THE INSTITUTE OF ACTUARIES OF AUSTRALIA

A.C.N. 000 423 656

---

12 May 2000

The Secretary
House of Representatives Standing Committee
on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600.
Telephone: 02 6277 2358
Facsimile: 02 6277 4773
Email: laca.reps@aph.gov.au

Dear Sir,

INQUIRY INTO THE PRIVACY AMENDMENT (PRIVATE SECTOR) BILL 2000

Please find attached a submission from the Institute of Actuaries of Australia commenting on the Privacy Amendment (Private Sector) Bill 2000.

We would be pleased to discuss the issues raised in this submission in more detail if required. Please feel free to contact either Jane Ferguson, Director – Public Affairs on (02) 9239 6105 or myself.

Yours sincerely,

David Knox
President
Institute of Actuaries of Australia

The Institute of Actuaries of Australia ACN 000 423 656
Level 7 Challis House 4 Martin Place
Sydney NSW Australia 2000
Telephone 02 9233 3466 Facsimile 02 9233 3446
Email: insact@actuaries.asn.au Web site www.actuaries.asn.au

INTRODUCTION

This submission sets out some brief observations of the Institute of Actuaries of Australia ("the Institute").

The Institute of Actuaries of Australia is the sole professional body for actuaries in Australia, representing the interests of over 1,100 fellows and 1,100 other members. The profession specialises in applying mathematical, statistical, economic and financial skills and techniques to a wide range of business situations.

As a profession, actuaries have a capacity and an obligation to contribute to public policy in their areas of practice and expertise.

The training and experience of members of the actuarial profession means that they are uniquely qualified to contribute because of their skills in:

- Analysing the financial long-term impact of structural change
- Implementation and management of programmes involving financial risks
- Evaluating the impact of demographic changes
- Designing appropriate funding mechanisms

.

RESEARCH AND STATISTICAL STUDIES

Institute members are involved in a range of activities where de-identified data are used for the research and statistical purposes. These include analysis of mortality, morbidity and health experience amongst the insured and general population

In June 1999, we provided a submission to the Federal Privacy Commissioner in response to his Background Paper on privacy issues (see attachment). The main comment we made in this submission was:

"This submission is limited to those matters which directly relate to actuarial work, and in particular the use by actuaries of experience data to calculate premium rates, reserves, and other amounts necessary for the financial well-being of private health insurers. A substantial amount of actuarial work involves use by actuaries of claims data from private health insurance. Actuarial work in many cases will not require the use of data from which the person who provided the data can be identified. We note on page 6 of your Background Paper that you state:- *Information from which a person is not reasonably able to be identified would not be subject to the privacy principles.*

We strongly support this principle, and if any consideration was to be made to removing this principle, we would like the opportunity to present the advantages of allowing data analysis to proceed as is proposed in the Background Paper. Such data would normally include an identifying number, or some other identifier apart from the name or personal contact details of the person who provided the data. This identifying number is included for reference purposes only, as a linkage between the core data record which includes personal information, and the de-identified record which is used for data analysis. "

We note that section 95A(2) of the Bill gives the Privacy Commissioner the power to approve guidelines issued by the National Health and Medical Research Council or other prescribed authority that relate to the use and disclosure of health information for the purposes of research, or the compilation of statistics, relevant to public health or public safety. This approval is subject to a public interest test that the benefits of such research outweighs the public interest in maintaining the level of privacy protection afforded by the National Privacy.

We also note that the provision and use of de-identified data cannot result in any loss of privacy by a person whose data is being used in the analysis.

The Explanatory Memorandum to the Bill states that "In considering whether the use or disclosure of health information is necessary the organisation must consider whether the use or disclosure of de-identified information would, in the circumstances, suffice."

It would appear from the Bill that such actuarial and statistical studies involving de-identified claims data from private health insurance might need approval from the Privacy Commissioner. If this was this case, it would result in unnecessary work on the part of the owner of the data (in applying for the approval) and on the part of the NHMRC (in providing the approval). It would slow the provision of the results of the studies, and result in fewer studies being performed (due to the additional costs). This consequence would be most undesirable for Australia, where we already spend a lower percentage of our national product on research than is spent in other comparable countries, and where we are said to be losing researchers to other parts of the world.

It is clearly beneficial to all concerned (and there can be no loss of privacy), that studies using de-identified data should be conducted without the need to seek the approval of the Privacy Commissioner in each instance. A suggested approach would be for the Privacy Commissioner to approve general guidelines for the conduct of such studies using de-identified data, including items covering confidentiality of data, restrictions on the use of the data to the primary research purpose and a written agreement to this effect between the data provider and those carrying out the research project.

We believe this section of the Bill should be amended to make it clear that actuarial and statistical research studies using de-identified health data can continue as currently.

CONCLUSION

We would be pleased to discuss the issues raised in this submission in more detail if required. Please Jane Ferguson, Director – Public Affairs, on (02) 9239 6105.

ATTACHMENT
PREVIOUS SUBMISSION TO THE FEDERAL PRIVACY COMMISSIONER

Institute of Actuaries of Australia

ACN 000 423 656

HEALTH PRACTICE COMMITTEE

21 June 1999

Our ref: 73833/100/A

Malcolm Crompton
Federal Privacy Commissioner
GPO Box 5218
SYDNEY NSW 1042

Dear Mr Crompton

HEALTH PRIVACY PRINCIPLES

This letter presents the response of the Health Practice Committee of the Institute of Actuaries of Australia to your letter dated 25 May 1999, in which you requested commentary on the conclusions and questions you put forward in your Issues Paper.

The Institute of Actuaries of Australia is the professional body which represents all actuaries who practise in Australia. Fellowship of the Institute of Actuaries of Australia is the qualification recognised in insurance, superannuation and taxation legislation as the qualification necessary to provide actuarial services under legislation.

The comments set out below are those of the Health Practice Committee, and are not comments of the Institute itself. The comments are not for public distribution, and do not represent Institute policy.

The Health Practice Committee of the Institute covers, amongst other things, work performed by actuaries for or on behalf of private health insurers. Therefore, the comments set out below relate primarily to the area of private health insurance.

Some of the issues identified in your Issues Paper have relevance to other insurers as well as, or separately from, private health insurers. Other practice committees of the Institute (such as the Life Insurance Practice Committee) may therefore wish to make submissions in relation to these other areas, in due course. However, the Institute has not requested them to do so at this stage given your tight time-frame for initial submissions. The Institute would therefore welcome the opportunity to have continued involvement in the review process being undertaken.

This submission is limited to those matters which directly relate to actuarial work, and in particular the use by actuaries of experience data to calculate premium rates, reserves, and other amounts necessary for the financial well-being of private health insurers. A substantial amount of actuarial work involves use by actuaries of claims data from private health insurance. Actuarial work in many cases will not require the use of data from which the person who provided the data can be identified. We note on page 6 of your Background Paper that you state:-

"Information from which a person is not reasonably able to be identified would not be subject to the privacy principles"

We strongly support this principle, and if any consideration was to be made to removing this principle, we would like the opportunity to present the advantages of allowing data analysis to proceed as is proposed in the Background Paper. Such data would normally include an identifying number, or some other identifier apart from the name or personal contact details of the person who provided the data. This identifying number is included for reference purposes only, as a linkage between the core data record which includes personal information, and the de-identified record which is used for data analysis.

The remainder of this letter presents answers to the questions which you raise in your Issues Paper.

Questions 1, 3, 6, 7, 8, 9, 10, 11, 15, 16, 17 and 19 are not relevant to the actuarial and statistical work undertaken by actuaries. Therefore, we make no comment on these questions.

Question 2 - Are there particular areas of activity which might be unduly limited by National Principles 1.1 and 10?

- We assume that "the management of health care services" includes the activity of "provision of private health insurance", and therefore that private health insurers are permitted to collect health details in relation to their policy holders under National Principle 1.1. If this is the case, then we can see no activity in relation to private health insurance which would be unduly limited by National Principles 1.1 and 10.

Question 4 – Does National Principle 2.1 provide too much latitude for uses or disclosures without consent in the health environment?

- As long as those organisations which necessarily have data on the health of individuals as part of their business, are permitted to analyse the data for the purposes of that business, Principle 2.1 could be modified for the health environment. We do not have an opinion on whether Principle 2.1 as it currently stands permits too much latitude.

Question 5 – Should the exception permitting uses and disclosures for related secondary purposes be tightened?

- No (see answer to question 4 above).

Question 12 – Is the suggested addition to the wording of National Principle 2.1 appropriate?

- Yes, however the Institute of Actuaries would be keen to have meaningful input into guidelines issued by the National Health and Medical Research Council, and be satisfied that our input was given reasonable consideration by the Council in producing its guidelines. The Institute could take steps to draw the guidelines to the attention of its membership, and to impose discipline on any member of the Institute who did not fulfill the guidelines. Alternatively, the Institute could produce its own guidelines for its members, if this was the preferred alternative.

Question 13 – Do the National Principles, as they currently stand, strike the right balance?

- The Health Practice Committee agrees with the Privacy Commissioner that the arrangements set out under the National Principles are satisfactory.

Question 14 – Are National Principles sufficient to ensure appropriate security for personal health information?

- Yes.

Question 18 – Should personal health information considered as part of a "commercially sensitive decision making process" be accessible even if the process that led to the resulting decision is not (accessible)?

- While we are opposed to information beyond personal health information being required to be disclosed in this circumstance, the Health Practice Committee agrees that variation of National Principle 6.2 would be appropriate to ensure an individual has access to the individual's personal health information.

Please contact Rob Paton (02) 9229 5217 or me on (02) 9335 8900 if you have any questions on this letter, or Jock Rankin on (02) 9233 3466 in relation to ongoing Institute involvement in the review process.

Yours sincerely

David Torrance
Convenor