Eric Wilon

Friday, 5 March 2010

Community Affairs Committee,
Parliament House,
Canberra, ACT.

Dear Senate Community Affairs Committee,

RE: Healthcare Identifiers Bill 2010

I am a former e-commerce newspaper columnist and inventor of "A System for Secure Distribution of Electronic Content and Collection of Fees" Australian Patent 2002366661. In these capacities I have knowledge of the issues of individual identification in large information systems.

I believe the Healthcare Identifiers Bill 2010 needs major revision because it appears to me that:

1. Section 6(2) makes no requirement that custodian of the identity numbers must be a truly independent statutory body. This is because the Bill allows the "service operator" to be changed by the Executive Council to any private or other person. This is clearly inappropriate for the kind of sensitive information involved. It sets a very bad precedent for what looks to be the foundation of the nation's future health system.

2. Section 9(1) of the Bill only allows for a service operator to "assign a number" not "assign numbers" to a healthcare recipient. This means the system will not allow people (without the system loosing track) to change their number as they could their own name. This restriction will drive many people underground who don't trust the government of the day. Indeed, it is hard to imagine a single number identity system not being abused by someone as a tracking device. Therefore safeguards should be built upfront into the Act, not left to chance that the regulations (which may be changed by the Executive Council) will somehow protect people.

3. Section 9(4) in effect makes the system compulsory whether you agree with it or not. It is therefore an imposition on basic civil liberties which will hinder public acceptance.

4. Section 9(5) provides for a review of decisions concerning assignment of "a number" to a person. But it does not mandate the right to a fair, just, informal and quick review by the AAT guaranteed in the Bill. Once again, people's protection against abuse of their number, if any, will be left to as yet unknown regulations.

5. Section 10(b) fails to limit the kind of information which may be related to a healthcare identifier. This is dangerous because the word "related" in an information technology record sense, effectively means "attached" in street language. There are therefore no limits what a service operator, which under the Bill could be any person (see point 1 above), may attach to an individual's identifier.

6. Section 11 compromises the confidentiality and trust of a patient in their doctor, if the patient does not wish to have a healthcare identifier, or his or her identity registered under

the Commonwealth's scheme.

7. Section 15(2)(b) allows regulations made by the Executive Council, State and/or Federal, to turn Health IDs into the Australia Card - see the definition of "law" in section 5. The expansion of the purposes of healthcare identifiers should be prohibited by the Bill, not encouraged.

8. As a matter of IT practicality, the Senate should keep in mind disclosures to and from the Service Operator under Sections 11 and 16 would most likely become routine to confirm consistency of the records kept.

9. There is nothing in Section 18 which mandates a time frame as to how quickly a person can access their record, or how they can get it changed if necessary.

10. Broadly speaking, Section 24 allows data-mining of the population's health information with all individual identities attached. There are many problems with this. I would characterise this section of the Bill as the greatest threat to privacy ever put to any parliament in Australia.

11. Section 27 only requires "reasonable steps" for healthcare identifier protection. This standard is far too low. Furthermore, what “reasonable steps” means is left undefined and the penalties for corporations or public officers ignoring any regulation concerning the proper protection of healthcare identifier information appears extraordinarily light.

12. Section 39(2) purports to provide the Executive Council with very broad penalty-making powers over ordinary citizens.

13. There is no protection against discrimination against people who do not wish to participate or always cooperate with the system.

14. There is no requirement that health identifiers and related records must be kept only in Australia. Therefore all our identities could be outsourced to a person under a foreign power against the national interest, as is happening to so much of our information today.

From the above, it can be seen there are many loopholes in the legislation or at best, it is weak as to the prevention of healthcare identifier abuses. Moreover, it is improper for so many sensitive issues to be addressed in regulations later, and on this basis allow this 'bare bones' Bill to become law.

Finally, the Constitutional footing for the broad purposes of the Bill as defined in Section 3 seems unclear. What is the Commonwealth's head of power to breach common law confidences between doctors and patients so a to authorise health providers to hand over their details? (See section 11 of the Bill) On the contrary, my identity is my own personal property of very special value.

I respectfully submit this Bill needs a lot more work. I commend to the Senate the attached submission I made to the Health Department regarding the framing of this legislation, which has largely been ignored.

Yours Faithfully,

Eric Wilson