

19 July 2018

By Email: Tim.Kelsey@digitalhealth.gov.au

Tim Kelsey
Chief Executive
Australian Digital Health Agency
Level 25, 56 Pitt St
Sydney NSW 2000

Dear Mr Kelsey

RE: Defamation of Sue Dunlevy

The Editorial Legal Office of News Corp Australia acts for a number of publishers including Nationwide News Pty Ltd and its journalist Sue Dunlevy. I write to condemn the vile and baseless attack on the integrity of Ms Dunlevy by the Australian Digital Health Agency in a statement published on its website at <https://www.myhealthrecord.gov.au/news/statement-inaccurate-reporting-privacy-fraud-fears-online-health>. The Agency is entitled to robustly defend its record but it is not entitled to engage in a malicious act of personal defamation by falsely claiming a journalist deliberately engaged in factually incorrect and misleading reporting. We demand that the statement containing these defamatory imputations is removed immediately.

The Agency's critique is not only defamatory of Ms Dunlevy but it fails the most perfunctory factual analysis. It defames Ms Dunlevy by accusing her of dangerous fearmongering by stating: *Every Australian will have a My Health Record that will reveal if they've had an abortion, mental illness, sexually transmitted disease or drug addiction*. This is a neutral and sustainable fact. It has been acknowledged by the Agency that when a record is created the government automatically downloads the previous two years of data from a person's PBS and Medicare records. This effectively means, for example, another health professional will know from a Medicare item number or a PBS record that a patient had an abortion in that period or used a medicine to bring on an abortion or that they were using mental health drugs or had a test for a sexually transmitted disease etc. As the Government is not engaged in any national advertising campaign, nor is it writing to Australian households to tell them about the system, many Australians will simply not know to take action to restrict access to their personal information.

In its website attack the Agency criticises Ms Dunlevy for reporting the fact that there will not be a national advertising campaign informing people about the record. You and your media manager have repeatedly confirmed to Ms Dunlevy that there will be no national television, radio or newspaper advertising campaign or even a mailing to every Australian affected by the changes to the health record system. In an interview in November 2017 a spokesman for the Agency said: "There will be no paid TV ... it'll be a PR-based approach also using social media, community engagement and the Primary Health Networks."

The Agency further defames Ms Dunlevy by accusing her of deliberately spreading false information; namely, that Ms Dunlevy was wrong to report that the ADHA and doctors can attach unspecified sources of information to a person's My Health Record without their permission. Ms Dunlevy's reporting is, again, demonstrably true. Pursuant to the *My Health Records Act 2012*, healthcare provider organisations are authorised to upload information to the My Health Record System and view information in the system. The Agency concedes this point on its own website: "Generally, this means that healthcare providers do not need to obtain consent prior to uploading information to a My Health Record when providing services to a healthcare consumer." Further, "...there is no requirement for a healthcare provider to obtain consent on each occasion prior to uploading clinical information. There is also no requirement for a healthcare consumer to review clinical information prior to it being uploaded." See <https://www.myhealthrecord.gov.au/for-healthcare-professionals/howtos/understand-when-you-can-view-and-upload-information>

The Agency mistakenly claims that Ms Dunlevy misleads the public by also reporting that the *government will also share the information from your health record with third parties such as researchers unless you take action to tick a box to prevent this*. Curiously, in attempting to debunk this statement the Agency actually confirms it by acknowledging that a national consultation process took place earlier in the year to establish a strict framework *for the secondary use of data* in the My Health Record system. Here the Agency is clearly admitting that it does have the authority to share a patient's health record with third parties.

We demand that you immediately remove this defamatory material from the website. In contrast to the (cowardly anonymous) author of this malicious attack, Ms Dunlevy has earned a high reputation among her peers for the integrity and accuracy of her reporting of national health affairs. Ms Dunlevy has been a member of the Canberra press gallery for three decades with a firm reputation for ethical and honest reporting. We submit that the Agency should actually engage reporters like Ms Dunlevy in a genuine and meaningful dialogue about the privacy implications of the My Health Record system instead of stooping to this somewhat pathetic and cynical propaganda exercise.

Further we demand that the Agency retain all internal records concerning the publication of the offending statement (including copies of all internal correspondence between the author of the statement and others within the Agency; the author's emails, texts, etc.). This letter does not represent a complete statement of Ms Dunlevy's position and is without prejudice to her legal and equitable rights, all of which are expressly reserved.

Yours sincerely,



Michael Cameron
National Editorial Counsel
News Corp Australia