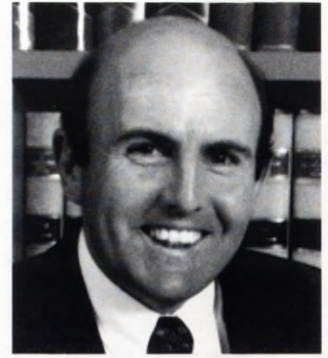


Access to health records in ACT

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On 1 February 1998 the *Health Records (Privacy & Access) Act 1997* will commence operation. The explanatory memorandum issued with the Act states its purpose as being "to provide a set of privacy and access rights for health care consumers to their own personal health information, wherever it is held in the ACT, and whether it is held in the public or the private sector."

The Act applies to all "consumers." That term is defined as any individual who uses or has used a Health Service or about whom a health record has been created. Health Services are defined broadly to cover any activity relating to the assessment recording improvement or maintenance of physical, mental or emotional well-being of a consumer or the diagnosis of an illness or disability of a consumer. It appears to us that it will therefore cover a broad range of Health Service Providers such as hospitals, doctors, physiotherapists and alternative medicine providers.

Part II of the Legislation contains twelve privacy principles which have the force of law. The principles basically require the Health Service Provider to maintain Health Service records and deal with them in accordance with the principles. Briefly the principles are as follows:

- 1 **Manner and purpose of collection of personal information:**
Information can only be collected for lawful purposes associated with the function or activity of the collector.
- 2 **Purpose of collection of personal health information to be made known:**
The person collecting personal health information must inform the consumer of the purpose for the collection.
- 3 **Solicitation of personal health information:**
A collector of personal health information must ensure the information is relevant and up to date and complete.

- 4 **Storage and security:**
A health record must be protected against loss or unauthorised access.
- 5 **Information relating to records kept by record keeper:**
A record keeper must take steps to notify a consumer about health records in his or her possession and how to gain access to same.
- 6 **Access to health records by persons other than consumer:**
The consumer's treating team (which is defined under the Act) may have access to the health information so far as it is necessary for the provision of health services. Beyond that, access is limited.
- 7 **Alterations of health records:**
This principle prevents the deletion of information from health records except for normal archival destruction.
- 8 **Record keeper to check accuracy:**
The record keeper must take steps which are reasonable to ensure that the information kept is accurate, up to date and complete.
- 9 **Limits on personal health information:**
Personal information can only be used as follows:
 - Where the consumer consents.
 - Where the information is necessary to prevent or lessen significant risk to life or health of consumer.
 - The use is required or authorised by Law.
 - The use is directly related to the purpose for which it was obtained.
 - The use is related to management funding or quality of health services received by the consumer.
- 10 **Limits on disclosure:**
Disclosure can only be made in the circumstances outlined in principle 9.
- 11 **Transfer or closure of practice of Health Service Provider:**
This applies to health records where a practice is sold, transferred or closed.
- 12 **Transfer of consumer to another Health Service Provider:**

This provides guidance where a consumer changes doctors or practices. The Act requires compliance with these principles unless such compliance is contrary to a Law of the Territory (for example where a subpoena has issued).

The legislation deals with the right of a consumer to get access to a record prepared by a Health Service Provider. This right exists (Section 10) for all factual matters whenever they were entered on record and for all expressions of opinion that are entered on the record after the date of commencement of the Act. Therefore the right of access extends to any matter of history or other similar records held on the record but would not extend to opinions expressed prior to the commencement of the Legislation.

The Act envisages that access can be obtained by either inspecting the record and taking notes, or by the giving of a copy. Further, the Act envisages that it may be appropriate for a consumer to have the opportunity to view the record and have it explained by the appropriate Health Service Provider. A fee or charge can be imposed under the act where there is a need for a copy or for explanation but no charge be made where the consumer simply wishes to view the record and take notes.

It should be noted that it is not possible under the Act to contract out of the provisions of the Legislation. Health Providers would therefore not be in a position to agree with patients that they will not seek to enforce their rights under the Act.

The Act contains various exemptions and other provisions. It is clear that the Legislation will enable most of your patients to request access to files whereas in the past that was not possible, except where FOI Legislation applied. ■

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