

COMMONWEALTH GOVERNMENT RESPONSE

to the

**REPORT OF THE SENATE COMMUNITY AFFAIRS REFERENCES
COMMITTEE, JUNE 1997**

on

ACCESS TO MEDICAL RECORDS

COMMITTEE RECOMMENDATIONS:

Recommendation 1

“The Committee notes the limited constitutional heads of power for the Commonwealth to legislate in this area. Accordingly, the Committee recommends that this legal problem needs to be addressed without delay. Such consideration would identify the most appropriate means of enacting national legislation to make access to medical and other health records a real right.”

Recommendation 2

“The Committee recommends that medical and other health records that are the subject of legislation should be described in the broadest possible way to include consultation notes, medical history, test results, letters of referral, records of consultation between doctors and other health providers, observations and opinions about the individual, details of treatment, and any other material relevant to the individual held in a health record, including electronic and video records.”

Recommendation 3

“The Committee recommends that the framing of comprehensive national legislation enshrining the right of access to medical and other health records in the public and private sectors commence without delay.”

Recommendation 4

“The Committee recommends that any access to medical and other health records legislation should be capable of imposing penalties and sanctions on medical and health care providers who fail to comply with the provisions of the legislation.”

Recommendation 5

“The Committee recommends that the Federal Privacy Commissioner investigate the privacy implications of record keeping in the private sector, including the obligations of the 'record-keeper', retention, storage, transfer and destruction of medical and health records. This investigation to be conducted without delay as an essential adjunct to the drafting of access to medical and other health records legislation.”

Recommendation 6

“The Committee recommends that the Commonwealth moves expeditiously to draft legislation for national access to medical and other health records legislation through the creation of extended privacy legislation to cover the private health sector, to avoid conflicting State and Territory access to medical and other health records legislation.”

Recommendation 7

“The Committee recommends that industry regulations be drafted for inclusion in extended privacy legislation to cover the private health sector.”

Recommendation 8

“The Committee recommends that research be conducted on the potential for interference to medical and other health records in the advent of electronic records and telemedicine, and that privacy legislation Information Privacy Principles and Codes of Practice take this into account and include the necessary safeguards.”

Recommendation 9

“The Committee recommends, in line with a recommendation made by the Federal Privacy Commissioner, that a phase-in period should apply to allow providers and consumers to become familiar with the legally-binding scheme, before any party faces enforceable sanctions or is charged under the provisions of the scheme.”

Recommendation 10

“The Committee recommends that the Federal Privacy Commissioner should have power to investigate and conciliate complaints and seek enforceable assurances against repetition of breaches of a health privacy code, the Privacy Act, and national legislation granting access to medical and other health records. Where a breach is found to have occurred, the Federal Court should be able to award compensation, issue restraint orders and impose penalties for serious breaches of privacy obligations.”

Recommendation 11

“The Committee recommends that access to medical and other health records legislation should be prospective in its operation, except so far as matters of fact are concerned, when an individual will have a right of access to these, whenever the record was prepared.”

Recommendation 12

“The Committee recommends that subject to Recommendation 15, concerning general exemptions, that no further exemptions should apply. In all circumstances, the contents of medical or other health records should be explained to a patient by a professional who understands the patient's clinical details.”

Recommendation 13

“The Committee recommends that reasons for exemptions and refusal to grant access to medical or other health records should be stated to the applicant, and that exemptions should be fully supported with evidence which should be provided to the applicant.”

Recommendation 14

“The Committee recommends that an appeal body should be established, that the appeal body should be independent, and that suitably qualified people should be appointed to the appeal body.”

Recommendation 15

“The Committee recommends that exemptions to access to medical or other health records be restricted to circumstances where a medical provider or health service provider believed that allowing access would be likely to cause serious harm to the mental or physical well being of the patient, or to a third party, or to the privacy of a third party. Such claims would require supportive evidence.”

Recommendation 16

“The Committee recommends that if a patient wished to challenge a refusal to grant access to a medical or other health record, then an appeal process through an independent appeal body could be available and handled within a stipulated period.”

Recommendation 17

“The Committee recommends that the Commonwealth initiates immediate discussions between all stakeholders in the States and Territories to enable the drafting and passage of national legislation to ensure access to medical records for all individuals across the public and private health sector.”

Government Response

The Government recognises the importance of patient access to medical records held by medical practitioners in the private sector and, accordingly, has given careful consideration to the Committee's recommendations.

The *Privacy Amendment (Private Sector) Bill*, introduced into Parliament in April 2000, will for the first time allow individuals the right of access to their personal information, including medical records held in the private sector in all states and territories. Where a consumer is not satisfied with the way that an organisation is handling his or her personal information, he or she will have the right to complain to either an industry code adjudicator or the Federal Privacy Commissioner. While most small businesses (with an annual turnover of less than \$3 million) will be exempt from this legislation, those which provide a health service and hold health information will be covered.

This legislation, based on the *National Principles for the Fair Handling of Personal Information* that have been developed by the Federal Privacy Commissioner in consultation with stakeholder groups, is designed to ensure that personal information, including health information, is handled appropriately in the private sector. In recognition of the highly sensitive nature of personal health information, the Attorney-General asked the Privacy Commissioner to consult widely in 1999 with key stakeholders and make recommendations about what changes, if any were needed to the National Principles to provide appropriate coverage of personal health information held in the private sector. This consultation process has provided valuable input to ensuring that this legislation will provide adequate privacy protection for health information.

The National Principles are intended to provide a framework for handling personal information. The Government recognises that there will be additional work required in assisting stakeholders in the practical application of the legislation in everyday situations, particularly relating to the issue of access to medical records. Accordingly, the Federal Privacy Commissioner intends to develop guidelines on this in close consultation with the Department of Health and Aged Care, the Attorney-General's Department, health consumer groups and health professionals.

Australian Health Ministers have also agreed to the establishment of a joint Commonwealth/State/Territory health information privacy working group with a view to developing nationally consistent, health-specific, privacy provisions to achieve harmonisation across the public and private sectors. This is likely to take the form of a national 'health code' developed in consultation with key stakeholders and established under the Federal Privacy Act. States and Territories would develop complementary legislation to cover their public sectors. The development of such a code will assist in addressing consumer and provider concerns regarding the appropriate handling of sensitive health information in the context of emerging e-health initiatives, such as electronic health records and telehealth.