

House of Representatives Standing Committee
on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

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I wish to make a submission to the Committee in relation to the Bill which proposes amendments to the Commonwealth's Privacy Act. While any greater privacy protection of personal information held in the private sector is welcome, I have real concerns about the adequacy of the protection created for health records and personal health information.

To provide some background about my knowledge of and longstanding interest in the area, I was a senior Commonwealth health bureaucrat in the first half of the 1990's. As Chair of the Review of Professional Indemnity Arrangements for Health Care Professionals, I undertook substantial work in this area which was presented to the Government and the public in Chapter 4 of the Review's Final Report, paragraphs 4.53-4.96. A copy of this can be found on the Department of Health and Aged Care's website at the following address:
<http://www.health.gov.au/pubs/hrom/theainsu2.htm>.

Following this, I worked for the ACT Government on the development of the ACT's *Health Records (Privacy and Access) Act 1997*. This piece of legislation provides clear and specific privacy protection for personal health information, in a way which recognises the unique importance of this type of information. It also makes very clear the rights of access, with very limited exemptions. I set out the reasons for this in my submission last June to the Privacy Commissioner in the following terms :

We crafted our exemptions to access to information very carefully to make them as narrow as we could, because it was our view and that of the then Minister for Health and Chief Minister Kate Carnell that patients did have a fundamental right of access to their own health information, unless there were really exceptional circumstances. The consultations with the medical profession that we undertook made it very clear that the public face of paternalism shown by many of them served to disguise a deep ambivalence to patients having information about what was being done to them and decisions that were being made about their health care. I have continued to speak widely with them about the importance of good notes and open access for the prevention of litigation and complaints and as a marker of good quality care. I think that there are many good doctors who don't see that there is a problem, but many of the more conservative elements of the profession are very strong in their antagonism to such changes.

when a person transfers between treating practitioners - neither of these are included in the Commonwealth's amending Bill. There also remains many concerns about what will be available as personal health information under the Commonwealth's Bill - particularly so far as doctor's opinions, which form part of a person's health record, are concerned.

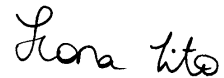
These shortcomings and others, which are detailed no doubt in other submissions to the Committee, are likely to thwart the Government's stated commitment to consumer access to this information. What is perhaps worst, is that the Bill, if passed, may well cast constitutional questions over the ACT's legislation, which goes much further and is much clearer in many ways than the proposed mechanisms in the Commonwealth's amending Bill.

This is not to say that I favour a jurisdiction by jurisdiction approach - so fundamental a set of rights as privacy of personal health information and consumer access rights to their our personal health information should be consistent throughout Australia. However, the "hands-off", industry-driven regulatory approach has demonstrably failed already in the health care arena. National legislation for health care consumers based on such a model will almost inevitably result in a diminution of the rights of access of consumers that already exist in the ACT.

A much preferred model would be to omit health care from this industry-by-industry approach and create either a separate legislative code for personal health information, which at least replicated the protections provided under the ACT's legislation, or to create a separate stand alone Commonwealth bill for this important area.

Should you require further information or clarification of any of my concerns, please contact me on 02 6231 1640 or by email on fiona.tito@gpo.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Fiona Tito". The signature is written in a cursive, flowing style.

Fiona Tito
Executive Director