



Australian Capital Territory

Health Records (Privacy and Access) Act 1997

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and A2006-3)

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Health Records (Privacy and Access) Act 1997* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 23 February 2006. It also includes any amendment, repeal or expiry affecting the republished law to 23 February 2006.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Health Records (Privacy and Access) Act 1997

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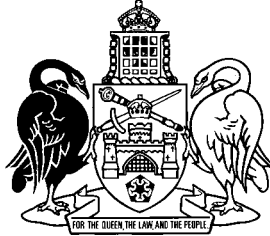
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Australian Capital Territory

Health Records (Privacy and Access) Act 1997

An Act to provide for the privacy and integrity of, and access to, personal health information, and for related purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Health Records (Privacy and Access) Act 1997*.

3 Objects of Act

The objects of this Act are—

- (a) to provide for privacy rights in relation to personal health information; and
- (b) to provide for the integrity of records containing personal health information; and
- (c) to provide for access to personal health information contained in health records; and
- (d) to provide for a consumer to receive an explanation of the consumer's personal health information; and
- (e) to encourage agreement, concerning the exercise of a right or performance of an obligation under this Act, between the persons concerned.

4 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*disability*—see the *Human Rights Commission Act 2005*, section 8 (2).' means that the term 'disability' is defined in that subsection and the definition applies to this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4A Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4B Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1):

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Privacy provisions

5 The privacy principles

Subject to this Act, the privacy principles mentioned in schedule 1 have the force of law.

6 Compliance with privacy principles

- (1) A person to whom a privacy principle applies shall not, without lawful authority, contravene the privacy principle.
- (2) A person is taken not to have lawful authority to contravene a privacy principle unless the person proves that, in the circumstances, compliance with the privacy principle would have contravened—
 - (a) a law of the Territory; or
 - (b) a law of the Commonwealth; or
 - (c) an order of a court of competent jurisdiction.

7 Consent by consumer to obtaining health status report

- (1) A person must not, without a consumer's consent—
 - (a) ask someone other than the consumer for a health status report about the consumer; or
 - (b) give someone other than the consumer a health status report about the consumer.
- (2) A person must not obtain a health status report about a consumer from a health service provider without the consumer's consent.

- (3) If a person obtains the consumer's consent for subsection (1) or (2) the person must—
- (a) tell the consumer in writing of the consumer's right to ask for a copy of the health status report and to give the person a statement commenting on the health status report; and
 - (b) if the consumer asks for a copy of the report—give a copy of the report to the consumer as soon as practicable; and
 - (c) if the consumer gives the person a statement commenting on the health status report—
 - (i) consider the comments; and
 - (ii) keep the statement with the report for as long as the person keeps the report.
- (4) A consent given by a consumer for subsection (1) or (2) must—
- (a) be in writing and signed—
 - (i) if the consumer is a young person or legally incompetent person—by a guardian of the consumer; or
 - (ii) in any other case—by the consumer; and
 - (b) if the health service report is to be, or has been, prepared or substantially prepared by a health service provider—name the health service provider.
- Note* If a form is approved under s 35 for this provision, the form must be used.
- (5) This section does not apply to the extent (if any) that a health status report is asked for, obtained or provided in accordance with—
- (a) a law of the Territory; or
 - (b) a law of the Commonwealth; or
 - (c) an order of a court.

Part 3 Access to personal health information

8 Access otherwise than under pt 3

- (1) A health service provider may allow a consumer to have access otherwise than in accordance with this part to a health record relating to the consumer.
- (2) Subsection (1) applies—
 - (a) subject to any prohibition on giving access to the health record under any of the following provisions:
 - (i) section 14A (No access to health record relating to Children and Young People Act complaint etc);
 - (ii) section 15 (No access to health record where risk to life or health of consumer or another person);
 - (iii) section 17 (No access to health record where material given in confidence); and
 - (b) except as stated in paragraph (a)—despite any other provision of this part.

9 Pt 3 not to prevent alternative arrangements

- (1) Where, under a provision of this part, a person has a right or obligation to—
 - (a) do an act in relation to another person in a specified way, or within a specified period; or
 - (b) give a notice to another person in a specified way, or within a specified period;

the firstmentioned person and the other person may make an agreement for the act to be done or the notice to be given, as the case may be, in another way or within a longer period.

- (2) If such an agreement is made, and—
- (a) the act is done in accordance with the agreement; or
 - (b) the notice is given in accordance with the agreement;
the firstmentioned person is taken—
 - (c) to have performed the act in the way specified in the provision;
or
 - (d) to have given the notice within the time specified in the
provision;
- as the case may be.

10 Statement of principle regarding right of access

- (1) A consumer has a right of access, in accordance with this Act, to a health record that is—
- (a) a health record held by a health service provider; or
 - (b) to the extent that it contains personal health information relating to the consumer, any other health record;
- as follows:
- (c) to the extent that the record contains factual matters, whenever the record was made;
 - (d) to the extent that the record contains matters of opinion, if the record was created on or after the date of commencement of this Act.
- (2) Subsection (1) does not apply—
- (a) in relation to a health record to the extent that access to the record would contravene—
 - (i) a law of the Territory; or
 - (ii) a law of the Commonwealth; or

- (iii) an order of a court of competent jurisdiction; or
- (b) to the extent that any of the following provisions has a contrary application:
 - (i) section 14 (Grounds for nonproduction);
 - (ii) section 14A (No access to health record relating to Children and Young People Act complaint etc);
 - (iii) section 15 (No access to health record where risk to life or health of consumer or another person);
 - (iv) section 17 (No access to health record where material given in confidence).
- (3) A right of access may be exercised in any of the following ways:
 - (a) by inspecting the health record or, if the health record is stored in electronic form, a print-out of the health record, and having the opportunity to take notes of its contents;
 - (b) by receiving a copy of the health record;
 - (c) by viewing the health record, and having its content explained by—
 - (i) if the relevant record keeper is a suitably qualified health service provider, and is willing to do so—the record keeper; or
 - (ii) in any other case—a suitably qualified health service provider who practises in the Territory, is nominated by the record keeper and has consented to being so nominated.
- (4) Subject to subsection (5), where the record keeper receives a request under section 12, the record keeper shall—
 - (a) in the case of a request that specifies access of a kind mentioned in subsection (3) (a) or (b)—provide access in accordance with the relevant paragraph; or

- (b) in the case of a request that specifies access of the kind mentioned in subsection (3) (c)—
 - (i) if subsection (3) (c) (i) applies—provide access in accordance with subsection (3) (c); or
 - (ii) if subsection (3) (c) (i) does not apply—nominate a suitable health service provider for subsection (3) (c).
- (5) The right of access is subject, in the case of access in a way mentioned in subsection (3) (b) or (c), to the payment of any fee or charge payable under this Act.
- (6) Where the consumer is under 18 years of age, the right of access conferred by subsection (1) is exercisable—
 - (a) if the consumer does not have the status under this Act of a young person—by the consumer personally; or
 - (b) in any other case—on behalf of the consumer by a guardian of the consumer.
- (7) Where the consumer is a legally incompetent person, the right of access conferred by subsection (1) is exercisable on behalf of the consumer by a guardian of the consumer.

11 Provision of health services and keeping of records— terms and conditions

- (1) It is a term of a contract, whether oral or in writing, for the provision of a health service to a consumer that the health service provider will allow the consumer to have access, in accordance with this Act, to a health record relating to the consumer that relates to, or is made in consequence of the provision of, the service.
- (2) Subsection (1) applies to a contract—
 - (a) only if the contract is made on or after the date of commencement of this Act, and at least 1 of the following circumstances applies:
 - (i) the contract is made in the ACT;

- (ii) the contract has been, or is to be, performed wholly or partly in the ACT;
 - (iii) the consumer is present, or resides, in the ACT when the contract is made; and
- (b) whether or not the consumer is a party to the contract.
- (3) Where a health record relating to a consumer is kept or located in the ACT, the record keeper shall allow the consumer to have access, in accordance with this Act, to the record.
- (4) Where a health service provider provides a health service to a consumer, the provider shall allow the consumer to have access, in accordance with this Act, to a health record relating to the consumer that relates to, or is made in consequence of the provision of, the service.
- (5) The application of subsection (3) or (4) in a particular instance is not affected by the application or otherwise of subsection (1) in that instance.
- (6) For this section, it is immaterial whether—
 - (a) the health service in question was provided in the ACT; or
 - (b) except in the case of subsection (3)—the health record in question is kept or located in the ACT.
- (7) If a contract or other agreement purports to exclude, or is inconsistent with, a provision of this section, the contract or agreement is, to that extent, void.
- (8) This section applies subject to section 10.

12 Requests for access

- (1) A consumer who has a right of access under section 10 to a health record may ask the record keeper for access to the record.
- (2) A request shall—

- (a) state the name and, unless it is already known to the record keeper, the address, of the consumer; and
 - (b) sufficiently identify the health record to which access is sought; and
 - (c) specify the way in which the consumer wishes to have access, being a way mentioned in section 10 (3); and
 - (d) be in writing if it is—
 - (i) a request by a guardian of a young person unless, in the period of 12 months before making the request, the guardian consented to the treatment of the young person that gave rise to the health record that is the subject of the request; or
 - (ii) a request by a guardian of a legally incompetent person; or
 - (iii) a request by a legal representative of a deceased consumer.
- (3) In the case of an oral request, the record keeper—
- (a) may ask the consumer to make the request in writing; and
 - (b) if the record keeper does so—need not take any further action in respect of the oral request.

13 Response to request for access

- (1) This section—
- (a) applies if a record keeper receives a request for access to a health record under section 12; but
 - (b) does not apply to an oral request if the record keeper has asked under section 12 (3) (a) for the request to be made in writing.
- (2) Within 2 weeks after the day the record keeper receives the request, the record keeper must—

- (a) if the record keeper relies on a ground mentioned in section 14 for nonproduction of the record or part of the record—give the consumer written notice that the record keeper will not give access to the record; or
 - (b) if the record keeper is prohibited from giving access to the record or part of the record under section 14A, section 15 or section 17—give the consumer written notice that the record keeper is prohibited from giving access to the record; or
 - (c) either—
 - (i) give access to the record in accordance with section 13A; or
 - (ii) if a fee has been determined under section 34 for access—give the consumer written notice that the record keeper will give access to the record on payment of a stated fee that is not more than the determined fee.
- (3) A notice under subsection (2) (a) must state the ground on which the record keeper relies for nonproduction of the record or part of the record.
- (4) A notice under subsection (2) (b) must state the section under which the record keeper is prohibited from giving access to the record or part of the record.
- (5) If the record keeper gives a notice under subsection (2) (a) or (b) that relates to only part of the record, the record keeper must comply with subsection (2) (c) in relation to the rest of the record.

13A Disclosure in accordance with consent

- (1) This section applies if—
- (a) a consumer has a right of access to a health record; and
 - (b) the consumer consents under schedule 1, principle 10, clause 2 (c) to the disclosure of personal health information about the consumer from the record to an entity.

- (2) The record keeper must disclose the information to the entity.
- (3) For the purpose of accessing the information in the record, the entity is taken to be the consumer.
- (4) To remove any doubt and without limiting subsection (3), the entity has the same right of access to the information in the record as the consumer.

13B Giving access to health records

- (1) This section applies if a record keeper must give a person access to a health record.
- (2) Access to the health record must be given—
 - (a) if the record keeper has given a notice under section 13 (2) (c) (ii) and the fee stated in the notice has been paid—no later than the later of the following:
 - (i) 1 week after the day the fee is paid;
 - (ii) 30 days after the day the record keeper received the request for access to the health record; or
 - (b) if the record keeper has not given a notice under section 13 (2) (c) (ii)—no later than 30 days after the day the record keeper receives the request for access to the health record.
- (3) However, before giving access to the record to a person (the *relevant person*), the record keeper must take reasonable steps to require evidence of, and be satisfied about—
 - (a) the relevant person's identity; and
 - (b) if someone else has authorised the access to be given to the relevant person—the identity and authority of the other person; and
 - (c) if the consumer is a young person, a legally incompetent person or dead—the fact that the relevant person (or, if

paragraph (b) applies, the person authorising the relevant person) is—

- (i) for a young person or legally incompetent person—a guardian of the person; or
 - (ii) for a deceased consumer—
 - (A) a legal representative of the deceased consumer; or
 - (B) if there is no legal representative of the deceased consumer—an immediate family member of the deceased consumer.
- (4) If the record keeper requires evidence under subsection (3) before giving access to a health record and the evidence is not provided or does not satisfy the record keeper, the record keeper need not provide access to the health record.

13C How access to health record given

- (1) This section applies if a record keeper must give a person access to a health record.
- (2) Access to the health record must be given as follows:
 - (a) for a request to inspect the record or, if the health record is stored in electronic form, a print-out of the record—by making the record or print-out available to the consumer at a time, and at a place in the ACT, stated in a written notice given to the consumer;
 - (b) for a request to receive a copy of the record—by giving the consumer—
 - (i) a copy of the record; or
 - (ii) if the consumer agrees—an accurate summary of the record; or
 - (iii) if the record, or part of the record, was made before the commencement of this Act and the record keeper does not

give a copy of the record to the consumer—a written summary of the factual matters contained in the record or part of the record;

- (c) for a request to view the record and have its content explained—by giving the consumer a written notice stating—
- (i) if the record keeper is a suitably qualified health service provider, and is willing to do so—that the record keeper will be available to explain the record at a time, and at a place in the ACT, stated in the notice; or
 - (ii) in any other case—the name and address of a suitably qualified health service provider who practises in the ACT and will be available in the ACT with the record, by arrangement with the consumer, to explain the record.

Note A fee may be determined under s 34 for this provision.

13D Access taken to have been refused

A record keeper is taken to have refused access to a health record—

- (a) if the record keeper fails to comply with a requirement of—
- (i) section 13 (Response to request for access); or
 - (ii) section 13A (Disclosure in accordance with consent); or
 - (iii) section 13B (Giving access to health records); or
 - (iv) section 13C (How access to health record given); or
- (b) if the record keeper has given a notice under section 13C (2) (a) about the record—
- (i) if the notice does not state a date and time that is reasonable for making the record or print-out available for inspection by the consumer; or
 - (ii) if the record keeper unreasonably fails to make the record or print-out available to the consumer for inspection in accordance with the notice; or

- (c) if the record keeper has given a notice under section 13C (2) (c) (i) about the record—
 - (i) if the notice does not state a time that is reasonable for the record keeper to be available; or
 - (ii) if the record keeper unreasonably fails to explain the content of the record in accordance with the notice; or
- (d) if the record keeper has given a notice under section 13C (2) (c) (ii) about the record—if the health service provider named in the notice unreasonably fails—
 - (i) to make an arrangement with the consumer to explain the content of the record; or
 - (ii) to comply with an arrangement made to explain the content of the record.

14 Grounds for nonproduction

The grounds for nonproduction of the whole or any part of a health record are as follows:

- (a) that the record or part of the record is not in the possession, custody or control of the person alleged to be the record keeper;
- (b) that the record or part of the record does not relate in any respect to the consumer;
- (c) that the production of, or the giving of access to, the record or part of the record would contravene—
 - (i) a law of the Territory; or
 - (ii) a law of the Commonwealth; or
 - (iii) an order of a court of competent jurisdiction.

14A No access to health record relating to Children and Young People Act complaint etc

A record keeper must not give access to a health record or part of a health record under section 10 if—

- (a) the record or part of a record relates to—
 - (i) a report under the *Children and Young People Act 1999*, section 158 or section 159; or
 - (ii) a notification under the *Children's Services Act 1986*, section 103; and
- (b) either—
 - (i) the record or part of a record identifies the person who made the report; or
 - (ii) the record keeper is satisfied that the record or part of the record allows the identity of the person who made the report to be worked out.

15 No access to health record where risk to life or health of consumer or another person

A record keeper shall not give access to a health record or part of a health record under section 10 if the record keeper believes, on reasonable grounds, that the provision of information in the record or part of the record would constitute a significant risk to the life or the physical, mental or emotional health of—

- (a) the consumer; or
- (b) any other person.

16 Refusal for risk to life or health of consumer—offer by record keeper

- (1) This section applies if—

- (a) a record keeper has given a notice under section 13 (2) (b) about a health record on the ground mentioned in section 15 (a); and
 - (b) the record keeper considers that it would be desirable for a suitably qualified health service provider to discuss the health record with the consumer.
- (2) The record keeper may include in, or attach to, the notice to the consumer under section 13 (2) (b) an offer—
- (a) if the record keeper is a suitably qualified health service provider—to discuss the record with the consumer; or
 - (b) whether or not paragraph (a) applies, to arrange for a named health service provider who practises in the ACT, is suitably qualified and has consented to the arrangement, to discuss the content of the record with the consumer.

16A Refusal for risk to life or health of consumer—nomination by consumer

- (1) This section applies if—
- (a) a record keeper has given a notice under section 13 (2) (b) about a health record on the ground mentioned in section 15 (a); and
 - (b) any of the following apply:
 - (i) the record keeper has not made an offer under section 16;
 - (ii) the record keeper has made an offer under section 16 but the consumer has not accepted it;
 - (iii) the consumer has had a discussion with the health service provider named by the record keeper in an offer under section 16, but is not satisfied with the outcome of the discussion.

- (2) The consumer may give a written notice (a ***nomination***) to the record keeper nominating a health service provider for this section if the health service provider has consented to being nominated.
- (3) The nomination lapses if—
 - (a) the record keeper gives the consumer a notice under section 16B about the health record; or
 - (b) the nominated health service provider—
 - (i) dies or otherwise stops being a health service provider; or
 - (ii) refuses to act or fails to act within a reasonable time.
- (4) If a nomination lapses, the consumer may make another nomination under this section.

16B Record keeper to give nominated health service provider health record

- (1) This section applies if a record keeper receives a nomination under section 16A in relation to a health record.
- (2) The record keeper must give the health record, or a copy of it, to the nominated health service provider within 2 weeks after the day the record keeper receives the nomination.
- (3) However, the record keeper need not comply with subsection (2) if, within the 2-week period—
 - (a) the record keeper gives a notice under section 16D in relation to the nomination; or
 - (b) the nomination lapses.

16C Functions of nominated health service provider

The functions of a health service provider nominated by a notice under section 16A are—

- (a) to form an opinion about the validity of the notice under section 13 (2) (b); and

- (b) if the nominated health service provider considers it appropriate—to explain the grounds of the claim to the consumer; and
- (c) to discuss the content of the health record with the consumer; and
- (d) if the provider is satisfied that to allow the consumer to inspect the record would not be a significant risk to the life or the physical, mental or emotional health of the consumer—to allow the consumer to inspect the record or, if the consumer wishes to have a copy of the record and the record keeper agrees, to have a copy of the record; and
- (e) if the provider is not satisfied as mentioned in paragraph (d)—to decline to allow the consumer to have access to the record.

16D Unsuitable consumer-nominated health service provider

- (1) This section applies if—
 - (a) a record keeper receives a notice under section 16A nominating a health service provider; and
 - (b) the record keeper believes, on reasonable grounds, that the nominated health service provider is not a suitable person to act as the nominated health service provider.
- (2) Within 2 weeks after the day the record keeper receives the nomination, the record keeper may give the consumer a written notice stating that the record keeper objects to the nominated health service provider.
- (3) The notice—
 - (a) must state the ground of the objection; and
 - (b) may suggest the class of health service providers from which a health service provider should be nominated.
- (4) However, the record keeper must not give a notice under subsection (2)—

- (a) if—
 - (i) the health service provider who wrote the health record is registered with a registration board; and
 - (ii) the nominated health service provider is registered by the same board; or
- (b) if the nominated health service provider is registered with the medical board and has the ability to understand and interpret the health record; or
- (c) if the nominated health service provider—
 - (i) provides the same kind of service as the health service provider who wrote the health record; and
 - (ii) has the ability to understand and interpret the health record.

17 No access to health record where material given in confidence

- (1) A record keeper shall not give access to a health record or part of a health record if, under this section, the health record or part of the record is subject to confidentiality.
- (2) A health record, or part of a health record, in relation to a consumer is subject to confidentiality if it consists of or includes material or information given in confidence, to the person who wrote the record, by a person other than—
 - (a) the consumer; or
 - (b) a guardian of the consumer; or
 - (c) a health service provider in the course of, or otherwise in relation to, the provider's treatment of the consumer.
- (3) A health record, or part of a health record, in relation to a consumer is subject to confidentiality if—

- (a) the consumer notifies a record keeper to the effect that the consumer wants the health record or part of the record, or information contained in the record or part, to remain confidential; and
 - (b) the record keeper marks the record or part of the record accordingly; and
 - (c) the consumer—
 - (i) becomes a legally incompetent person; or
 - (ii) dies.
- (4) In subsection (3):
- consumer*, for a consumer who has died, does not include a legal representative of the deceased consumer.

U Part 4 **Complaints and requests to review**

U 18 **Grounds**

- (1) A complaint may be made to the commissioner about an act or omission that is alleged to contravene the privacy principles in relation to a consumer.
- (2) In the case of a complaint about an act or omission that is alleged to contravene the privacy principles in relation to a deceased consumer, it is immaterial whether the contravention occurred, or is alleged to have occurred, in the lifetime or after the death of the deceased consumer.
- (3) A complaint may be made to the commissioner to review an act or omission that is alleged to constitute a refusal to give access in accordance with this Act to a health record relating to a consumer.
- (4) A request may be made to the commissioner to review a claim by a record keeper in respect of a health record that there is—
 - (a) a ground under section 14 for nonproduction of the health record; or
 - (b) a ground under section 15 or 17 on which the record keeper is prohibited from giving access to the health record.
- (5) A complaint or request to review may be made by—
 - (a) unless paragraph (b) applies, the consumer; or
 - (b) if the consumer is a young person or a legally incompetent person—the guardian of the consumer; or
 - (c) if the complaint or request concerns a health record relating to a deceased consumer—the legal representative of the deceased consumer; or

- (d) a person approved by the commissioner to make the complaint or request on the consumer's behalf.

U 19 **Application of *Community and Health Services Complaints Act 1993***

- (1) A complaint under section 18 (1) or (3) has effect as a complaint for the *Community and Health Services Complaints Act 1993* (the *Complaints Act*).
- (2) A request to review under section 18 (4) has effect as a request to review for the *Complaints Act*.
- (3) A complaint or request to review under section 18 shall—
 - (a) comply with the relevant requirements of the *Complaints Act*; and
 - (b) be dealt with in accordance with the *Complaints Act*.

Part 5 Offences

20 Unlawfully requiring consent etc

- (1) A person commits an offence if the person threatens or intimidates someone else with the intention of causing the other person—
- (a) to give a consent under this Act; or
 - (b) to do something without the consent required for it under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if—
- (a) the person makes a representation to someone else; and
 - (b) the representation is false; and
 - (c) the person is reckless about whether the representation is false; and
 - (d) the person makes the representation with the intention of causing the other person—
 - (i) to give a consent under this Act; or
 - (ii) to do something without the consent required for it under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the representation is not false in a material particular.

- (4) A person commits an offence if—
- (a) the person represents to a consumer that the consumer is legally required to consent to the provision of a health status report to anyone; and
 - (b) the representation is false.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

21 Destroying etc health records and related material

- (1) A person commits an offence if the person destroys, defaces or damages a health record or related material with the intention of evading or frustrating the operation of this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if the person removes a health record from the ACT with the intention of evading or frustrating the operation of this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

22 Unlawfully requesting or obtaining access to health records

- (1) A person commits an offence if—
- (a) the person threatens or intimidates someone else with the intention of—
 - (i) causing the other person to give the person access to a health record; or
 - (ii) otherwise obtaining access to a health record; and

(b) the person is not entitled to access to the health record.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person commits an offence if—

(a) the person makes a representation to someone else; and

(b) the representation is false; and

(c) the person is reckless about whether the representation is false; and

(d) the person makes the representation with the intention of—

(i) causing the other person to give the person access to a health record; or

(ii) otherwise obtaining access to a health record; and

(e) the person is not entitled to access to the health record.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) Subsection (2) does not apply if the representation is not false in a material particular.

23 People not to be unlawfully penalised

(1) A person commits an offence if the person threatens or intimidates someone else with the intention of causing the other person—

(a) not to make or pursue a request under part 3 for access; or

(b) to withdraw a request.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person commits an offence if—

(a) the person makes a representation to someone else; and

- (b) the representation is false in a material particular; and
- (c) the person is reckless about whether the representation is false; and
- (d) the person makes the representation with the intention of causing the other person—
 - (i) not to make or pursue a request under part 3 for access; or
 - (ii) to withdraw a request.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that—
 - (a) the defendant had another ground for engaging in the conduct complained of; and
 - (b) the ground was a reasonable one.

24 Acts and omissions of representatives

- (1) In this section:

person means an individual.

Note See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

representative, of a person, means an employee or agent of the person.

state of mind, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
 - (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

Part 6 Miscellaneous

Note for pt 6

The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

25 Young persons

Subject to this Act, where a consumer is a young person, a right or power conferred on consumers by this Act—

- (a) is exercisable on behalf of the consumer by a guardian of the consumer; and
- (b) is not exercisable by the consumer on his or her own behalf.

26 Legally incompetent persons

(1) Subject to this Act, where a consumer is a legally incompetent person, a right or power conferred on consumers by this Act—

- (a) is exercisable on behalf of the consumer by a guardian of the consumer; and
- (b) is not exercisable by the consumer on his or her own behalf.

(2) A purported consent by a guardian of a legally incompetent person is void if, when giving it, the guardian knows or believes it to be at variance with the wishes expressed, and not changed or withdrawn, by the person before he or she became a legally incompetent person.

27 Deceased consumers

(1) The privacy principles apply in relation to a deceased consumer, so far as they are reasonably capable of doing so, in the same way as they apply in relation to a consumer who is not deceased.

- (2) Subject to subsection (3), where a consumer has died, a right or power conferred on consumers by a provision of this Act is exercisable in relation to the deceased consumer, so far as the circumstances reasonably permit, by a legal representative of the deceased consumer.
- (3) A purported consent by a legal representative of a deceased consumer is void if, when giving it, the legal representative knows or believes it to be at variance with the wishes expressed, and not changed or withdrawn, by the consumer in his or her lifetime.

29 Defect or invalidity—protection if person acts in good faith etc

If a person takes any action in respect of, or in consequence of having received—

- (a) a notice or request, made or apparently made under this Act; or
(b) a consent or authorisation, given or apparently given under this Act;

that is void or defective, the person is not liable in respect of the action by reason only that the notice, request, consent or authorisation was void or defective, if the person proves that he or she—

- (c) took the action in good faith; and
(d) did not know, and had no reason to be aware, when taking the action, that the notice, request, consent or authorisation was void or defective (as the case may be).

30 Unqualified record keeper to obtain and act on expert advice

If a record keeper lacks the skill or training necessary to perform a function under this Act, the record keeper shall, for the purpose of performing the function, obtain and act on the advice, in respect of the function, of a person possessing such skill and training.

U 31 Jurisdiction of Magistrates Court

- (1) Application may be made to the Magistrates Court (the *court*) for—
 - (a) a declaration that, for this Act, a person has, or does not have, the status under this Act of—
 - (i) a legally incompetent person; or
 - (ii) a guardian of a legally incompetent person; or
 - (iii) a young person; or
 - (iv) a guardian of a young person; or
 - (v) a legal representative of a deceased person; or
 - (b) a declaration that, for this Act, anything done or purportedly done under this Act was, or was not, validly done; or
 - (c) any other order in relation to a matter arising under this Act that the court considers appropriate.
- (2) An application may be made by—
 - (a) the commissioner; or
 - (b) any person who has a sufficient interest in the matter to warrant the making by the person of the application.
- (3) The court may make, vary or revoke a declaration or order of a kind referred to in subsection (1).

32 Appeals

- (1) An appeal to the Supreme Court may be brought as of right from—
 - (a) the making, variation or revocation of a declaration or order under section 31; or
 - (b) a refusal of the Magistrates Court to make, vary or revoke such a declaration or order.

- (2) The *Magistrates Court Act 1930*, part 4.5 (Civil appeals), other than an excluded provision, applies in relation to the appeal.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including rules (see Legislation Act, s 104).

- (3) In this section:

excluded provision means the following provisions of the *Magistrates Court Act 1930*:

- section 274 (Cases in which appeal may be brought)
- section 275 (Appeals—Small Claims Court).

- (4) Despite subsection (1), an appeal does not lie (whether as of right or by leave) from—

- (a) the making, variation or revocation of an interim restraining order under section 31; or
- (b) a refusal of the Magistrates Court to make, vary or revoke such an order.

33 Court orders under other laws

- (1) This Act does not prevent a court of competent jurisdiction from making, or continuing in force, under a law of the Territory an order in such terms that compliance with it would, apart from the order, constitute a contravention of this Act.
- (2) Nevertheless, in deciding whether to make, or continue in force, an order in such terms the court shall have regard to the relevant provisions of this Act.

34 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

U 35 Approved forms

- (1) The commissioner may, in writing, approve forms for this Act.
- (2) If the commissioner approves a form for a particular purpose, the form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

36 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may—
- (a) extend, by not more than 21 days, the time within which something must or may be done for this Act; or
 - (b) make provision about the keeping and transfer of health records; or
 - (c) prescribe qualifications to be held, or other requirements to be met, by record keepers in relation to possession or control of health records.

- (3) A regulation may make provision about a matter by applying, adopting or incorporating an instrument, or a provision of an instrument, as in force from time to time for the privacy principles, principle 10, clause 3 (which is about the disclosure of a health record for the purpose of research or the compilation or analysis of statistics).
- (4) The regulations may also prescribe offences for contraventions of the regulations and may prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

37 Saving

This Act shall not be read as affecting, except to the extent that it does so expressly or by necessary implication, the operation of a law of the Territory that relates to access to, or privacy or confidentiality in relation to, a document or a kind or class of document.

Part 10 Transitional—Human Rights Commission Legislation Amendment Act 2006

50 Transitional—effect of Health Records (Privacy and Access) Amendment Act 2005 (No 2)

- (1) The *Health Records (Privacy and Access) Amendment Act 2005 (No 2)* A2005-63 is taken to have always had effect as if each amendment of the dictionary were an amendment of section 4.
- (2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

51 Expiry—pt 10

This part expires on the day after the day it commences.

Schedule 1 The privacy principles

(see s 5)

Principle 1: Manner and purpose of collection of personal health information

- 1 A collector shall not collect personal health information for inclusion in a health record or in a generally available publication unless—
 - (a) the information is collected for a lawful purpose that is directly related to a function or activity of the collector; and
 - (b) the collection of the information is necessary for or directly related to that purpose.
- 2 A collector shall not collect personal health information by unlawful or unfair means.
- 3 Where personal health information or health records are required to be collected by someone as part of his or her employment for the management, funding or quality of a health service received by the consumer, then that person is allowed access to the information only for those purposes, unless these principles otherwise provide.

Principle 2: Purpose of collection of personal health information to be made known

- 1 Subject to clause 2 of this principle, where—
 - (a) a collector collects personal health information for inclusion in a health record or in a generally available publication; and
 - (b) the information is solicited by the collector from the consumer concerned;

the collector shall take such steps (if any) as are reasonable in the circumstances to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the consumer is generally aware of—

- (c) the purpose for which the information is being collected; and
 - (d) if the collection of the information is required or authorised by law—the fact that the collection of the information is so required or authorised; and
 - (e) unless it is obvious from the circumstances of any health service provided—the identity of all members of the treating team who will have access to the consumer’s personal health information; and
 - (f) the identity of any person to whom, or agency to which, the collector would, in accordance with the collector’s usual practice, disclose the information for inclusion in a health record or in a generally available publication; and
 - (g) if it is, to the knowledge of the collector, the usual practice of any such person or agency to pass on such information to other persons or agencies—the identity of each of those other persons or agencies.
- 2 The collector is not required to notify the consumer of the identity of individuals, or classes of individuals, who are employed by the collector and who are required for the management, funding or quality of the health service received by the consumer to handle health records or personal health information as part of their employment.

Principle 3: Solicitation of personal health information generally

Where—

(a) a collector collects personal health information about a consumer for inclusion in a record or in a generally available publication; and

(b) the information is solicited by the collector;

the collector shall take such steps (if any) as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is collected—

(c) the information is relevant, up to date and accurate; and

(d) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the consumer.

Principle 4.1: Storage, security and destruction of personal health information—safekeeping requirement

1 A record keeper who has possession or control of a health record must ensure that—

(a) the record is protected, by reasonable security safeguards, against each of the following:

(i) loss;

(ii) unauthorised access, use, modification or disclosure;

(iii) other misuse; and

(b) if the record is given to another entity—everything reasonably within the power of the record keeper is done to prevent unauthorised use or disclosure of any information contained in the record.

2 A record keeper must keep, and must not destroy, a health record about a consumer, even if it is later found or claimed to be inaccurate.

3 However, clause 2 does not apply to the destruction of a health record about a consumer if—

(a) the destruction is required or allowed under a law of the Territory; or

Note **Law of the Territory**—see dict.

(b) the destruction is not prohibited under any other law and happens after—

(i) if the consumer is under 18 years old when the information is collected—the day the consumer turns 25 years old; or

(ii) if the consumer is an adult when the information is collected—7 years after the day a service was last provided to the consumer by the record keeper.

Example of law of the Territory that might deal with record keeping for health professionals

a standard of practice under the *Health Professionals Act 2004*

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Principle 4.2: Storage, security and destruction of personal health information—register of destroyed or transferred records

1 A record keeper must keep a register of records that have been destroyed or transferred to another entity.

Note **Entity** includes a person (see Legislation Act, dict, pt 1).

2 The register must identify the following for records that have been destroyed or transferred:

(a) the consumer to whom the record relates;

(b) the period of time the record covers;

(c) for a destroyed record—the date the record was destroyed;

- (d) for a transferred record—the entity to which the record has been transferred.
- 3 A record keeper need not keep a record on the register under clause 1 for longer than 7 years after the day the record is made.

Principle 4.3: Storage, security and destruction of personal health information—destruction of health information

- 1 Health information may be kept by a health service provider if it is needed for the purpose for which it was collected, or another purpose allowed under a law of the Territory, even if its destruction is allowed under principle 4.1.
- 2 An entity other than a health service provider must take reasonable steps to destroy, or permanently deidentify, health information if it is no longer needed for the purpose for which it was collected or for any other purpose allowed under a law of the Territory.

Principle 5: Information relating to records kept by record keeper

- 1 A record keeper who has possession or control of health records shall, subject to clause 2 of this principle, take such steps as are reasonable in the circumstances to enable any consumer to ascertain—
 - (a) whether the record keeper has possession or control of any health records, or personal health information, relating to the consumer; and
 - (b) if so—
 - (i) the nature of the records or information; and
 - (ii) the main purposes for which the records are, or the information is, used; and
 - (iii) the steps that the person should take if the person wishes to obtain access to the records or the information.

- 2 A record keeper is not required to give a person information if, under a law of the Territory (including this Act) or a law of the Commonwealth, the record keeper is required or authorised to refuse to give that information to the person.

Principle 6: Access to health records by people other than the consumer

- 1 A health service provider who is a member of a treating team for a consumer may have access to the personal health information about the consumer so far as necessary for the provision by the provider of a health service to the consumer.
- 2 If a person reasonably requires access to personal health information about a consumer for the purpose of the management, funding or quality of a health service received, or being received, by the consumer, the person may have access to the extent necessary for that purpose without the consumer's consent.
- 3 A treating health service provider for a consumer may disclose personal health information about the consumer to an immediate family member if—
 - (a) the disclosure is made for compassionate reasons; and
 - (b) the provider believes, on reasonable grounds, that the disclosure would be expected by the consumer; and
 - (c) the disclosure is not contrary to any wishes previously expressed by the consumer that the provider is, or ought reasonably to be, aware of.

Note Section 17 deals with information subject to confidentiality.

- 4 An entity must not require a consumer, directly or indirectly, to obtain or grant access to a health record about the consumer unless the entity is required or allowed to make the requirement under—
 - (a) a law of the Territory; or
 - (b) a law of the Commonwealth; or

- (c) an order of a court.

Principle 7: Alteration of health records

- 1 A person shall not delete information from a health record, even where it is later found or claimed to be inaccurate, unless the deletion is part of a program of archival destruction.
- 2 A record keeper who has possession or control of a health record shall take such steps, by way of making appropriate corrections and additions as are reasonable in the circumstances, to ensure that the record is—
 - (a) up to date and accurate; and
 - (b) relevant to the purpose for which the information was collected or is to be used and to any other purpose that is directly related to that purpose.
- 3 Where—
 - (a) the record keeper of a health record is not willing to amend that record, by making a correction or an addition, in accordance with a request by the consumer concerned; and
 - (b) no decision or recommendation to the effect that the record should be amended wholly or partly in accordance with that request is pending, or has been made, under a law of the Territory (including this Act) or a law of the Commonwealth;the record keeper shall, if the consumer gives to the record keeper a written statement concerning the requested correction or addition, take such steps as are reasonable in the circumstances to include the statement in the record.
- 4 Where the record keeper accepts the need to amend the health record but—
 - (a) the record keeper considers it likely that leaving incorrect information on a health record, even if corrected, could cause

harm to the consumer or result in incorrect health care treatment or assistance being provided; or

- (b) the form in which the record is held makes correction impossible; or
- (c) the corrections required are sufficiently complex or numerous for a real possibility of confusion or error to arise in relation to interpreting or reading the record if it were to be so amended;

the record keeper shall place the incorrect information on a record which is not generally available to the consumer's treating practitioner or treating team, and to which access is restricted, and take such steps as are reasonable in the circumstances to ensure that only the corrected copy is generally available to the practitioner or treating team.

Principle 8: Record keeper to check accuracy etc of personal health information before use etc

- 1 A record keeper who has possession or control of a health record shall not use personal health information in that record without taking such steps (if any) as are reasonable in the circumstances to ensure that, having regard to the purpose for which the information is proposed to be used, the information is up to date and accurate.
- 2 Where a person gives information in confidence to a health service provider about a consumer, the provider shall—
 - (a) encourage the person to waive the requirement of confidentiality; and
 - (b) if the information remains confidential—
 - (i) record the information only if it is likely to assist in the treatment or care of the consumer; and
 - (ii) take such steps (if any) as are reasonable in the circumstances to ensure that the information is accurate and not misleading.

Principle 9: Limits on use of personal health information

- 1 Except where personal health information is being shared between members of a treating team to the extent necessary to improve or maintain the consumer's health or to manage a disability of the consumer, a record keeper who has possession or control of a health record that was obtained for a particular purpose shall not use the information for any other purpose unless—
 - (a) the consumer has consented to use of the information for that other purpose; or
 - (b) the record keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a significant risk to the life or physical, mental or emotional health of the consumer or another person; or
 - (c) use of the information for that other purpose is required or authorised by—
 - (i) a law of the Territory; or
 - (ii) a law of the Commonwealth; or
 - (iii) an order of a court of competent jurisdiction;
 - (d) the purpose for which the information is used is directly related to the purpose for which the information was obtained; or
 - (e) the use of the information is related to the management, funding or quality of the health service received by the consumer.
- 2 In relation to the sharing of information among a treating team, unless it is obvious from the circumstances or context of the health service, the person in charge of the treating team shall inform the consumer of the identity of all members of the treating team who will have access to the consumer's personal health information.
- 3 The treating team leader is not required to notify the consumer of the identity of individuals, or of classes of individuals, who are

required for the management, funding or quality of the health service received by the consumer to handle health records or personal health information.

Principle 10: Limits on disclosure of personal health information

- 1 A record keeper who has possession or control of a health record must not disclose personal health information about a consumer from the record to an entity other than the consumer.
- 2 Clause 1 does not apply to the disclosure of personal health information about a consumer to an entity if—
 - (a) the information is being shared between members of a treating team for the consumer only to the extent necessary to improve or maintain the consumer's health or manage a disability of the consumer; or
 - (b) the consumer is reasonably likely to have been aware, or to have been made aware under principle 2, that information of the kind disclosed is usually disclosed to the entity; or
 - (c) the consumer has consented to the disclosure; or
 - (d) the record keeper believes, on reasonable grounds, that the disclosure is necessary to prevent or lessen a serious and imminent risk to the life or physical, mental or emotional health of the consumer or someone else; or
 - (e) the disclosure is required or allowed under—
 - (i) a law of the Territory (including this Act); or
Note Disclosure is allowed under cl 8, cl 9 and cl 10.
 - (ii) a law of the Commonwealth; or
 - (iii) an order of a court; or
 - (f) the disclosure of the information is necessary for the management, funding or quality of the health service received, or being received, by the consumer.

- 3 Clause 1 also does not apply to the disclosure of personal health information about a consumer to an entity if—
- (a) the disclosure is necessary for the purpose of research or the compilation or analysis of statistics, in the public interest; and
 - (b) it is impracticable to seek the consumer's consent before disclosure; and
 - (c) the purpose mentioned in paragraph (a) cannot be achieved by the disclosure of information that does not identify the consumer and from which the consumer's identity cannot reasonably be worked out; and
 - (d) the entity is required for any disclosed information (***identifiable information***) that identifies the consumer, or from which the consumer's identity can be reasonably worked out—
 - (i) to provide protection that is at least equal to that of this Act and that prevents any further disclosure of it; and
 - (ii) to take reasonable steps to deidentify the information and destroy identifiable information at the earliest possible opportunity; and
 - (iii) to ensure that identifiable information is not made publicly available.
 - (e) the disclosure is in accordance with guidelines prescribed by regulation for this clause; and
 - (f) the record keeper believes, on reasonable grounds, that the recipient of the health information will not disclose the personal health information.
- 4 Clause 1 also does not apply to the disclosure of personal health information about a consumer to a person responsible for the consumer's care (the ***carer***) if—

- (a) the consumer cannot give or withhold consent to the disclosure, whether or not because the consumer is a young person or legally incompetent person; and
 - (b) in the record keeper's opinion, the disclosure is necessary to enable the carer to safely and effectively provide appropriate services to, or care for, the consumer.
- 5 In relation to the sharing of information among the treating team under clause 2 (a), unless it is obvious from the circumstances and context of the health service, the person in charge of the treating team must tell the consumer about the identity of each member of the treating team who will have access to the personal health information about the consumer.
- 6 However, the treating team leader need not tell the consumer about the identity of individuals who are required to handle health records, or personal health information about the consumer, for the management, funding or quality of the health service received, or being received, by the consumer.
- 7 A consent given by a consumer for clause 2 (c) must—
- (a) be in writing and signed—
 - (i) if the consumer is a young person or legally incompetent person—by a guardian of the consumer; or
 - (ii) in any other case—by the consumer; and
 - (b) name the health service provider who made the record.
- Note* If a form is approved under s 35 for this provision, the form must be used.
- 8 An entity to which information is disclosed under clause 2, clause 3 or clause 4 must not use or disclose the information for a purpose other than the purpose for which the information was given to the entity.
- 9 If there is an emergency and a consumer cannot give or withhold consent to the disclosure of personal health information about the

consumer, the treating health service provider may discuss relevant personal health information with an immediate family member of the consumer to the extent reasonable and necessary for the proper treatment of the consumer.

- 10 A treating health service provider for a consumer may disclose personal health information about the consumer to a person responsible for the consumer's care (the *carer*) if—
- (a) the consumer cannot give or withhold consent to the disclosure, whether or not because the consumer is a young person or legally incompetent person; and
 - (b) in the record keeper's opinion, the disclosure is necessary to enable the carer to safely and effectively provide appropriate services to, or care for, the consumer.
- 11 A treating health service provider for a consumer may disclose personal health information about the consumer to an immediate family member if—
- (a) the consumer cannot give or withhold consent to the disclosure, whether or not because the consumer is a young person or legally incompetent person; and
 - (b) the disclosure is made for compassionate reasons; and
 - (c) the provider believes, on reasonable grounds, that the disclosure would be, or would have been, expected by the consumer; and
 - (d) the disclosure is not contrary to any wishes previously expressed by the consumer of which the provider is aware or ought reasonably to be aware.

Example for par (a)

Jo has died, and Jo's daughter who has looked after him for many years cannot understand why he died when he seemed to have recovered from a recent illness. She is extremely distressed. Subject to clause 11 (c) and (d), the treating health service provider may disclose personal health information about Jo's illness if she considers that the disclosure would help Jo's daughter.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Principle 11: Transfer or closure of practice of health service provider

- 1 This principle applies if the practice of a health service provider (the *provider*) is, or is proposed to be—
 - (a) sold or otherwise transferred; or
 - (b) closed down.
- 2 The provider or, if the provider is deceased, the legal representatives of the provider, shall—
 - (a) publish a notice in a newspaper circulating in the locality of the practice stating that—
 - (i) the practice has been, or is about to be, transferred or closed down (as the case may be); and
 - (ii) the health records of the practice, other than those returned to a consumer or passed on to a nominated practitioner at the consumer's request, will be transferred to a specified person (being a person to whom clause 3 (a) or (b) of this principle applies) at a specified address; and
 - (b) take such other steps as are practicable to inform every such consumer—
 - (i) that the practice has been, or is about to be, transferred or closed down (as the case may be); and

- (ii) about the arrangements (as stated in the notice under paragraph (a)) for dealing with those health records.
- 3 Not earlier than 21 days after giving notice in accordance with clause 2 of this principle, the person or persons giving the notice shall transfer each health record held by, or on behalf of, the practice—
- (a) to the health service provider (if any) who takes over the practice;
 - (b) to a competent record keeper for safe storage in the Territory (until such time (if any) as the record is destroyed as part of a program of archival destruction); or
 - (c) to the consumer to whom the record relates or to a practitioner nominated by that consumer.
- 4 Subject to the restriction stated in clause 3 of this principle, a person shall comply with the requirements of this principle as soon as practicable.
- 5 Despite any other provision of these principles, a person who transfers a health record in accordance with this principle does not, by so doing, contravene these principles.

Principle 12: Transfer of consumer to another health service provider or of health service provider to another practice

- 1 Where—
- (a) a consumer transfers from one health service provider to another; or
 - (b) a health service provider transfers from one practice to another and a consumer continues to see the provider;
- the record keeper shall, on request, provide the consumer's health record, or a copy or written summary of it—

Schedule 1 The privacy principles

Principle 12

- (c) if paragraph (a) applies—to the health service provider to whom the consumer has transferred; or
 - (d) if paragraph (b) applies—to the relevant health service provider.
- 2 The amount of a fee that is chargeable for providing, in accordance with clause 1 of this principle, a copy of a health record, or a written summary of a health record, is—
- (a) if the Minister determines, under section 34, a fee for the purposes of this principle—an amount not exceeding the amount of the fee so determined; or
 - (b) in any other case—nil.

U Dictionary

(see s 4)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- adult
- Commonwealth
- contravene
- domestic partner (s 169)
- entity
- individual.

child, in relation to a person, includes an adopted child or stepchild of the person.

collector means a person who, in the course of his or her profession, employment or official duty, collects personal health information.

commissioner means the commissioner for health complaints.

consent includes implied consent.

consumer means an individual who uses, or has used, a health service, or in relation to whom a health record has been created, and includes—

- (a) if the consumer is a young person or legally incompetent person—a guardian of the consumer; and
- (b) if the consumer has died and there is a legal representative of the deceased consumer—a legal representative of the deceased consumer; and

- (c) if the consumer has died and there is no legal representative of the deceased consumer—an immediate family member of the deceased consumer.

Note Under s 13A an entity is taken to be the consumer for the purpose of accessing certain information if the consumer has consented to disclosure of the information to the entity.

deceased consumer means a deceased person who, before his or her death, was a consumer.

destroy a record includes delete the record.

disability—see the *Community and Health Services Complaints Act 1993*.

factual matter, in relation to a consumer, means—

- (a) a history of the health, an illness or a disability of the consumer; or
- (b) any findings on an examination of the consumer in relation to the health, an illness or a disability of the consumer; or
- (c) the results of any investigation into the health, an illness or a disability of the consumer; or
- (d) a diagnosis, or preliminary diagnosis, of an illness or disability of the consumer; or
- (e) a plan of management, or proposed plan of management, of the treatment or care of an illness or disability of the consumer; or
- (f) any action taken (whether or not in accordance with a plan of management) by or under the direction or referral of a health service provider in relation to the consumer.

guardian means—

- (a) for a young person—a parent, a legally appointed guardian of the young person or someone else with parental responsibility for the young person under the *Children and Young People Act 1999*, section 18; or

-
- (b) for a legally incompetent person—
- (i) a person who is—
 - (A) a legally appointed guardian of the legally incompetent person; or
 - (B) an attorney, appointed under an enduring power of attorney that has become operative, of the legally incompetent person; and
 - (ii) who has power to make decisions about the medical treatment or health care of the legally incompetent person.

health record means any record, or any part of a record—

- (a) held by a health service provider and containing personal information; or
- (b) containing personal health information.

health service means—

- (a) any activity that is intended or claimed (expressly or by implication), by the person providing it, to assess, record, improve or maintain the physical, mental or emotional health of a consumer or to diagnose or treat an illness or disability of a consumer; or
- (b) a disability, palliative care or aged care service that involves the making or keeping of personal health information;

but does not include any service declared by regulation to be an exempt service.

health service provider means an entity that provides a health service in the ACT.

health status report means a report—

- (a) that is prepared or substantially prepared—
 - (i) by a health service provider; and

- (ii) in respect of a consumer who, at the time of the preparation of the report, resides or is present in the ACT; and
- (b) that relates to the physical, mental or emotional health of a consumer, or a disability or disease of a consumer; and
- (c) whose purpose, or main purpose, is not a health service for the consumer.

illness means a physical, mental or emotional illness, and includes a suspected illness.

immediate family member, of a consumer, means a person who—

- (a) is—
 - (i) a parent of the consumer; or
 - (ii) a domestic partner of the consumer; or
 - (iii) an adult child or sibling of the consumer; or

Note For the meaning of ***domestic partner***, see the Legislation Act, s 169.

- (b) is a member of the same household as the consumer and is—
 - (i) another relative of the consumer; or
 - (ii) a close friend of the consumer.

law of the Territory does not include this Act or the common law.

legally incompetent person means a person who is subject—

- (a) to an enduring power of attorney that has become operative; or
- (b) otherwise than as a person under the age of majority to a guardianship order.

legal representative, in relation to a deceased person, means a person—

- (a) holding office as executor of the will of the deceased person where probate of the will has been granted or resealed in Australia; or

- (b) holding office in Australia as administrator of the estate of the deceased person.

order of a court of competent jurisdiction includes a subpoena or similar process of such a court.

parent, in relation to a person, includes a step-parent or adoptive parent of the person.

personal information, in relation to a consumer, means any information, recorded or otherwise, about the consumer where the identity of the consumer is apparent, whether the information is—

- (a) fact or opinion; or
- (b) true or false.

personal health information, of a consumer, means any personal information, whether or not recorded in a health record—

- (a) relating to the health, an illness or a disability of the consumer; or
- (b) collected by a health provider in relation to the health, an illness or a disability of the consumer.

privacy principles means the privacy principles under schedule 1.

record means a record in documentary or electronic form that consists of or includes personal health information in relation to a consumer (other than research material that does not disclose the identity of the consumer), and includes—

- (a) a photograph or other pictorial or digital representation of any part of the consumer; and
- (b) test results, medical imaging materials and reports, and clinical notes, relating to the consumer; and
- (c) any part of a record; and
- (d) a copy of a record or any part of a record.

record keeper means an entity that has possession or control of a health record.

registration board means a health profession board under the *Health Professionals Act 2004*.

sibling, in relation to a person, means a brother, sister, half-brother, half-sister, adoptive brother, adoptive sister, stepbrother or stepsister of the person.

treating health service provider, in relation to a consumer, means a health service provider who is involved in diagnosis, care or treatment of the consumer for the purpose of improving or maintaining the consumer's health.

treating team, in relation to a consumer, means health service providers involved in diagnosis, care or treatment for the purpose of improving or maintaining the consumer's health for a particular episode of care, and includes—

- (a) if the consumer named another health service provider as his or her current treating practitioner—that other health service provider; and
- (b) if another health service provider referred the consumer to the treating team for that episode of care—that other health service provider.

young person means a person under 18 years of age, other than a person who is of sufficient age, and of sufficient mental and emotional maturity, to—

- (a) understand the nature of a health service; and
- (b) give consent to a health service.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Health Records (Privacy and Access) Act 1997 No 125 notified 24 December 1997 (Gaz 1997 No S420)

Endnotes

3 Legislation history

commenced 1 February 1998 (s 2)

as amended by

Legislation (Consequential Amendments) Act 2001 No 44 pt 181

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 181 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Legislation Amendment Act 2002 No 11 pt 2.26

notified LR 27 May 2002

s 1, s 2 commenced 27 May 2002 (LA s 75)

pt 2.26 commenced 28 May 2002 (s 2 (1))

Legislation (Gay, Lesbian and Transgender) Amendment Act 2003 A2003-14 sch 1 pt 1.19

notified LR 27 March 2003

s 1, s 2 commenced 27 March 2003 (LA s 75)

sch 1 pt 1.19 commenced 28 March 2003 (s 2)

Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 1 pt 1.22

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 1 pt 1.22 commenced 9 April 2004 (s 2 (1))

Health Professionals Legislation Amendment Act 2004 A2004-39 sch 5 pt 5.8

notified LR 8 July 2004

s 1, s 2 commenced 8 July 2004 (LA s 75 (1))

sch 5 pt 5.8 commenced 7 July 2005 (s 2 and see Health Professionals Act 2004 A2004-38, s 2 and CN2005-11)

Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.30

notified LR 2 September 2004

s 1, s 2 commenced 2 September 2004 (LA s 75 (1))

sch 1 pt 1.30 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

Health Records (Privacy and Access) Amendment Act 2005 A2005-4

notified LR 22 February 2005

s 1, s 2 commenced 22 February 2005 (LA s 75 (1))
 remainder commenced 23 February 2005 (s 2)

**Domestic Violence and Protection Orders Amendment Act 2005
 A2005-13 sch 1 pt 1.11**

notified LR 24 March 2005
 s 1, s 2 commenced 24 March 2005 (LA s 75 (1))
 sch 1 pt 1.11 commenced 25 March 2005 (s 2)

**Human Rights Commission Legislation Amendment Act 2005
 A2005-41 sch 1 pt 1.6 (as am by A2006-3 amdt 1.3)**

notified LR 1 September 2005
 s 1, s 2 commenced 1 September 2005 (LA s 75 (1))
 amdts 1.92-1.95, amdt 1.97, amdt 1.100 commenced 23 February
 2006 (s 2 (2) as am by A2006-3 amdt 1.3)
sch 1 pt 1.6 remainder commences on the day the Human Rights
 Commission Act 2005 A2005-40 commences (s 2 (3) as am by
 A2006-3 amdt 1.3)

Note default commencement under LA s 79 does not apply to A2005-40

**Health Records (Privacy and Access) Amendment Act 2005 (No 2)
 A2005-63**

notified LR 21 December 2005
 s 1, s 2 commenced 21 December 2005 (LA s 75 (1))
 s 19, sch 1 amdt 1.1 commenced 23 February 2006 (LA s 79A and
 A2005-41)
 remainder commenced 17 January 2006 (s 2 and CN2006-1)

**Human Rights Commission Legislation Amendment Act 2006 A2006-
 3 sch 1 pt 1.1, pt 1.3**

notified LR 22 February 2006
 s 1, s 2 commenced 22 February 2006 (LA s 75 (1))
 sch 1 pt 1.1, pt 1.3 commenced 23 February 2006 (s 2)

4 Amendment history

Name of Act

s 1 sub A2005-41 amdt 1.92

Commencement

s 2 om 2001 No 44 amdt 1.2068

Endnotes

4 Amendment history

Dictionary

s 4 defs reloc to dict A2005-41 amdt 1.94
sub A2005-41 amdt 1.95
def **false representation** om A2005-63 amdt 1.3
def **health record** om A2005-41 amdt 1.93
def **health service** om A2005-41 amdt 1.93
def **health service provider** om A2005-41 amdt 1.93
def **immediate family member** am A2003-14 amdt 1.65,
amdt 1.66
om A2005-41 amdt 1.93
def **medical board** sub A2004-39 amdt 5.12
om A2005-41 amdt 1.93 (as am by A2006-3 amdt 1.4)
def **personal health information** om A2005-41 amdt 1.93
def **record** om A2005-41 amdt 1.93
def **record keeper** om A2005-41 amdt 1.93
def **registration board** om A2005-41 amdt 1.93
def **this Act** om 2001 No 44 amdt 1.2069

Notes

s 4A ins A2005-41 amdt 1.95

Offences against Act—application of Criminal Code etc

s 4B ins A2005-41 amdt 1.95 (as am by A2006-3 amdt 1.5)
am A2005-63 amdt 1.1

The privacy principles

s 5 am A2005-63 ss 4-7
privacy principles reloc to sch 1 by A2005-63 s 8

Consent by consumer to obtaining health status report

s 7 sub A2005-63 s 9

Access otherwise than under pt 3

s 8 am A2005-63 s 10

Statement of principle regarding right of access

s 10 am A2005-63 s 11

Response to request for access

s 13 am A2005-4 s 4
sub A2005-63 s 12

Disclosure in accordance with consent

s 13A ins A2005-63 s 12

Giving access to health records

s 13B ins A2005-63 s 12

How access to health record given

s 13C ins A2005-63 s 12

Access taken to have been refused

s 13D ins A2005-63 s 12

No access to health record relating to Children and Young People Act complaint etc

s 14A hdg sub A2005-63 s 13

s 14A ins A2005-4 s 5

am A2005-63 s 14

No access to health record where risk to life or health of consumer or another person

s 15 am A2005-4 s 6

Refusal for risk to life or health of consumer—offer by record keeper

s 16 sub A2005-63 s 15

Refusal for risk to life or health of consumer—nomination by consumer

s 16A ins A2005-63 s 15

Record keeper to give nominated health service provider health record

s 16B ins A2005-63 s 15

Functions of nominated health service provider

s 16C ins A2005-63 s 15

Unsuitable consumer-nominated health service provider

s 16D ins A2005-63 s 15

No access to health record where material given in confidence

s 17 am A2005-63 s 16

Complaints

pt 4 hdg sub A2005-41 amdt 1.96

Grounds for complaint

s 18 sub A2005-41 amdt 1.96

Application of *Community and Health Services Complaints Act 1993*

s 19 om A2005-41 amdt 1.96

Unlawfully requiring consent etc

s 20 sub A2005-63 amdt 1.2

Destroying etc health records and related material

s 21 sub A2005-63 amdt 1.2

Unlawfully requesting or obtaining access to health records

s 22 sub A2005-63 amdt 1.2

People not to be unlawfully penalised

s 23 sub A2005-41 amdt 1.97

Acts and omissions of representatives

s 24 sub A2004-15 amdt 1.26

Endnotes

4 Amendment history

Miscellaneous

pt 6 note ins 2002 No 11 amdt 2.50

Legal professional privilege not affected by this Act

s 28 om 2002 No 11 amdt 2.51

Jurisdiction of Magistrates Court

s 31 am A2005-13 amdt 1.41, amdt 1.42; [A2005-41 amdt 1.98](#)

Appeals

s 32 am A2004-60 amdt 1.156; ss renum R5 LA

Determination of fees

s 34 sub 2001 No 44 amdt 1.2070

Approved forms

s 35 sub 2001 No 44 amdt 1.2070
[am A2005-41 amdt 1.99](#)

Regulation-making power

s 36 sub 2001 No 44 amdt 1.2070
am A2005-63 s 17; ss renum R9 LA

Transitional—Human Rights Commission Legislation Amendment Act 2006

pt 10 hdg ins A2006-3 amdt 1.1
[exp 24 February 2006 \(s 51\)](#)

Transitional—effect of Health Records (Privacy and Access) Amendment Act 2005 (No 2)

s 50 ins A2006-3 amdt 1.1
[exp 24 February 2006 \(s 51 \(LA s 88 declaration applies\)\)](#)

Expiry—pt 10

s 51 ins A2006-3 amdt 1.1
[exp 24 February 2006 \(s 51\)](#)

Amendments of other Acts

sch om 2001 No 44 amdt 1.2071

The privacy principles

sch 1 hdg ins A2005-63 s 18
sch 1 privacy principles reloc from s 5 by A2005-63 s 8

Dictionary

dict ins A2005-41 amdt 1.100
am A2005-63 s 19
def **child** reloc from s 4 A2005-41 amdt 1.94
def **collector** reloc from s 4 A2005-41 amdt 1.94
def **commission** ins A2005-41 amdt 1.100 (om A2006-3
amdt 1.6)
[ins A2005-41 amdt 1.100B \(as ins by A2006-3 amdt 1.7\)](#)
def **commissioner** reloc from s 4 A2005-41 amdt 1.94 (as am
by A2006-3 amdt 1.4)

- om A2005-41 amdt 1.100A (as ins by A2006-3 amdt 1.7)
- def **consent** reloc from s 4 A2005-41 amdt 1.94
- def **consumer** sub A2005-63 s 20
reloc from s 4 A2005-41 amdt 1.94 (as am by A2006-3
amdt 1.4 and see amdt 1.6)
- def **deceased consumer** reloc from s 4 A2005-41 amdt 1.94
- def **destroy** ins A2005-63 s 21
reloc from s 4 A2005-41 amdt 1.94
- def **disability** reloc from s 4 A2005-41 amdt 1.94 (as am by
A2006-3 amdt 1.4 and see amdt 1.6)
sub A2005-41 amdt 1.100C (as ins by A2006-3 amdt 1.7)
- def **factual matter** reloc from s 4 A2005-41 amdt 1.94
- def **guardian** sub A2005-63 s 22
reloc from s 4 A2005-41 amdt 1.94 (as am by A2006-3
amdt 1.4 and see amdt 1.6)
- def **health record** ins A2005-41 amdt 1.100
- def **health service** ins A2005-41 amdt 1.100
- def **health service provider** ins A2005-41 amdt 1.100
- def **health status report** reloc from s 4 A2005-41 amdt 1.94
- def **illness** reloc from s 4 A2005-41 amdt 1.94
- def **immediate family member** ins A2005-41 amdt 1.100
- def **law of the Territory** reloc from s 4 A2005-41 amdt 1.94
- def **legally incompetent person** reloc from s 4 A2005-41
amdt 1.94
- def **legal representative** reloc from s 4 A2005-41 amdt 1.94
- def **order of a court of competent jurisdiction** reloc from s 4
A2005-41 amdt 1.94
- def **parent** reloc from s 4 A2005-41 amdt 1.94
- def **personal health information** ins A2005-41 amdt 1.100
- def **personal information** reloc from s 4 A2005-41 amdt 1.94
- def **privacy principles** ins A2005-63 s 23
reloc from s 4 A2005-41 amdt 1.94
- def **record** ins A2005-41 amdt 1.100
- def **record keeper** ins A2005-41 amdt 1.100
- def **registration board** ins A2005-41 amdt 1.100
- def **sibling** reloc from s 4 A2005-41 amdt 1.94
- def **treating health service provider** reloc from s 4 A2005-41
amdt 1.94
- def **treating team** reloc from s 4 A2005-41 amdt 1.94
- def **young person** reloc from s 4 A2005-41 amdt 1.94

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 2001 No 44	24 January 2002
2	Act 2002 No 11	30 May 2002
3	A2003-14	28 March 2003
4	A2004-15	9 April 2004
5	A2004-60	10 January 2005
6	A2005-4	23 February 2005
7	A2005-13	25 March 2005
8	A2005-13	7 July 2005
9	A2005-63	17 January 2006

6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

Human Rights Commission Legislation Amendment Act 2005 A2005-41 sch 1 pt 1.6 remainder (as am by A2006-3)
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Part 1.6 Health Records (Privacy and Access) Act 1997

[1.96] Part 4

substitute

Part 4 Complaints

18 Grounds for complaint

- (1) A person may make a complaint about an act or omission to the commission on the following grounds:
 - (a) the act or omission contravenes the privacy principles in relation to a consumer;
 - (b) the act or omission is a refusal to give access in accordance with this Act to a health record relating to a consumer;
 - (c) the act or omission is a refusal by a record keeper of a health record to give access to the health record under this Act.
- (2) A complaint on a ground mentioned in subsection (1) (a) in relation to a dead consumer may be made whether or not the act or omission happened in the lifetime or after the death of the consumer.

Note Complaints about unlawful discrimination are made under the HRC Act (see s 42).

[1.98] Section 31 (2) (a)

omit

commissioner

substitute

health services commissioner

[1.99] Section 35

omit

commissioner

substitute

commission

Endnotes

6 Uncommenced amendments

[1.100A] Dictionary, definition of *commissioner*

omit

[1.100B] Dictionary, new definition of *commission*

insert

commission means the human rights commission.

[1.100C] Dictionary, definition of *disability*

substitute

disability—see the *Human Rights Commission Act 2005*, section 8 (2).

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