

8 October 2021

## Member briefing – Health Legislation Amendment (Information Sharing) Bill 2021

### Executive summary

On 5 October 2021, the Victorian Government introduced the Health Legislation Amendment (Information Sharing) Bill 2021, implementing legislation that was first consulted on in 2020. When passed, the legislation will enable services to share healthcare information between services and the Department of Health.

In its current state, the legislation only provides the basis for the creation of an Electronic Patient Health Information Sharing System (System). As a System is developed, further roles and responsibilities of the participating health services will also be developed. Implementation of the legislation is delayed until 2023 so that a solution can be developed – there is therefore no immediate impact on health services at the time the legislation is passed.

Once in effect, the included services (ambulance services, registered community health centres, public hospitals, multipurpose services, denominational hospitals, metropolitan hospitals, public health services, Forensicare and certain residential care services) will be responsible for creating, maintaining and sending healthcare information to the Secretary of the Department of Health (the Secretary) to support the operation of the System.

Further information on the key features of the proposed System is available in **Addendum A**.

### Background

In November 2020, the Department of Health and Human Services launched a [consultation](#) on potential legislative reform to enable health information sharing. Services can currently only share information within their own service. The consultation focused on a proposal to develop a clinical information sharing (CIS) solution which uses a single digital interface to allow health information from services to be stored and held in a central location by the (now) Department of Health (DH), before being securely shared with other public hospitals and health services. The consultation was focused on seeking feedback on proposed amendments to the *Health Services Act 1988* and *Health Records Act 2001* to deliver this proposal.

### VHA submission

The VHA developed a [submission](#) for the consultation, supported by member engagement. The submission, while supportive of the intention and aim of the proposal, expressed concern that the proposed CIS solution may not be the most appropriate mechanism to achieve the intended aim – for patients to move between services and receive treatment over an extended period in a safe and coordinated way.

One of the main concerns was the lack of inclusion of all healthcare settings, as consumers often interact with a range of settings that were not set to initially be included. Broadly, the VHA wanted to see suitable levels of resourcing, consultation and safeguards to ensure the system did not have any unintended consequences, with the entire health system included in the CIS.

## Health Legislation Amendment (Information Sharing) Bill 2021

### **The Bill is very similar to the consultation paper, including the lack of patient consent**

The proposed [Bill](#), in line with the initial consultation paper, focuses on amending the *Health Services Act 1988* and the *Health Records Act 2001* to enable the establishment of a centralised System, authorising the collection and disclosure of health information to the Secretary for the purpose of establishing and maintaining the System. Patient consent is not required, to ensure that the System can work effectively, in line with current permissions in Victorian privacy laws that enable sharing health information for care delivery.

These powers are delayed, coming into effect on 17 February 2023, if not proclaimed earlier, so that DH can design, construct and commission the electronic information management solution required to deliver the proposed System. The legislation includes no information on the proposed System, leaving that open to the Secretary and DH to design as required, which means there are still uncertainties around the responsibilities for participating health services.

Broadly, the Bill is very similar to the proposal in the initial consultation paper. Information from all health services will still flow through to DH, which will collect all the information then provide that to services to support the provision of medical treatment. See **Addendum B** for further information on how the system will operate.

### **There has been an expansion of the health services initially involved**

A key change from the initial consultation paper is the inclusion of further health services. Participating health services would, now, initially include ambulance services, registered community health centres, Forensicare and certain residential care services, as well as public hospitals, multipurpose services, denominational hospitals, metropolitan hospitals and public health services. Further health services, or classes of health services, may be prescribed in future, which the Bill enables.

### **Services would have discretion over access to the System, but there will be stringent protections**

In terms of using and supporting this new System, the Bill enables a broad array of people to interact with it. Anyone engaged or employed by a participating health service, and who is authorised by that health service, would be able to access the System to support the provision of medical treatment to a person. Similar language would enable someone to access the System for the purposes of sharing information, information security and data management in relation to the System. The Victorian Government, in [readings](#) of the Bill, has said that there will be ‘robust safeguards and audit processes to securely manage data and protect patient privacy’, including real-time business processes and audit checks. However, it is not clear how much of this responsibility and administration will be on participating health services. The Bill would also make it an offence to have unauthorised access or access the information for unauthorised purposes. The penalty for both breaches would be 240 penalty units or two years imprisonment.

### **Health services will remain responsible for the information they collect**

The Bill has a number of implications around the collection and amendment of information. The Bill would make the System, and all information shared through it, exempt from the *Freedom of Information Act 1982* (FOI Act). Similarly, the amendments to the *Health Records Act 2001* will ensure that Health Privacy Principles 1.3 and 1.5, which impose certain requirements on collecting information about an individual from someone else, do not apply to the collection of health information for the proposed System to support efficient information collection. However, health services will still be included in the FOI Act; as participating health services will hold the source records, those health services will also have responsibility to provide access to, and correction of, patient health information.

### **The Department of Health Secretary will be responsible for the System and setting the information required**

The Secretary will be responsible for establishing and maintaining the System, and will be able specify the patient health information required through a notice in the Government Gazette. The scope of information to be specified would include prescribed medicines, allergies, alerts, admissions, discharge summaries, outpatient consults and laboratory and imaging results. Introducing the legislation, the Victorian Government has already highlighted the applicability that these changes would have on sharing COVID-19 information, including COVID status. The Secretary will be able to request information that is up to five years old to support the creation of the System and to ensure a

consistent start date for all information on a patient. Services will also have to provide a unique identification number for each patient to ensure the new System can work.

### VHA's position

The VHA supports the creation of a centralised Electronic Patient Health Information Sharing System. The availability of information will ensure better health outcomes and is a vital first step in creating the future of healthcare in Victoria.

The VHA, in particular, welcomes the inclusion of ambulance services and registered community health services in the proposed legislation. While private and primary care sectors are still excluded, this change will support the efficacy of the System, especially with the growing emphasis on community care. Further information and detail, however, is required, as community health services, with the support of DH, are expanding the use of GPs; it seems this activity, for now, is excluded from the System. The VHA will continue to advocate for clarification and their inclusion.

The legislation continues the original proposal to not require patient consent. While the VHA has advocated for a consumer-controlled solution, we understand and support the basis for a future System to not have an opt-out option to ensure that care can be effectively delivered in emergency situations. However, DH should continue to support efforts to encourage patients to engage with their healthcare information, which has been found to contribute to better health outcomes.

Further information is required on the future System to ensure that there are no unintended consequences. The VHA advocates for the Victorian public health sector to be extensively involved and used to inform its development to ensure it supports the delivery of care post-pandemic. The VHA also recommends that other elements of its initial consultation submission, which focus on effective implementation of a clinical information sharing solution, are considered and developed alongside the creation of a System. This includes substantial investment to support implementation of an equal baseline of digital competency across Victorian health services, such as the establishment and improvement of compatible electronic medical records systems (EMRs), patient information systems and client management systems.

### Next steps

The VHA will continue to monitor passage of the Bill through Parliament, and will advocate, as necessary, to benefit members' interests. It is expected that the legislation will pass. Members are encouraged to get in contact to share any further insights.



#### For further information contact

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## Addendum A - Key features: Proposed health information sharing system

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### Creation

- The Secretary, along with DH, will establish and maintain a centralised Electronic Patient Health Information Sharing System.

### Information

- Patient consent is not required.
- The Secretary will specify the patient health information required through a notice in the Government Gazette. The Secretary will be able to request information that is up to five years old.
- The scope of information to be specified would include prescribed medicines, allergies, alerts, admissions, discharge summaries, outpatient consults and laboratory and imaging results.

### Service actions

- Participating health services will collect, maintain and send information to the Secretary/System on individual patients.
- Participating health services will be able to access collected patient information, across all involved health services, from the System to support care delivery.
- Participating health services will have up to seven days to provide information that is requested in the Government Gazette, unless specified for a later date. These services will provide information on an ongoing basis, and will have up to seven days to provide this information after it has been collected from a patient interaction.
- Participating health services will have to provide a unique identification number for each patient.
- Participating health services now include ambulance services, registered community health centres, public hospitals, multipurpose services, denominational hospitals, metropolitan hospitals, public health services, Forensicare and certain residential care services.
- Further health services, or classes of health services, may be prescribed in the future.

### Enforcement

- To enforce the legislation, the Secretary can issue a direction to participating health services that do not comply with the information requirements; that service must comply with a direction within three months.
- The Bill would make it an offence for a person to knowingly access, use or disclose specified patient health information held in the System unless authorised to do so. The penalty for a breach would be 240 penalty units or two years imprisonment.

## Addendum B - Infographic

1. Participating health services will collect patient healthcare information as part of care delivery

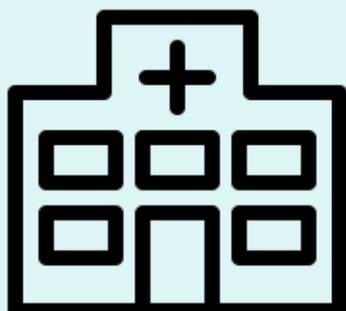
2. Participating health services will send patient healthcare information to the Electronic Patient Health Information Sharing System, while still holding ownership of that information



3. The Secretary/Department of Health will collect all these different fragments in the Electronic Patient Health Information Sharing System and integrate them in cohesive, singular records

5. The Electronic Patient Health Information Sharing System will send the entire integrated patient record to the participating health service

4. Participating health services will request patient healthcare information to support care delivery



- Participating health services will collect, maintain and send information to the Electronic Patient Health Information Sharing System on individual patients.
- Participating health services will be able to access collected patient information, across all involved health services, from the Electronic Patient Health Information Sharing System to support care delivery.
- Participating health services will have up to seven days to provide information and will provide information on an ongoing basis.
- Participating health services will have to provide a unique identification number for each patient.