RACGP response to the Productivity Commission's consultation on the *Harnessing of data and digital technology Interim report*

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RACGP

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1.Introduction

The Royal Australian College of General Practitioners (RACGP) is pleased to provide a response to the Productivity Commission's consultation on the Harnessing of data and digital technology Interim report.

With a strong focus on productivity growth through artificial intelligence, the transformative potential of data, and the critical importance of safeguarding Australians' privacy rights, the RACGP is well placed to contribute meaningful insights to this discussion from a general practice perspective.

2.About the RACGP

The RACGP is the voice of GPs in our growing cities and throughout rural and remote Australia. For more than 60 years, we have supported the backbone of Australia's health system by setting the standards for education and practice and advocating for better health and wellbeing for all Australians.

As a national peak body representing over 50,000 members working in or towards a career in general practice, our core commitment is to support GPs from across the entirety of general practice address the primary healthcare needs of the Australian population. We cultivate a stronger profession by helping the GPs of today and tomorrow continue their professional development throughout their careers, from medical students and GPs in training to experienced GPs.

We develop resources and guidelines to support GPs in providing their patients with world-class healthcare and help with the unique issues affecting their practices. We are a point of connection for GPs serving communities in every corner of the country.

Australia's GPs see more than two million patients each week, and support Australians through every stage of life. Every year, almost nine in 10 Australians visit a specialist GP for their essential healthcare, making them the most accessed health professional in the country. The scope of general practice is unmatched among health professionals. Patient-centred care is at the heart of every Australian general practice, and at the core of everything we do.

To that end, the RACGP is well positioned and keen to work productively and collaboratively to support the establishment of the Australian CDC, ensuring GPs and primary care are appropriately and consistently represented.

3.Consultation response to draft recommendations

3.1 – Artificial intelligence

Please note the RACGP position statement on Artificial Intelligence in primary care and previous RACGP submissions to government branches regarding the safe and responsible use of AI, including:

- RACGP response to 'Safe and responsible AI in Australia' discussion paper (2023)
- RACGP Submission to Department of Health and Aged Care - AI legislation and regulation review (2024)
- RACGP Submission to the Therapeutic Goods Administration - Clarifying and strengthening the regulation of AI (2024)
- RACGP Submission to the Department of Industry, Science and Resources' - Mandatory guardrails for AI in high-risk settings (2024)

Our view is that AI has the potential to revolutionise the delivery of healthcare, and regulation must keep pace with these technologies to keep patients safe. GPs bring valuable insights into the challenges of AI in a clinical setting and must be included and involved in the development and implementation of relevant AI technologies, as well as the regulatory approaches that govern their use in Australia.

We welcome continued collaboration with regulators and policymakers to ensure AI is integrated into healthcare in a way that is safe, ethical, and aligned with the realities of general practice.

3.1.1 – Draft recommendation 1.1: Productivity growth from AI will be built on existing legal foundations. Gap analyses of current rules need to be expanded and completed.

The RACGP supports this recommendation.

The RACGP recognises the need to strike a balance between regulation and innovation to advance the interests of the patient. Over-regulation in this space risks stifling the development of potentially life-saving technologies.

The RACGP is supportive of a risk-based approach for responsible AI via regulatory guardrails, which should be applied to AI developers. While there is potential for AI to present technological advancements that save and enhance patients' lives, the risks to patient safety inherent to many medical AI applications (and potential for related liability to the clinician) are significant.

Relying solely on voluntary industry codes of ethics is insufficient, particularly where gaps exist in current legislation governing high-risk AI use. Shifting the burden of compliance onto general practice would unfairly disadvantage a sector already under substantial time and financial pressure.

The RACGP would support cross-industry development of a framework for the use of AI in healthcare settings, where GPs have a seat at the table. Their frontline experience and deep understanding of patient-centred care are essential to the safe and effective implementation of AI technologies. We would welcome the opportunity to collaborate on such a project.

The RACGP recommends a review is conducted to address the potential harms AI poses for particular groups, and the impact AI can have on health equity. AI could propagate and magnify existing problems with health equity. Biases can be 'baked in' to AI products. They can be trained with unrepresentative datasets. For example, where historical data is used to train AI, these datasets may not include women or ethnic minorities.

There are examples of AI results reinforcing racist stereotypes and images, and it is likely AI will reinforce and reproduce existing inequities based on the data it is trained on.

3.1.2 – Draft recommendation 1.2: AI specific regulation should be a last resort

The RACGP *somewhat* supports this recommendation.

We recognise the need for a balanced approach to AI regulation – one that fosters innovation while ensuring patient safety and data protection.

Healthcare data is inherently sensitive and demands robust safeguards. The RACGP believes stronger regulatory oversight is essential where AI supports healthcare delivery and decision making.

Regulating AI tools presents unique challenges. Since AI relies on machine learning, where systems learn and adapt over time, a device which is compliant with regulations one day might not be compliant the next day. There is the potential for AI to re-identify anonymised data by linking multiple data points putting patient information at risk of data breaches. Additionally, the 'black box' nature of AI means its complex decision-making processes are often opaque and at times proprietary, making it difficult to assess reliability or to detect bias.

Liability is closely tied to regulation. Determining fault becomes complex if a clinician ignores AI advice or follows advice which results in a negative outcome. The use of AI raises ethical questions, such as whether a GP should have the clinical autonomy to override AI decisions, or if AI recommendations should take precedence, and to what extent.

We acknowledge the important work of the Therapeutic Goods Administration (TGA) in regulating AI through its framework for Software as a Medical Device (SaMD). However, regulation must extend beyond pre-market approval. Post-market surveillance is critical, especially for AI systems that continuously learn from historical data. These systems must be evaluated dynamically to ensure they remain safe, effective, and fit for purpose over time. This will require ongoing funding, an ongoing cycle of development and review, and robust oversight.

In our 2024 submission to the TGA, the RACGP supported maintaining international harmonisation as a pragmatic and sensible approach to AI regulation where relevant.

We believe the greatest burden of compliance must lie with the developer.

3.1.3 – Draft recommendation 1.3: Pause steps to implement mandatory guardrails for high risk AI

The RACGP supports this recommendation.

The RACGP believes AI that intersects with healthcare should be considered "high-risk" due to potential ramifications for inappropriate use of this technology in this setting.

In 2024, the RACGP responded to the Australian Government Department of Industry, Science and Resources (DISR) consultation on the introduction of mandatory guardrails for AI in high-risk settings. We supported the proposed measures, recognising their potential to appropriately mitigate the risks associated with AI in these environments.

However, we believe pausing implementation would allow for a more comprehensive gap analysis of existing rules and legislation. This would provide an opportunity to better understand how to effectively balance innovation with regulation in the Australian context, particularly within healthcare. Crucially, it would enable deeper consideration of the implications of AI on Australia's privacy legislation.

3.2 – Data access

3.2.1 – Draft recommendation 2.1: Establish lower cost and more flexible regulatory pathways to expand basic data access for individuals and businesses

The RACGP supports this recommendation.

Patient access to their own data

The RACGP supports healthcare consumers having access to their own healthcare information, provided safeguards are in place to prevent unintended harm.

Australia's national system for patient data access is *My Health Record*, and the RACGP has been a key stakeholder in its development. We have consistently advocated for increased uptake across the healthcare sector to improve patient outcomes. Our collaboration with stakeholders has focused on enhancing usability and ensuring uploaded documents are safe, accurate, and clinically relevant. We continue to promote its use among general practices and consumers.

We strongly support consumer ownership, access, and control over their *My Health Record*. In our response to the *Health Legislation Amendment (Modernising My Health Record – Sharing by Default) Bill 2024*, which proposes a legislative framework for default sharing of key health information, the RACGP was broadly supportive. We recognise real-time access to health information is essential for a connected healthcare system, and default sharing—subject to appropriate exceptions—can facilitate this.

However, immediate access to certain healthcare data, such as pathology and diagnostic imaging results, may lead to unintended consequences. Patients may misinterpret complex information or receive distressing results without timely clinical support. The RACGP is supportive of the changes to the Australian Government's Share by Default Reforms which will provide consumers with faster access to some pathology and diagnostic imaging reports. Potentially sensitive tests will continue to have a 5-day delay which will allow GPs and other clinicians to review results, arrange follow up consultations and provide appropriate context and care. Improving patient access to healthcare data must go hand-in-hand with efforts to enhance health literacy. Patients need support to understand the meaning and implications of their health information.

Secondary use of general practice data

Data collected in general practice plays a vital role in improving health outcomes across Australia. It informs policy development, public health initiatives, research, and service delivery. The Royal Australian College of General Practitioners (RACGP) supports the use of general practice data for these purposes, provided it is done with care, transparency, and respect for patient privacy.

To guide safe and appropriate data sharing, the RACGP has developed Three key principles for the secondary use of general practice data by third parties. The principles include:

- All parties must demonstrate compliance with data management best practice
  - All parties must act in compliance with the Privacy Act and Privacy Principles
  - All parties must act ethically with regard to general practice data
  - Data must only be used for agreed purposes
  - Data security is everyone's responsibility
  - Special considerations apply for data linkage
- Healthcare consumers deserve transparency in the use of their health data

    - General practices must provide information on secondary use of GP data to patients
    - General practices must provide patients an opportunity to opt out of providing GP data for secondary uses
    - Consent must be obtained from patients for particular secondary uses
    - Special considerations apply for data on or about Aboriginal and Torres Strait Islander peoples (see section below re: Aboriginal and Torres Strait Islander data sovereignty)
    - Special considerations may apply for data collected specifically related to other patient groups

- The contribution of general practice must be valued and recognised

    - General practices must retain access and control over what can be extracted
    - There must be a value proposition for general practice
    - GP advisors must be involved in data analysis and interpretation.

The RACGP advocates for these principles to be applied for any expansion of data access.

Enabling secure and effective data sharing

To support appropriate data sharing, Australia needs legislative frameworks and funding models that enable secure data linkages across primary and tertiary care and investment in technologies that support interoperability and data security.

A lack of interoperability across healthcare systems creates data silos and hinders effective data sharing. Improvements are needed in:

- integration between general practice clinical information systems, My Health Record, and other healthcare platforms.
- secure, seamless information exchange between patients, GPs, other healthcare providers, and organisations using healthcare data
- education and training to improve data capture and use across the healthcare system.

The RACGP advocates for digitally connected systems that support coded, structured data exchange, rather than relying on unstructured text documents. We support the adoption of the Fast Healthcare Interoperability Resources (FHIR) standard and coded data capture using SNOMED-CT-AU to improve data exchange and system compatibility

Consistency and compatibility across systems require the prioritisation of standards, developed collaboratively by end users, clinical informatics experts, and clinical information system vendors. The RACGP is a recognised leader in standards development for general practice and is well positioned to lead this work.

In 2021 the RACGP provided a response to the Australian Digital Health Agency Draft National Healthcare Interoperability Plan consultation.

Data security and workforce capability

The health sector is particularly vulnerable to data breaches due to the volume and sensitivity of health data. A tailored, supportive approach is needed to strengthen data security across the nation and in all sectors – but particularly in the healthcare sector, due to the significance a data breach of sensitive health information could have on an individual.

Improving data security capability takes time and requires planning, financial investment, and must be supported by education and training to increase uptake and adoption.

Aboriginal and Torres Strait Islander data sovereignty

Data that concerns or that might affect Aboriginal and Torres Strait Islander people, either individually or collectively, should be given specific consideration by third parties. Aboriginal and Torres Strait Islander data sovereignty ensures data on, or about, Aboriginal and Torres Strait Islander people is used in ways that are consistent with their values, culture, and diversity, and meets their current and future needs. Enhanced data sets can assist to design tailored preventative health strategies to those with the poorest health outcomes. Identification and analysis of key demographic data collected is critical, particularly that which reflects groups with the poorest health outcomes. This would include socio-economic status, age, disability, Aboriginal and Torres Strait Islander people background, culturally and linguistically diverse background.

All entities must ensure appropriate Aboriginal and Torres Strait Islander data sovereignty and data governance arrangements are embedded, which requires guidance from Aboriginal and Torres Strait Islander Communities and their representatives. Guidance to the Australian CDC from National Aboriginal Community Controlled Health Organisation (NACCHO) about access to Aboriginal Community Controlled Health Organisation data will be important. See Lowitja Institute's Taking Control of Our Data: A Discussion Paper on Indigenous Data Governance for Aboriginal and Torres Strait Islander People and Communities.

The RACGP notes some Aboriginal or Torres Strait Islander patients may choose not to self-identify as such, and therefore all data may include information about Aboriginal and Torres Strait Islander people.

3.3 – Privacy regulation

3.3.1 – Draft recommendation 3.1: An alternative compliance pathway for privacy

The RACGP does not currently hold a position on alternative compliance pathways for privacy but is open to collaborating on any proposed amendments to the Privacy Act and Australian Privacy Principles (APPs).

The RACGP considers the Privacy Act and APPs are currently sufficiently flexible to balance personal information protection with the operational needs of businesses.

3.3.2 – Draft recommendation 3.2: Do not implement a right to erasure

The RACGP generally supports this recommendation.

While we acknowledge that implementing a right to erasure would impose a significant compliance burden on regulated entities, including general practices, our primary concern lies in the clinical safety risks associated with incomplete medical records.

Medical practitioners, including GPs, rely on comprehensive patient information – often sourced from pathology, diagnostic imaging, and specialist reports – to inform clinical decision-making. The removal of data from medical records could result in decisions made without a full understanding of the patient's history, potentially leading to patient harm and medicolegal consequences.

Existing state and territory legislation, alongside the Privacy Act and APPs, already provide mechanisms for patients to:

- identify and request correction of inaccurate information,
- annotate records with statements if corrections cannot be made to their satisfaction.

Additionally, current legislation – including the APPs – specifies retention periods for medical records and mandates the secure destruction or de-identification of health information once it is no longer required.

The RACGP considers these existing provisions for correction and eventual destruction/de-identification to be sufficient. However, we do recommend consideration be given to a right to erasure where health data is generated by AI without informed consent or where human oversight cannot be shown to be adequate.

3.4 – Digital financial reporting

3.4.1 – Draft recommendation 4.1: Make digital financial reporting the default

The RACGP will not be providing comment in response to this recommendation.

4.Conclusion

The RACGP thanks the Productivity Commission for the opportunity to provide feedback on the Harnessing of data and digital technology Interim report.

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