1996 after Senator Belinda Neal's proposal to amend the Health Insurance Amendment Bill (No 2) 1996, to incorporate access to medical records provisions was unsuccessful.

The reference to the Committee was, among related issues, to inquire into a legislative access to medical records scheme to provide patients in the private health sector with a right of access to their medical records.

The background to the amendment concerned a patient's right of access to her doctor's notes. A test case, Breen v Williams in 1994, went to the NSW Court of Appeal. In 1996, the High Court of Australia confirmed that in the private health sector, the common law confirms ownership of records with the originator of the record.

While patients in the public health sector have access to their medical and health records under the provisions of the Freedom of Information legislation, patients in the private sector must rely upon the cooperation of medical practitioners and other health care providers to provide access to their records.

The High Court advised that if there was to be any change, it was for the Parliament to decide upon legislation which would ensure individual's access to their medical records in the private health sector.

The aim of Senator Neil's proposal was to remove this anomaly, to provide access to medical records, and to ensure the privacy of medical and other health records.

...

The Committee's major recommendations are

> that the Commonwealth should initiate immediate discussions between all stakeholders in the States and Territories to enable the drafting and passage of legislation to ensure access to medical records for all individuals across the public and private health sectors;
>
> that the Commonwealth should move expeditiously to draft legislation for national access to medical and other health records, and extended privacy legislation, to avoid the possibility of conflicting with State and Territory access to medical and other health records legislation being developed;
>
> that national legislation will be prospective in its operation, except where matters of fact are concerned;
>
> that for a national legislative scheme, a broad definition should be adopted to describe information and materials constituting an individual medical or health record.
>
> ..."

Senate Committee Consideration of Indexed Lists of Departmental Files

The Report of the Senate Finance and Public Administration References Committee entitled *Review of the Operation of the Order for the Production of Indexed Lists of Departmental Files* was tabled in the Senate on 5 February 1997. The Government response to the Committee's report was tabled in the Parliament on 25 June 1997 (Senate Hansard 5201 - 5202).

The Order for the Production of Indexed Lists of Departmental Files requires Ministers to table indexed lists of the titles of relevant files created in the central offices of departments and agencies by the tenth day of the autumn sittings (for files created between 1 July and 31 December) and by the tenth day of the spring sittings (for files created between 1 January and 30 June). Relevant files include files relating to policy advising or development of legislation and files relating to matters of public administration but need not include files transferred to the Australian Archives, case related files and files essentially related to the internal administration of the department or agency.

The Order also requires the Senate Committee to undertake a review of the operation of the Order after the first returns are tabled.

In response to its first term of reference – the most efficient and effective method of ensuring that the information required by this order to be tabled, is available on the public record –

the Senate Committee report notes that a number of recent reviews and Government initiatives which had a bearing on its terms of reference were taken into account. These reviews include the joint ARC/ALRC FOI Report which proposed that the information might be more useful if it were made available on-line. Several departmental submissions also suggested that access to the information should be made available through a single Commonwealth home page on the Internet.

The Committee considered that public access could be improved by placing the material on the Internet but this would be costly in staff time and the "visibility" would be less than ideal because an indexed, central point of access to government information holdings on the Internet has not yet been established.

The Committee recommends:

> "As an interim measure, and subject to availability of resources, . . . that file lists from a small number of departments which historically have received a large number of FOI requests be put on the Senate home page on the internet on a trial basis. Links to the home pages of the departments involved be established. The trial should run for six months. At the end of the trial period this committee would access the usage of the file lists and report to the Senate on:
>
> - whether the practice should be extended to all file lists; and
> - the most appropriate location(s) on the Internet for the lists." (para 1.18)

The Government's response provides:

> This is a matter for decision by the relevant parliamentary authorities, having regard to all the costs involved.

In relation its second term of reference – whether the indexing of file lists across departments and agencies can be improved in consultation with the Australian Archives to provide uniform methods of obtaining access to government data – the Committee noted the ARC/ALRC view that the file titles needed to be more meaningful and self-explanatory. The Committee noted some improvements were being made, namely:

- the Australian Archives has endorsed a preferred Commonwealth thesaurus, has indicated its willingness to co-ordinate amendments and maintenance of the common thesaurus and will broker training and the provision of consultant services for advice and development of specific thesaurus components for departments and agencies; and
- the Information Management Steering Committee on Information Management in the Commonwealth Government has produced a preliminary report (which has the status of a discussion draft) proposing the establishment of a Government Information Locator System to improve the visibility of government information holdings

and made no recommendations on the matter.

On the third term of reference – whether the order needs to be amended to take into account e-mail and electronic data storage – the Committee noted that:

- information about electronic databases containing records of personal information is incorporated into the Personal Information Digest which is published annually by the Privacy Commissioner;
- a Request for Proposal was issued in October 1996 by the Office of Government Information Technology with the aim of developing a whole of government approach to records management, encompassing both paper and electronic records;

- in general, departments expressed concern at attempting to extend the order to electronically stored data at this stage, and some indicated that it would be impossible for them to comply with such an order.

The Committee endorsed initiatives to develop a whole of government approach to integrated management of paper and electronic records and made no recommendations on this aspect of its terms of reference.

On the fourth term of reference – any legal or practical difficulties encountered by agencies in complying with the order – the Committee noted that no departments or agencies had reported legal difficulties. A number of departments noted practical difficulties, such as the labour intensive nature of the task and the difficulties for staff in one agency meeting the timing of tabling of a list soon after preparation of the Budget. One submission suggested that usage should be monitored to see if it was a cost effective means to achieve the objectives of the Order. Another noted that it was trialing a system for identifying files when they were raised, rather than retrospectively.

The Department of Defence suggested that the titles of files classified Confidential, Secret or Top Secret should be excluded from the Order on the basis that analysis of a collage of individually innocuous files could provide information to foreign intelligence agencies.

The Committee recommended that"the order be amended to exclude the titles of files whose national security classification is Confidential, Secret or Top Secret or their equivalent." (para 1.47)

The Government's response was to agree with this recommendation.

The Committee also decided to provide a further report to the Senate in 12 months.

Senate Committee Consideration of the Administrative Decisions (Effect of International Instruments) Bill 1997

This Bill responds to the High Court's decision in *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273.

In that decision, the Court said that, by entering into a treaty, the Government creates a "legitimate expectation" that the Executive Government and its agencies will act in accordance with the terms of the treaty, even where those terms have not been incorporated into Australian law. Further, if a decision-maker intends to act inconsistently with a treaty, procedural fairness requires that the person affected by the decision should be given notice and an opportunity to put arguments on the matter, otherwise the decision could be set aside on the ground of unfairness. However, the Court said that the "expectation" cannot arise if there is a statutory or executive indication to the contrary. The Attorney-General on introducing the Bill (House of Representatives Hansard, 18 June 1997, 5545) stated that it is a clear statutory indication to the contrary.

The Bill passed the House of Representatives on 25 June 1997 and was introduced into the Senate on 27 June. The Bill was subsequently referred to the Senate Legal and Constitutional Legislation Committee and was also considered by the Senate Standing Committee for the Scrutiny of Bills.

The Senate Standing Committee for the Scrutiny of Bills reported on the Bill in its Eleventh Report of 1997 (dated 27 August 1997). This report followed on from comments made by the Committee in its Alert Digest No 9 of 1997, which were outlined in the Committee's Eleventh report as:

> "...the fact that this bill is considered necessary demonstrates that, as things now stand, international instruments may have effect within Australia without being incorporated in legislation. The committee wondered whether this amounts to an exercise of power with insufficient parliamentary scrutiny or no