

COMHWA Member Briefing Paper – September 2023



Concerns over unregulated mental health apps: Quality and consumer privacy.

Purpose

To offer an understanding of the lack of regulation in Australia for mental health apps, and the impact that this lack of oversight has in relation to privacy risks and overall quality of support.

Background

A recent ABC news article¹ has highlighted growing concerns about the impact that unregulated mental health apps may have on people unaware of the potential privacy risks, sometimes misleading information about service quality, and even some apps providing reductive/inappropriate characterisations of mental health and recovery. Mental health apps are not a new phenomenon, but the popularity of these digital supports drastically increased during the COVID 19 crisis, where many people found themselves isolated in their homes and needing help to manage their mental health. According to the figures developed by the UK telecommunications company Uswitch, Australians are among the most likely to make use of mental health apps in the world.²

In 2019, there was a proposal to develop regulations and standards for mental health apps via an amendment to the Therapeutic Goods Act.³ However, in 2020 a separate amendment was tabled, without clear explanation, that *excluded* digital mental health software from these regulations.⁴ Instead, later in 2022 the Australian Government developed a set of standards for mental health apps, with an option for mental health apps to receive accreditation through a process of showing that they meet these standards.⁵ However, unlike the earlier 2019 legislation, both the standards and accreditation offered by the Government are completely voluntary.

The Issue

A key concern over the rising popularity of mental health apps is the lack of oversight regarding their privacy policies. An Australian 2019 study revealed that 41% of available digital mental health apps available *did not have a policy about user privacy* that explained how the sensitive data collected by the app would be managed, or if it would be sold/made

¹Sam Nichols. 2023. 'Mental health apps are largely unregulated in Australia. Some experts fear vulnerable users could be harmed' <https://www.abc.net.au/news/2023-06-02/mental-health-app-s-unregulated-cause-user-safety-concerns/102380956>

²Uswitch website. 'Health App Index: Which countries track their health the most?' Accessed 27/06/23.

<https://www.uswitch.com/mobiles/health-app-index/>

³Therapeutic Goods Administration. 2019. 'Therapeutic Goods Legislation Amendment (2019 Measures No.1) Regulations 2019' <https://www.tga.gov.au/resources/resource/guidance/therapeutic-goods-legislation-amendment-2019-measures-no-1-regulations-2019>

⁴Australian Government. 2021. 'Therapeutic Goods (Excluded Goods) Determination 2018' <https://www.legislation.gov.au/Details/F2021C00176>

⁵Australian Commission on Safety and Quality in Healthcare. 2020. 'National Safety and Quality Digital Mental Health Standards' <https://www.safetyandquality.gov.au/sites/default/files/2020-11/National%20Safety%20and%20Quality%20Digital%20Mental%20Health%20Standards%20%282%29.pdf>

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available to third parties.⁶ The researchers framed their concern over the possibilities for consumers' data in the following way:

*'A third party may insert individualised data into their employment algorithm to generate an "employability score" for that individual, which can be bought and used by employers in a preliminary assessment of job applicants. They may also offer "credit ratings" and "rental scores" for use by banks and landlords respectively...even having a mental health app on one's phone could be used to make inferences about an individual's suitability for employment or promotion.'*⁷

An example of the sale of highly sensitive user data by a mental health app company is the BetterHealth app, which was found to have sold a collection of user data to Facebook in order to target advertisements. The BetterHealth company was fined a total of 5.6 million dollars by the American Federal Trade Commission. Concerningly, the BetterHealth company actively misled consumers with app pop-ups that assured users that the information they provided would remain confidential between them and their therapist.⁸

Another issue beyond the lack of privacy regulation for online mental health apps is the quality of such products, especially the manner in which they frame mental health struggles. A 2018 study noted that many apps tended to frame mental health purely in terms of neurophysiology, ignoring the crucial psychosocial dynamics that also play a key part in mental health. By neglecting external, psychosocial factors, the apps reinforced an attitude of medicalisation about mental health—where a range of everyday responses to intense life circumstances are viewed simplistically as medical pathologies. Additionally, the aforementioned study noted that the apps involved in their study tended to frame mental health as a personal responsibility, once again downplaying the impact of external social factors upon mental health.⁹

Response to date

As outlined above, in 2019 the government had intended to enact regulations on digital apps designed to provide help with mental health. However, prior to this Act coming into effect, the regulations created for these apps were overcome through an amendment that exempted health applications from these standards. The more recent introduction of the voluntary standards and accreditation by the government was promoted as a means to ensure quality, but without stifling 'innovation' in the health app sector. From outside the government, there have been many calls for a clamp down upon the health app sector. In particular, an alarm has been raised by Dr. Lisa Parker and her fellow researchers about the risk to consumer's privacy, and the sale of personal data that is possible with many of the online apps have ill-defined or non-existent privacy policies.¹⁰ As it presently stands however, there appears to

⁶ Parker, L. Halter, V. Karlychuk, T. Grundy, Q. 2019. 'How private is your mental health app data? An empirical study of mental health app privacy policies and practices'

<https://www.sciencedirect.com/science/article/abs/pii/S0160252718302681?via%3Dihub>

⁷ *Ibid.*

⁸ Sam Nichols. 2023. 'Mental health apps are largely unregulated in Australia. Some experts fear vulnerable users could be harmed' <https://www.abc.net.au/news/2023-06-02/mental-health-app-s-unregulated-cause-user-safety-concerns/102380956>

⁹ Parker, L. Bero, L. Gillies, D. Raven, M. Mintzes, B. Jureidini, J. Grundy, Q. 2018. 'Mental Health Messages in Prominent Mental Health Apps' *Annals of Family Medicine*. 16, 4. <https://www.annfammed.org/content/annalsfm/16/4/338.full.pdf>

¹⁰ Sam Nichols. 2023. 'Mental health apps are largely unregulated in Australia. Some experts fear vulnerable users could be harmed' <https://www.abc.net.au/news/2023-06-02/mental-health-app-s-unregulated-cause-user-safety-concerns/102380956>

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be no future plans by government to address this privacy risk in the near future or create mandatory standards for the industry.

CoMHWA's Position

- CoMHWA is strongly in support of the federal government developing required standards and strict privacy requirements for apps designed to help manage mental health.
- CoMHWA encourages members to exercise caution in sharing their data with health management applications.
- CoMHWA supports the practice of promoting reputable mental health apps through government run and managed mental health services, ensuring consumers have greater access to digital supports that can supplement (but not replace) psychosocial support services and gaps in present care conditions.

Have your say:

CoMHWA is dedicated to representing your views on these reforms. To have your say, please get in touch with our Systemic Advocacy Team at sysadvocacy@comhwa.org.au.

