
Inquiry into the Privacy Amendment (Private Sector) Bill 2000

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Privacy Amendment (Private Sector) Bill 2000

The Mental Health Council of Australia is the peak, national non-Government organisation established to represent the Australian mental health sector. The MHCA has eight membership groups including consumers, carers, clinical service providers, private mental health service providers, non-government organisations, State/Territory peak bodies, Aboriginal and Torres Strait Islander groups, and special needs groups. Through its constituents, the MHCA seeks to promote the mental health of all Australians.

The Inquiry into the Privacy Amendment (Private Sector) Bill 2000 has not been highly publicised in the mental health sector, which of concern due to the significant implications the Bill has on the practices of health professionals and the disclosure, use and access of personal health information.

Privacy issues apply across the whole spectrum of the mental health sector. Privacy of health information may be a contentious issue due to potential conflicts of interests between key stakeholders.

The rules applied to the private sector under the Bill will differ from those which apply to the public sector. This may be viewed as simply adding to the patchwork of laws covering privacy in the health sector, rather than moving toward a goal of one code for the health industry.

The Bill raises a number of specific issues which are of concern to the mental health sector, particularly in regards to the use and disclosure of information; access to personal health information; and use of electronic commerce in maintaining personal health information.

Use and Disclosure of Information

The welfare of consumers and the public, and the integrity of health professionals takes precedence over a professional's self interest. As such, health professionals must respect the confidentiality of information obtained from consumers. Health professionals are obliged to explain the limits of confidentiality before the consumer-health professional relationship develops.

Informed consent is granted when a consumer gives permission, after they have been fully informed of the intent and outcome of specific act, for a health professional to perform such an act.

Use and disclosure of personal health information is protected, and only under special circumstances may such information be used or disclosed, such as when:

- circumstances arise where failure to disclose confidential information may result in clear risk either to the consumer or to others (e.g. suicide, threats). Health professional's may disclose the necessary amount of information to avert risk;
- the consumer gives their informed consent for a health professional to disclose information to a third party;
- when personal health information is to be used for research purposes, the consumer must give their informed consent, and their personal identity must be protected; wherever possible, consumers should be informed of the outcomes of research that used their personal health information; and
- health professionals must take provisions for maintaining confidentiality in the access, storage and disposal of records, subject to the legal requirements of their employment.

The MHCA supports the principles outlined in the *National Principles for the Fair Handling of Personal Information* (1999) which state “wherever possible, people should be able to exercise some control over the way information about them is handled” (p.2), and which allow for:

- All groups, organisations and individuals have a responsibility to seek informed consent of consumers before using personal health information.
- Opportunities should be made available to ensure consumers participate in decisions about the management and use of personal health information.
- Consumers should have a right of redress/appeal where there is evidence that personal health information has been misused.

Access to personal health information

Mental health consumers believe in a right of access to their own personal health information, and that the Commonwealth Government should introduce national privacy legislation that promotes consumers' right of access. Issues surrounding whether carers should also have access to consumer records are controversial, as some carers may believe knowledge of such records would enhance their ability to care, however some consumers may not wish for such information to be disclosed.

At present, consumers do not have a right to access their personal health records in the private sector, except in the ACT and in private hospitals in NSW. In the public sector, consumers have a right to access their records under the freedom of information (FOI) legislation, however certain circumstances under FOI allow for refusal of access. Often the decision of access, is an individual decision made by the health professional. Under the proposed Bill, consumers will theoretically be given a right of access to health records held in the private sector. However, in contrast with ACT legislation which allows health records held in the private and public sector to be accessed under the *Health Records (Privacy and Access) Act 1997*, there are a number of exceptions in the Bill which are irrelevant to the health sector.

Health professionals are under legal and ethical constraints to maintain accurate records, maintain client confidentiality, and share relevant information with consumers. Effective enforcement procedures exist to safeguard the rights of aggrieved consumers.

The MHCA notes the Bill's proposed definition of 'health information' is very broad, and any definition of health information must recognise the different types of information contained in a person's file. Often, such information contains working notes which may be beneficial to other health professionals, but extremely damaging to the client relationship. However, exclusion of such notes may compromise client care, as other health professionals would not be aware of clinically relevant concerns. As such, perhaps the Bill needs to dedicate separate sections to specific areas of health, and address issues specific to that health discipline.

There is a need for clear guidelines and codes covering the use and disclosure of health information being enforceable, with clear sanctions in place to address breaches.

Electronic Health Records

The MHCA recognises the impact of information technologies on the health sector, resulting in new and evolving information technologies with the ability to transform the way health care is delivered. Consumers are reported to be the beneficiaries of this health care revolution, as it has been suggested that new techniques may secure improved health outcomes for consumers and improved quality of care.

The potential for electronic health records to improve efficiency, safety and quality of care over paper-based systems and the advantages to electronic health records have been outlined in *Health Online Issues Paper (2000)*:

- Reduced number of adverse events caused by lack of information about health consumers at the point of care;
- Reduced duplication of diagnostic tests due to unavailability of previous test results;
- Enhanced decision making for practitioners and consumers, and therefore increased quality of care and health outcomes, through online access to decision-support tools such as clinical practice guidelines, with alerts to the latest information on prevention, diagnoses, and treatment;
- Greater coordination and integration of care across the care continuum through increased exchange of information between service providers in the health and community sectors;
- Individual consumers being confident that, subject to appropriate privacy protection and their consent, regardless of where they seek or need health care, the health care professional treating them has full access to relevant clinical histories and treatment information;
- Efficiency gains through time saved in retrieving information and reduced duplication in ordering tests. Ordering tests and treatments and arranging

appointments and referrals can be substantially sped up with direct electronic requests. Data will be collected and made available more quickly, thereby increasing the time available for direct consumer care.

While the MHCA is supportive of the proposed benefits of electronic health records, the MHCA also recognises the concerns regarding privacy of information from both the perspective of service providers and consumers. For example, will any health professional from a certain field be able to view the spectrum of a clients health history, including physical health, mental health, and clinical issues? What might be the relevance of a person's mental health when accessing their dental records, for instance? What provisions will be put in place to ensure electronic health information is secure and not open to public access?

A national framework for the use of electronic health records is recommended by the National Health Information Management Advisory Council (NHIMAC) in the release of *"Health Online: A Health Information Action Plan for Australia"*. National consistency in information management would ensure current State and Territory initiatives are not duplicated.

Consumers need to be confident their information is valued, their privacy is respected, and such information will be used to improve their own health and that of the community. The lack of comprehensive protection of consumers' personal information is an important element affecting consumer confidence in the information economy and, increasingly, participation in electronic commerce.

The MHCA recognises the potential differing views and opinions of key stakeholders in the mental health sector including those who are providing/delivering a service and those who are accessing a service, in regards to privacy of personal health information issues. The MHCA identifies and supports the need for review of the legislation, and acknowledges the wide options health by various key stakeholders in the sector. The MHCA urges the Government to consider the impact of legislation on all key stakeholders, in particular consumers and carers. The MHCA is eager to assist in progressing this issue within the mental health sector, and recognises the unique interests and concerns of key stakeholders.

References

Australian Psychological Society, (1997). *Code of Ethics*.

National Electronic Health Records Taskforce, (March 2000). *Health Online: A National Approach to Electronic Health Records for Australia – Issues Paper*.

Office of the Privacy Commissioner, (1999). *National Principles for the Fair Handling of Personal Information*.