

2015

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

HEALTH LEGISLATION AMENDMENT BILL 2015

EXPLANATORY STATEMENT

Presented by
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EXPLANATORY STATEMENT

OVERVIEW

The Health Legislation Amendment Bill 2015 amends:

- a) The *Civil Law (Wrongs) Act 2002* to protect people who may be impaired by a recreational drug from civil litigation when administering Naloxone in an emergency situation;
- b) The *Health Act 1993* to repeal Part 3A to remove the provisions relating to the establishment and functions of the Local Hospital Network Council (the LNHC); and
- c) The *Health Records (Privacy and Access) Act 1997* (HRA) to bring the definitions of the HRA in line with the definitions for carer, child, young person and guardian in other legislation. The amendments will also clarify the application of the HRA to records held by the Health Services Commissioner (the HSC).

DETAIL

Part 1 Preliminary

Clause 1 Name of Act

This clause is a technical clause and sets out the name of the proposed Act as the *Health Legislation Amendment Act 2015*.

Clause 2 Commencement

This clause is a technical clause setting out when commencement of the Act will occur. It is intended that commencement will occur on the day after its notification day.

Clause 3 Legislation amended

This clause is a technical clause and sets out the Acts that will be amended, namely the *Civil Law (Wrongs) Act 2002*, the *Health Act 1993* and the *Health Records (Privacy and Access) Act 1997*.

recommended that the government reconsider the ongoing role of the LHNC.

The National Health Reform Agreement (NHRA) required states and territories to agree to LHNCs. LHNCs were intended to provide more local and flexible governance arrangements for hospital management. Amongst other things, LHNC's were expected to deliver agreed services and performance standards, monitor LHN performance and improve local patient outcomes.

The changes to health funding announced in the Federal Budget for 2014-15 seriously undermined the need for LHNCs. The government was committed to establishing a LHNC by signing up to the NHRA. Ongoing commitment to this agreement has been seriously undermined by the Commonwealth's retraction of associated funding guarantees. The necessity to continue with a LHNC has therefore been removed.

Clause 6 Dictionary, definition of *council*

This clause omits the definition of council from the dictionary which is no longer needed given the repeal of Part 3A.

**Clause 7 Disclosure of interests by committee members
Section 190 (1), note 1**

This clause omits note 1 of subsection 190 (1) dealing with the disclosure of interests by committee members and is a consequential amendment of the repeal of Part 3A.

Clause 8 Legislation repealed

This clause provides that all legislative instruments made under Part 3A of the *Health Act 1993* are repealed. This is consistent with the current drafting practice of the Parliamentary Council's Office and is a consequential amendment of the repeal of Part 3A.

Part 4 Health Records (Privacy and Access) Act 1997

**Clause 9 Consent by consumer to obtaining health status report
Section 7 (4) (a) (i)**

This clause omits the words 'young person or' from section 7 (4) (a) (i) and is a consequential amendment as a result of inserting a new

section 7 (4) (a) (ia) in clause 10 which deals specifically with the consent of a child or young person for the purpose of obtaining a health status report.

Clause 10 New section 7 (4) (a) (ia)

This clause inserts a new section which deals specifically with the consent of a child or young person for the purpose of obtaining a health status report.

**Clause 11 Statement of principle regarding right of access
New section 10 (4A) and (4B)**

This clause inserts a new section to clarify the application of the legislation to health records held by the HSC. New section 10 (4A) allows the HSC to refer a request for a health record received by the HSC to the health service provider that provided the record. New section 10(4B) provides that if the HSC refers a request to a health service provider under subsection (4A) (b), the health service provider is taken to have received it under section 12.

Clause 12 Section 10 (6)

This clause omits this section on account of the new section 10A inserted under clause 13.

Clause 13 New section 10A

This clause inserts a new section providing a statement of principle regarding the right of access to health records by children and young people.

The new section clarifies the policy intention of the legislation which is to allow access to health records by young persons who have sufficient maturity and development capacity to understand the nature of the request to access a health record and the nature of the health record.

This section also updates the language used in the section from ‘guardian’ to a ‘person with parental responsibility’ to ensure consistency with the language used in other relevant legislation such as the *Children and Young People Act 2008* and the *Guardianship and Management of Property Act 1991*.

Clause 14 Requests for access
Section 12 (1)

This clause inserts the words ‘or section 10A’ after the words ‘section 10’ in order to include a reference to the new section inserted by clause 13 in section 12(1).

Clause 15 Section 12 (2) (d) (i)

This clause substitutes a new section in order to provide the updated language of a ‘person with parental responsibility’ to ensure consistency with the language used in other relevant legislation such as the *Children and Young People Act 2008* and the *Guardianship and Management of Property Act 1991*.

Clause 16 Response to request for access
New section 13 (2) (aa)

This clause inserts a new subparagraph in section 13(2) to facilitate the new section inserted by clause 11 which allows the HSC to refer requests the HSC has received for health records to a health service provider.

Clause 17 Section 13B heading

This clause substitutes a new heading to make clearer the purpose of the section.

Clause 18 Section 13B (1)

This clause makes it clear that this section does not apply to a child or a young person and is consequent on the insertion of a new section 13 BA in clause 21 that deals specifically with giving access to health records for children and young people.

Clause 19 Section 13B (3) (c)

This clause makes it clear that this section does not apply to a young person and is consequent on the insertion of a new section 13 BA in clause 21 that deals specifically with giving access to health records for children and young people.

Clause 20 Section 13B (3) (c) (i)

This clause removes the words ‘young person or’ and is consequent to the amendment in clause 19.

Clause 21 New section 13BA

This clause inserts a new stand alone section for giving access to health records by children and young people. The new section replicates the existing provisions for giving access to health records and applies them specifically to children and young people.

At the same time the language used in the new section has been updated for consistency with the language used in other relevant legislation such as the *Children and Young People Act 2008* and the *Guardianship and Management of Property Act 1991*.

The new section also clarifies the policy intention of the legislation which is to allow access to health records by young persons who have sufficient maturity and development capacity to understand the nature of the request to access a health record and the nature of the health record.

**Clause 22 Access taken to have been refused
Section 13D (a) (iii)**

This clause amends section 13D (a) (iii) to be consistent with the new heading as amended by clause 17.

**Clause 23 No access to health record where material given in
confidence
New section 17 (2) (ba)**

This clause amends section 17 (2) to add to the list of people specified in that subsection a person with parental responsibility for a consumer to ensure appropriate coverage for health records that are subject to confidentiality.

Clause 24 Section 25 heading

This clause substitutes a new heading to make clearer the purpose of the section and to ensure that it applies to both children and young people.

Clause 25 Section 25

This clause provides that subject to the provisions in the HRA if a consumer is a child or young person then any power conferred on consumers by the HRA is exercisable by a person with parental responsibility for the consumer. This amendment is necessary to maintain consistency with the rest of the HRA as amended by this Bill.

Clause 26 Section 25 (a)

This clause updates the language used in the section from ‘guardian’ to a ‘person with parental responsibility for the consumer’ to ensure consistency with the language used in other relevant legislation such as the *Children and Young People Act 2008* and the *Guardianship and Management of Property Act 1991*.

Clause 27 Jurisdiction of Magistrates Court Section 31 (1) (a) (iii) and (iv)

This clause amends section 31 (1) (a) to maintain consistency with the rest of the HRA as amended by this Bill. In particular, the language used in the section has been updated for consistency with the language used in other relevant legislation such as the *Children and Young People Act 2008* and the *Guardianship and Management of Property Act 1991*.

The amendment also clarifies the policy intention of the legislation which is to allow status under the HRA to a child or to a young person who has or does not have sufficient maturity and development capacity to understand the nature of the request to access a health record and the nature of the health record.

Clause 28 The privacy principles Schedule 1, principle 10, clause 4

This clause provides a drafting improvement to the wording of the clause in respect of the definition of the consumer’s carer.

Clause 29 Schedule 1, principle 10, clause 4 (a)

This clause substitutes a new subparagraph (a) to update the wording of the clause to maintain consistency with the rest of the HRA as amended by this Bill.

Clause 30 Schedule 1, principle 10, clause 7 (a) (i)

This clause substitutes a new subparagraph (a) to update the wording of the clause to maintain consistency with the rest of the HRA as amended by this Bill.

Clause 31 Schedule 1, principle 10, clause 10

This clause provides a drafting improvement to the wording of the clause in respect of the definition of the consumer's carer.

Clause 32 Schedule 1, principle 10, clause 10 (a)

This clause omits the words 'young person' and substitutes a more accurate description to update the wording of the clause to maintain consistency with the rest of the HRA as amended by this Bill.

Clause 33 Schedule 1, principle 10, clause 10 (b)

This clause substitutes the words 'provider's opinion' for the words 'record keeper's opinion' in the clause to correct an internal inconsistency in the wording of the clause.

Clause 34 Schedule 1, principle 10, clause 11 (a)

This clause substitutes a new subparagraph (a) to update the wording of the clause to maintain consistency with the rest of the HRA as amended by this Bill.

Clause 35 Schedule 1, principle 10, new clause 12

This clause provides a new definition of carer for principle 10 to make it clear that a carer is not intended to include people such as school principals, teachers or early childhood educators providing short term care for a child. The definition of 'carer' in the *Guardianship and Management of Property Act 1991* has been adopted with two examples to address this issue.

Clause 36 Dictionary, definition of *child*

This clause substitutes a new definition of child to maintain consistency with other legislation.

Clause 37 Dictionary, definition of *consumer*, paragraph (a)

This clause substitutes a new definition of consumer to maintain consistency with the rest of the HRA as amended by this Bill.

Clause 38 Dictionary, definition of *guardian*

This clause substitutes a new definition of guardian to maintain consistency with other relevant legislation such as the *Children and Young People Act 2008* and the *Guardianship and Management of Property Act 1991*.

Clause 39 Dictionary, definition of *person with parental responsibility*

This clause substitutes a new definition of person with parental responsibility to maintain consistency with other relevant legislation such as the *Children and Young People Act 2008*.

Clause 40 Dictionary, definition of *young person*

This clause substitutes a new definition of young person to maintain consistency with other relevant legislation such as section 12 of the *Children and Young People Act 2008*.