

From: Bill Casey [bcasey@midcoast.com.au]
Sent: Thursday, 18 May 2000 1:28 PM
To: laca.reps@aph.gov.au
Subject: Privacy Amendment (Private Sector) Bill

From:
Bill Casey,
People With Disabilities (NSW) Inc
PO Box 666
Strawberry Hills
NSW
2012

To:
The Secretary
House of Representatives Standing Committee on Legal and Constitutional
Affairs
Parliament House
CANBERRA ACT 2600

The Privacy Amendment (Private Sector) Bill, has been tabled in this session of Parliament. This Bill is intended to enhance the protection provided by the Commonwealth Privacy Act (1988), help monitor and promote privacy in the public sector and ensure a means of redress for consumers in case of privacy abuse by the public sector. It appears though that the proposed legislation does nothing to upgrade the existing Privacy Act with regard to protection of and access to health records. What is proposed even falls short of what we have now.

The Health Issues Centre and the ACA say that at a minimum legislation for health records in the private sector should address consumers' rights to access and control of the content of their health records, allow consumers to decide who else should have access to their records and provide for proper enforcement of legislation.

A major problem is that a series of industry codes developed and enforced by industry bodies and only broadly supervised by the Privacy Commissioner is envisaged. Also the default framework provided for in the proposed legislation is faulty in terms of what might actually constitute privacy abuse. Third, the enforcement mechanisms are weak. This gives control over records to the industry rather than the consumer.

The health 'industry' has always been resistant to allowing consumers to access to their personal health records and the access principle described in the Key Provisions does not improve on this situation. It gives a number of reasons why a medical specialist might justify a refusal of access. These include for example, the possibility that providing access might be "likely to prejudice the prevention, detection, investigation, prosecution or punishment of (any) criminal offences or breaches of (any) law imposing a penalty or sanction" (National principle 6(j)(i)). This is much weaker than health consumer rights of access to records kept in the public sector.

The Australian Law Reform Commission has recommended that provisions need to be strengthened rather than weakened and moves within NSW following the Health Council Report are also intended to strengthen consumer

control of personal health records. The proposed Bill seems at odds with progress that is being achieved by others on the question of access to and protection of health records.

Although this Bill is consistent with what parts of the medical profession have been promoting, it is completely inconsistent with the views of consumer organisations and more progressive medical professionals. I would therefore urge you to consider removing access to health records from this privacy legislation and to deal with this issue separately.

Bill Casey

Director
People With Disabilities (NSW) Inc