership and Management, Section for Private Practice, and other Committees which are made up of community members and psychiatrists. As such, the RANZCP is well positioned to provide assistance and advice about this issue due to the breadth of academic, clinical and service delivery expertise it represents.

The RANZCP has previously made a [submission](#) in relation to the Privacy Act Review in response to the Discussion Paper that was published on 25 October 2021. In this submission the RANZCP highlighted our position that privacy protections are of vital importance to the confidential nature of the consumer-practitioner relationship, especially to those who are most vulnerable and at risk of harm. This position has been outlined in a number of other RANZCP submissions including two in response to the release of the Government's Online Privacy Bill, both as part of a coalition of stakeholders and individually, and one regarding the Australian Law Review Commission's inquiry – *Family Law for the Future: An Inquiry into the Family Law System*.

The RANZCP outlines the importance of privacy protections to vulnerable groups in [Position Statement 89 – Patient-psychiatrist confidentiality: the issue of subpoenas](#), [Position Statement 83 – Recognising and addressing the mental health needs of the LGBTIQ+ population](#) and [Professional Practice Guideline 3 - Australian Family Court Proceedings](#). The responses below reflect these established statements and guidelines.

Issues

The RANZCP has particular interest in the proposals affecting consent and in particular the proposal which would grant the right to erasure. Consent is the bedrock of clinical psychiatric practice and underwrites the trust required to develop and maintain the patient-practitioner relationship. As highlighted in the RANZCP's previous submission the nature of 'personal information' being that which is 'true or not' when dealing with the health record has the potential for harm to consumers. The right to erasure provides an avenue to correct the record and prevent untrue or outdated information impacting consumer recovery.

1. Consent

The RANZCP supports proposal 11.1 to amend the definition of consent to provide that it must be voluntary, informed, current, specific, and unambiguous.

As previously stated in the [RANZCP's submission](#), it is important to highlight that 'consent' is not always total and inclusive. Any standardisation of consent requests must consider that within even compromised capacity, there exists scope for patients to make intermediary decisions about day-to-day aspects of their care not directly connected to their treatment. It is the position of the RANZCP that consumers have the right to the best mental health care, in a manner that respects their dignity, humanity and rights. This includes their treatment occurring in a culturally sensitive manners which respects their right to privacy and

being as fully informed of the decisions affecting their lives and care as possible, including how their 'health information' will be used or disclosed.

2. Consent (Research)

The RANZCP recognises the importance of research and academic psychiatry in the practice of clinical psychiatry and advocacy. The RANZCP recognises the recommendation of the report that broad consent for research should be adopted in Australia subject to the existing exceptions.

However, the RANZCP would highlight that broad consent should not be used to justify research that has the potential to harm individuals or communities. The benefits to the public for a broad consent basis should not be used to overcome the inherent private good of consent that is 'voluntary, informed, current, specific, and unambiguous'. In cases where there is the potential for harm, or vulnerable groups are involved in the proposed research, the RANZCP maintains the need and benefits of assessment by independent Human Research Ethics Committees.

3. The right to erasure

The RANZCP welcomes the effects of proposal 18.3 in providing an avenue for the removal of outdated or incorrect information. Due to the classification of 'personal information' as being 'true or not' for the purposes of privacy protections there is a risk that the abuse of information or misrepresentation of any incorrect information as a basis of evidence or fact could result in misdiagnosis or mistreatment..

[Inaccurate or outdated information](#) can be used intentionally by bad faith actors or unintentionally by governmental and commercial systems in a number of ways that can impact consumer recovery. Employment, governmental benefits, insurance and legal determinations can all be affected by a consumer's health record and the inability to maintain those records to be an accurate representation would be a breach of an individual's right to mental health care which respects dignity and humanity.

The RANZCP would highlight that the right to erasure should not be subject to onerous law enforcement exceptions. Such law enforcement exceptions would impact the patient-practitioner relationship, especially in the case of particularly vulnerable individuals.

When their clinical records are disclosed against their will, consumers frequently feel ashamed, helpless and stigmatised. Successful therapy may become impossible in such circumstances; the relationship of trust with the psychiatrist may be permanently damaged, and in some cases, consumers may be re-traumatised by the forcible disclosure. This is equally the case with an inability to erase incorrect or outdated information that may be subject to law enforcement requests for disclosure.

The RANZCP would welcome the opportunity to provide further comment to any other documentation or consultation produced, or to act as a consultative body on this matter.