



AUSTRALIAN CAPITAL TERRITORY

Epidemiological Studies (Confidentiality) Act 1992

No. 26 of 1992

An Act to provide for confidentiality in relation to certain epidemiological studies

[Notified in ACT Gazette S89: 26 June 1992]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Epidemiological Studies (Confidentiality) Act 1992*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“Territory epidemiological study” means an epidemiological study conducted in the Territory;

“Canberra Drug Users Study” means the Territory epidemiological study in relation to drug users in the Territory, including—

- (a) their networks;
- (b) their infection with human immunodeficiency virus;
- (c) their risks; and
- (d) their strategies for minimising those risks;

“court” includes a tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Australian Capital Territory Ombudsman;

“epidemiological study” means a study of—

- (a) the incidence or distribution, within the population of a country, or a part of a country, or within a particular group of persons, or within a sample or sub-sample of such a population or group, of—
 - (i) a disease;
 - (ii) a physical or mental state; or
 - (iii) a condition, circumstance, occurrence, activity, form of behaviour, course of conduct, or state of affairs, that is or may be disadvantageous to, or result in a disadvantage to, the person concerned or to the community; or
- (b) the factors responsible for such an incidence or distribution, or both, and includes a series of such studies;

“prescribed study” means —

- (a) the Canberra Drug Users Study; or
- (b) a Territory epidemiological study declared by the regulations to be a study to which this Act applies.

(2) A reference in this Act to a person who has assisted, or is assisting, in the conduct of an epidemiological study includes a reference to a person who has conducted, or is conducting, or has supervised or is supervising the conduct of, the study but does not include a reference to a person who has assisted, or is assisting, in the conduct of the study by reason only that such person was or is one of the persons to whom the study related or relates or has provided, or is providing, information about one of the persons (whether himself or herself, as the case requires, or another person) to whom the study related or relates.

(3) A reference in this Act to information concerning the affairs of a person shall be read as including—

- (a) a reference to information as to the existence or non-existence of a document concerning the affairs of a person; and
- (b) a reference to information relating to the whereabouts of a document concerning the affairs of a person.

(4) Unless the contrary intention appears, a reference in this Act to information or a document concerning the affairs of a person includes a reference to information or a document, as the case may be, concerning the affairs of a deceased person.

Secrecy relating to prescribed studies

4. Subject to sections 5 and 7, a person who has assisted, or is assisting, in the conduct of a prescribed study shall not, directly or indirectly, except for the purpose of the conduct of that study, make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by the first-mentioned person by reason of that person having assisted, or assisting, in the conduct of that study.

Penalty: \$5,000 or imprisonment for 12 months, or both.

Authority for access to documents

5. (1) Notwithstanding section 4, the Minister may, in accordance with this section, authorise the giving of access to documents prepared or obtained in the conduct of a prescribed study to persons assisting in the conduct of another prescribed study where each such study was, or is being, conducted by, or on behalf of, the Territory.

- (2) An authorisation of the giving of access under subsection (1)—
 - (a) shall be in writing signed by the Minister; and
 - (b) shall specify the relevant form or forms of access to be given.

(3) It is a defence to a prosecution for a contravention of section 4 that is constituted by the giving of access to a document if it is established that the access was given in accordance with an authorisation given under subsection (1).

Secrecy relating to certain documents

6. Subject to section 7, a person who has assisted, or is assisting, in the conduct of a prescribed study and has been given access, duly authorised under section 5, to a document prepared or obtained in the conduct of another prescribed study shall not, directly or indirectly, except for the purpose of the conduct of either of those studies, make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by the first-mentioned person by reason of that person having been given access to that document.

Penalty: \$5,000 or imprisonment for 12 months, or both.

Certain persons may be given information

7. Sections 4 and 6 do not prevent a person who has assisted, or is assisting, in the conduct of a prescribed study from divulging or communicating information concerning the affairs of another person to—

- (a) the person who supplied the information;
- (b) where the information concerns the affairs of only one person—that person;
- (c) where the information concerns the affairs of 2 or more persons—any of those persons with the consent of the other person, or each other person, whose affairs that information concerns; or
- (d) a person nominated by a person to whom the information may be given by virtue of paragraph (a), (b) or (c) as a person to whom that information may be given.

Protection of information from court

8. (1) A person who has assisted, or is assisting in the conduct of a prescribed study shall not be required—

- (a) to produce in a court, or permit a court to have access to, a document prepared or obtained in the course of the conduct of that study, being a document concerning the affairs of another person; or

- (b) to divulge or communicate to a court any information concerning the affairs of another person acquired by the first-mentioned person by reason of that person having assisted, or assisting, in the conduct of that study.

(2) A person who has assisted, or is assisting, in the conduct of a prescribed study and has been given access, duly authorised under section 5, to a document shall not be required—

- (a) to produce in a court, or permit a court to have access to, that document, being a document concerning the affairs of another person; or
- (b) to divulge or communicate to a court any information concerning the affairs of another person acquired by the first-mentioned person by reason of that person having had, or having, that access.

Extension

9. Without limiting the generality of sections 4, 6 and 8, those sections extend to a person who has assisted, or is assisting, in the conduct of a prescribed study—

- (a) as an officer or employee of the Public Service of the Commonwealth, a State or another Territory;
- (b) as an employee of a body corporate, or of another person, involved in the conduct of the study; or
- (c) in accordance with a contract for the provision of that person's services;

and extend to a person whether or not the person received or receives, or was or is entitled to receive, remuneration in respect of the assistance provided by that person.

Oaths and declarations of secrecy

10. A person who is, or is about to become, a person to whom section 4 or 6 applies shall, if and when required to do so by the Minister, or by a person authorised in writing by the Minister for the purposes of this section, take an oath, or make an affirmation or declaration, in a manner and form, and before a person, prescribed by the regulations, not to make a record of, or divulge or communicate, information in contravention of this Act in its application to a prescribed study conducted by, or on behalf of, the Territory.

Penalty: \$5,000 or imprisonment for 12 months, or both.

Publication of results of studies

11. (1) Nothing in this Act prevents the publication of conclusions based on, statistics derived from, or particulars of procedures used in, a prescribed study, but such conclusions, statistics or particulars shall not be published in a manner that enables the identification of an individual person, including a deceased person.

(2) In this section, “publication”, in relation to conclusions, statistics or particulars, includes—

- (a) the divulging or communication to a court of the conclusions, statistics or particulars; and
- (b) the production to a court of, or the permitting of a court to have access to, a document containing the conclusions, statistics or particulars.

Information supplied for prescribed study

12. Information concerning the affairs of a person to whom a prescribed study relates may be disclosed to a person assisting in the conduct of that study without breach of any law or any principle of professional ethics.

Application

13. (1) For the purposes of the application of this Act in relation to the Canberra Drug Users Study, this Act extends to information acquired, and documents prepared or obtained, before the commencement of this Act.

(2) For the purposes of the application of this Act in relation to a Territory epidemiological study declared by the regulations to be a study to which this Act applies, this Act extends to information acquired, and information prepared or obtained, before the commencement of those regulations.

Regulations

14. The Executive may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

[Presentation speech made in Assembly on 13 May 1992]

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