



Australian Government

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AIHW submission to the Inquiry into the *Privacy Act 1988*

The AIHW is pleased to have the opportunity to comment on this important piece of legislation. We were a keen contributor to the development of the revised *Privacy Act*, and have monitored its impact on our own operations carefully. There was initial, unspecified uncertainty regarding the views of data providers in the private sector whose information is held by the AIHW. However, extension of the *Privacy Act* to the private sector has not inhibited the Institute's ability to fulfill our mission:

Better health and wellbeing for Australians through better health and welfare statistics and information.

We inform community discussion and decision-making through national leadership and collaboration in developing and providing health and welfare statistics and information.

In fact, the *Privacy Act* provides a firm underpinning to ensure that people can be confident that the privacy of any data provided to the AIHW is fully protected.

The AIHW has a faultless record of protection of the personal health information we hold. As well as the protection offered by the Information Privacy Principles, personal information held by the Institute is covered by the confidentiality provisions of the *Australian Institute of Health and Welfare Act 1987 (AIHW Act)*, and by a range of Agreements, Policies and Guidelines available to the public via our website: www.aihw.gov.au. The legislative framework provides a firm underpinning for the Institute's national data collection activities.

Section 95 and 95A Guidelines under the Privacy Act 1988

The *Privacy Act* includes the vital enabling provisions (sections 95 and 95A) covering "the use and disclosure of health information for the purposes of research, or the compilation or analysis of statistics, relevant to public health or public safety."¹ The Australian Institute of Health and Welfare Ethics

¹ Section 95A(2) of the *Privacy Act, 1988* (Commonwealth).

Committee, established by section 16 (1) of the *AIHW Act* operates within the *Section 95 Guidelines* developed by the Australian Health Ethics Committee of the National Health and Medical Research Council to consider applications for use of our data for the compilation or analysis of statistics.

Extension of sections 95 and 95A of the Privacy Act 1988 to cover welfare information:

The Guidelines have served the interests of public safety well. The ability to use or disclose health information under the provisions of the *Privacy Act* is a major strength. Extension of the legislation to include similar provisions regarding welfare information would further enhance the health and safety of the public.

The *AIHW Act* (section 5(1AA) defines the functions of the AIHW as “health-related functions” and “welfare-related functions”.

The *Privacy Act* defines “health information” and “health services” as follows:

health information means:

- (a) information or an opinion about:
 - (i) the health or a disability (at any time) of an individual; or
 - (ii) an individual’s expressed wishes about the future provision of health services to him or her; or
 - (iii) a health service provided, or to be provided, to an individual; that is also personal information; or
- (b) other personal information collected to provide, or in providing, a health service; or
- (c) other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body parts, organs or body substances.

health service means:

- (a) an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the person performing it:
 - (i) to assess, record, maintain or improve the individual’s health; or
 - (ii) to diagnose the individual’s illness or disability; or
 - (iii) to treat the individual’s illness or disability or suspected illness or disability; or
- (b) the dispensing on prescription of a drug or medicinal preparation by a pharmacist.

Clearly, those definitions do not cover some of the Institute’s welfare functions which are broadly:

- children, youth and families
- housing assistance
- supported accommodation and crisis services.

In the context of the current Inquiry, the AIHW proposes consideration by the Committee of the value of Guidelines covering the use of welfare information for

the purposes of research, or the compilation or analysis of statistics, relevant to public health or public welfare similar to those prescribed under sections 95 and 95A of the Privacy Act.

“The effectiveness of the Privacy Amendment (Private Sector) Act 2000 in extending the privacy scheme to the private sector, and any changes which may enhance its effectiveness”,

The AIHW has observer status on the Australian Health Ministers’ Advisory Council (AHMAC) working group developing the National Health Privacy Code and is committed to national adoption of that Code. Notwithstanding the Code, which applies only to health information, the AIHW supports a national privacy regime through adoption of a set of privacy principles common across both the public and private health sectors. The existing private sector principles provide a strong base for such a development.

The Institute would be happy to discuss further any issues with you.

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March 2005