

The Secretary  
House of Representatives  
Standing Committee on Legal and Constitutional Affairs  
Parliament House  
Canberra ACT 2600

Dear Sir

The Health Consumers' Council is an independent community based organisation, representing the consumers' 'voice' in health policy, planning, research and service delivery. The Council advocates on behalf of consumers to government, doctors, other health professionals, hospitals and the wider health system.

The Council is funded by the WA government and has a statewide membership of individual and not for profit, non-government organisations. We have 430 members.

The Health Consumers' Council membership has indicated that access to medical records by individual patients is a fundamental right in a democratic society. The Health Consumers' Council receives many complaints from consumers about the barriers to accessing their own medical records in the private sector.

We believe that the proposed amendments to the Commonwealth Privacy Act are unacceptable to the Australian community, as the proposed Bill is completely ineffectual in providing protection for health consumers. We are seen as a “soft touch” and denied a fair go.

What is proposed for the private sector by way of regulation falls far short of even the limited privacy regime currently applicable in the public sector. Privacy and confidentiality are key components of the Australian health care system, and this proposed bill does nothing to ensure privacy protection in health for the community. It appears to have been prepared by those seduced by the entrepreneurial promoters of the free market, who believe that all personal information should be available for a range of commercial purposes, without the consent of individuals as we all now live in one big marketplace. As Scott McNeal, chairman and CEO of Sun Microsystems Inc puts it “You have no privacy – so get used to it”. Health consumers believe that the privacy and ethical considerations around health information, to record, store, transfer, retrieve and access are in no way addressed by this proposed Amendment.

The “light touch” model of industry regulation where industry has set up its own privacy codes and complaints bodies is inappropriate in this area.

The “health industry” has proved itself notoriously resistant to allowing consumer access to their personal health information. The Access principle described in the key provisions does not advance the cause. It includes a list of at least 10 reasons the medical specialist might seek to hide behind in order to justify a refusal of access. This is dramatically weaker than health consumer rights of access to records kept in the public sector.

It is richly ironic that the Federal Government is strongly committed to encouraging citizens to take responsibility and purchase private health insurance, at the same time disadvantaging these same citizens by the provisions of this Bill. These consumers, under this Bill, will not have satisfactory access to their own health records, but at the same time researchers are allowed access to these records without the consent of the individual.

The privacy provisions of this Bill fail to deliver enough protection for health consumers and once again are inconsistent with privacy protection for health records in the public sector, even in a state like Western Australia which has no legislative framework around the Health Department of WA linked Database project, nevertheless has a set of conventions, strictly adhered to, about the use of individual health information.

In the context of Federal Government plans for integrated electronic health records, consistent regulations across the public and private sectors and stronger private sector regulation of privacy are particularly important.

The Health Consumers' Council requests that the House of Representative Standing Committee give consideration to removing personal health information from this legislation and support comprehensive health records legislation that cover the private sector.

Thank you for your consideration of matters raised in this letter.

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