



Australian Capital Territory

Health Records (Privacy and Access) Act 1997

A1997-125

Republication No 28

Effective: 23 June 2021

Republication date: 23 June 2021

Last amendment made by [A2021-12](#)

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 June 2021. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 23 June 2021.

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

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- 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 includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

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 the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Health Records (Privacy and Access) Act 1997

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
3	Objects of Act 2
4	Dictionary 2
4A	Notes 3
4B	Offences against Act—application of Criminal Code etc 3
Part 2	Privacy provisions
5	The privacy principles 4
6	Compliance with privacy principles 4
7	Consent by consumer to obtaining health status report 4

R28
23/06/21

Health Records (Privacy and Access) Act 1997
Effective: 23/06/21

contents 1

	Page
Part 3	Access to personal health information
8	Access otherwise than under pt 3 6
9	Pt 3 not to prevent alternative arrangements 6
10	Statement of principle regarding right of access 7
10A	Statement of principle regarding right of access—children and young people 10
11	Provision of health services and keeping of records—terms and conditions 10
12	Requests for access 11
13	Response to request for access 12
13A	Disclosure in accordance with consent 13
13B	Giving access to health records—generally 14
13BA	Giving access to health records—children and young people 15
13C	How access to health record given 17
13D	Access taken to have been refused 18
14	Grounds for nonproduction 19
14A	No access to health record relating to Children and Young People Act complaint etc 19
15	No access to health record where risk to life or health of consumer or another person 20
16	Refusal for risk to life or health of consumer—offer by record keeper 21
16A	Refusal for risk to life or health of consumer—nomination by consumer 21
16B	Record keeper to give nominated health service provider health record 22
16C	Functions of nominated health service provider 23
16D	Unsuitable consumer-nominated health service provider 23
17	No access to health record where material given in confidence 25
Part 4	Complaints
18	Grounds for complaint 26
Part 5	Offences
20	Unlawfully requiring consent etc 27
21	Destroying etc health records and related material 28
22	Unlawfully requesting or obtaining access to health records 28
23	People not to be unlawfully penalised 29
24	Acts and omissions of representatives 30

	Page	
Part 6	Miscellaneous	
25	Children and young people	32
26	Legally incompetent persons	32
27	Deceased consumers	32
29	Defect or invalidity—protection if person acts in good faith etc	33
30	Unqualified record keeper to obtain and act on expert advice	33
31	Jurisdiction of Magistrates Court	34
32	Appeals	35
33	Court orders under other laws	35
34	Determination of fees	36
36	Regulation-making power	36
37	Saving	37
Schedule 1	The privacy principles	38
Dictionary		62
Endnotes		
1	About the endnotes	68
2	Abbreviation key	68
3	Legislation history	69
4	Amendment history	74
5	Earlier republications	80



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 must 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 legally incompetent person—by a guardian of the consumer; or
 - (ii) if the consumer is a child or young person—by the person with parental responsibility for the child or young person; or
 - (iii) 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.
- (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 (7), where the record keeper receives a request under section 12, the record keeper must—
- (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) However, if the health services commissioner receives a request under section 12 in relation to a health record prepared by a health service provider, the health services commissioner—
- (a) need not give access in accordance with subsection (3) (a), (b) or (c); and
 - (b) may instead refer the request to the health service provider.
- (6) If the health services commissioner refers a request to a health service provider under subsection (5) (b), the health service provider is taken to have received it under section 12.
- (7) 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.
- (8) 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.

**10A Statement of principle regarding right of access—
children and young people**

The right of access to a health record conferred by section 10 (1) is exercisable—

- (a) for a consumer who is a child—on behalf of the child by the person with parental responsibility for the child; and
- (b) for a consumer who is a young person—
 - (i) if the young person has sufficient maturity and developmental capacity to understand the nature of the young person’s request to access a health record and the nature of the record—by the young person personally; or
 - (ii) in any other case—on behalf of the young person by the person with parental responsibility for the young person.

**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 must 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 must 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 or section 10A to a health record may ask the record keeper for access to the record.
- (2) A request must—
 - (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 person with parental responsibility for a child or young person unless, in the 12 months before making the request, the person with parental responsibility consented to the treatment of the child or 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 health services commissioner is the record keeper and refers the request to a health service provider under section 10 (5)—give the consumer written notice that the request has been referred to the health service provider who prepared the health record; or

- (b) 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
- (c) 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
- (d) 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.

Note For how documents may be served, see the [Legislation Act](#), pt 19.5.

- (3) A notice under subsection (2) (b) 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) (c) 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) (b) or (c) that relates to only part of the record, the record keeper must comply with subsection (2) (d) 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—generally

- (1) This section applies if a record keeper must give a person (other than a child or young 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) (d) (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) (d) (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 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 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.

13BA Giving access to health records—children and young people

- (1) This section applies if a record keeper must give a child or young person access to a health record.
- (2) Access to a health record must be given—
 - (a) if the record keeper has given a notice under section 13 (2) (d) (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) (d) (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 child or a young person who does not have sufficient maturity and developmental capacity to understand the nature of the young person’s request to access the record and the nature of the record—the fact that the relevant person (or, if paragraph (b) applies, the person authorising the relevant person) is the person with parental responsibility for the child or young person.
- (4) Before giving access to a relevant person who is a young person, the record keeper may require that the young person—
 - (a) meet with the record keeper so that the record keeper can explain the nature of the record to the young person; or
 - (b) consent to a person with parental responsibility for the young person attending that meeting.
- (5) Before giving access to a relevant person who has parental responsibility for a young person, the record keeper may—
 - (a) require that the young person consent to the access; or
 - (b) discuss the access with the young person.

- (6) If the record keeper requires evidence under this section 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—generally); 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 child concern report under the *Children and Young People Act 2008* (see section 353); or

- (ii) a prenatal report under the *Children and Young People Act 2008*, section 362; or
 - (iii) information that is care and protection report information within the meaning of the *Children and Young People Act 2008*, section 845 (2) (b); or
 - (iv) a report under the *Children and Young People Act 1999*, section 158 or section 159; or
 - (v) 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 must 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) (c) 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) (c) 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) (c) 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.

Note For how documents may be served, see the [Legislation Act](#), pt 19.5.
- (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) (c); 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.

Note For how documents may be served, see the [Legislation Act](#), pt 19.5.

- (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 registration board established for the medical profession (other than as a student) 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.
- (5) In this section:

registration board means a national board established under the [Health Practitioner Regulation National Law \(ACT\)](#), section 31.

17 No access to health record where material given in confidence

- (1) A record keeper must 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 person with parental responsibility for the consumer; or
 - (d) 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.

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).

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 self-incrimination and client legal privilege.

25 Children and young people

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

- (a) is exercisable on behalf of the consumer by a person with parental responsibility for 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 must, 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.

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 child or young person; or
 - (iv) a young person who has or does not have sufficient maturity and developmental capacity to understand the nature of the young person's request to access a health record relating to the young person and the nature of the record; or
 - (v) a person with parental responsibility for a child or young person; or
 - (vi) 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 health services 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 section 274 (Cases in which appeal may be brought), 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) 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 must have regard to the relevant provisions of this Act.

34 Determination of fees

- (1) The Minister may 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](#).

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 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).

Note A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

- (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 is not to 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.

Schedule 1 The privacy principles

(see s 5)

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

- 1 A collector must 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 must 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 must 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 must 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; or

(c) an electronic copy of the record has been generated—

(i) by a method described in the *Electronic Transactions Act 2001*, section 11 (2) (b); and

(ii) when the record is destroyed it is reasonable to expect that the information contained in the electronic copy will be readily accessible so as to be useable for subsequent reference.

Note The *Electronic Transactions Act 2001*, section 11 (Retention of information and documents) provides that, if a person is required to retain a document, the requirement is taken to be met if the person retains an electronic form of the document.

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 must, 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 must 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 must 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 must, 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 must 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 must 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 must—
 - (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 must 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 must 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 the consumer's carer if—
- (a) the consumer cannot give or withhold consent to the disclosure, whether or not because the consumer is a—
 - (i) child or a young person who does not have sufficient maturity and developmental capacity to understand the nature of the young person's request to access a health record and the nature of the record; or
 - (ii) 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 child or a young person who does not have sufficient maturity and developmental capacity to understand the nature of the young person's request to access a health record and the nature of the record—by a person with parental responsibility for the consumer; or
 - (ii) if the consumer is a legally incompetent person—by a guardian of the consumer; or
 - (iii) in any other case—by the consumer; and
 - (b) name the health service provider who made the record.
- 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 the consumer's carer if—
- (a) the consumer cannot give or withhold consent to the disclosure, whether or not because the consumer is a child, young person who does not have sufficient maturity and developmental capacity to understand the nature of the young person's request to access the health record and the nature of the record or legally incompetent person; and
 - (b) in the provider'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—
 - (i) a child or a young person who does not have sufficient maturity and developmental capacity to understand the nature of the young person's request to access the health record and the nature of the record; or
 - (ii) a 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.

12 In this principle:

carer, of a consumer, means a person who gives care, support or assistance to the consumer but does not include—

- (a) a person who gives short-term care, support or assistance to the consumer; or
- (b) a person who gives care, support or assistance to the consumer—
- (i) under a commercial arrangement, or an arrangement that is substantially commercial; or
 - (ii) in the course of doing voluntary work for a charitable, welfare or community organisation; or
 - (iii) as part of a course of education or training; or

Examples—people not included as carers

- 1 Yiannis is the principal of Haig Park Primary School. Although Yiannis owes a duty of care to the students at Haig Park Primary School, Yiannis is not a carer for the purposes of principle 10.
- 2 The ACAT makes an order under the *Guardianship and Management of Property Act 1991*, s 7 (2) appointing Tash as a guardian for Olympia. Even though Tash has a guardianship order in relation to Olympia, Tash is not a carer for the purposes of principle 10. Tash would need to give Olympia care, support or assistance to be a carer.

-
- (c) a person just because the person—
 - (i) is the domestic partner, parent, child or other relative, or guardian of the consumer; or
 - (ii) lives with the consumer.

Principle 11: Relocation and closure of health service practice

- 1 This principle applies if a health service practice is or is proposed to be—
 - (a) relocated; or
 - (b) permanently closed.
- 2 Not later than 30 days before the proposed relocation or closure, the provider must—
 - (a) give public notice of the relocation or closure (a *transfer notice*); and
 - (b) take other practicable steps to inform each consumer who has attended the health service practice of the matters mentioned in the transfer notice.

Note **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1).
- 3 The transfer notice must state—
 - (a) that the consumer may request (a *transfer request*) that a copy or written summary of the consumer's health record be given to the consumer or a health service provider nominated by the consumer; and
 - (b) that the transfer request must be made not later than 14 days after the day the transfer notice (the *transfer request period*) is published; and

- (c) if a fee has been determined under section 34 for this principle— that there is a fee that the consumer must pay before the provider will give a copy or written summary of the record to the consumer or health service provider nominated by the consumer; and
 - (d) that if the consumer does not make a transfer request within the transfer request period, a copy of the consumer’s health record will be given to a stated health service provider or record keeper; and
 - (e) the stated health service provider’s or record keeper’s address and contact details.
- 4 As soon as practicable after publishing the transfer notice, the provider must give a copy of the transfer notice, or written notice of the information in the transfer notice, to the director-general.
- Note 1* **Director-general** means the director-general of the administrative unit responsible for this Act (see [Legislation Act](#), s 163). Administrative units are established under the administrative arrangements (see [Public Sector Management Act 1994](#), s 13).
- Note 2* Notice may be given electronically in certain circumstances (see [Electronic Transactions Act 2001](#), s 8).
- 5 If a consumer has made a transfer request, the provider must give the consumer or the consumer’s nominated health service provider the requested copy or written summary of the consumer’s health record as soon as practicable but not later than the later of—
- (a) if a fee is payable for this principle—7 days after the day the fee is paid; and
 - (b) 30 days after the day the provider receives the transfer request.

-
- 6 If, however, the consumer is receiving or needs urgent health services, the provider must give the consumer or the consumer's nominated health service provider the requested copy or written summary of the consumer's health record as soon as practicable but not later than 7 days after the day the provider receives the transfer request.

Note **Urgent health services**—see cl 11 and cl 12.

- 7 If a consumer does not make a transfer request within the transfer request period, the provider must, within 30 days after the end of the transfer request period, give a copy of the consumer's health records to the health service provider or record keeper stated in the transfer notice.

Note 1 If the original or copy of a consumer's health record is given to another health service provider (the **new provider**) or other record keeper (the **new record keeper**)—

- the consumer may ask the new provider or new record keeper for access to the consumer's health record (see s 10 and s 12); and
- the new provider or new record keeper must give the consumer access to the consumer's health records in accordance with the Act (for example, see s 13 to s 13D).

Note 2 A fee may be payable by the consumer for certain types of access (see s 10 (7) and s 13 (2) (d) (ii)).

- 8 If a record keeper holds health records following the relocation or closure of a health service practice, the record keeper must promptly notify the director-general of any change to—
- (a) the record keeper's contact details; or
 - (b) the location of the stored health records.
- 9 The director-general must promptly give a copy of a notice under clause 4 or clause 8 to the health services commissioner.

- 10 If this principle applies because a sole provider in a health service practice dies or becomes legally incompetent, a legal representative or guardian of the provider must comply with the requirements of this principle as soon as practicable.
- 11 It is sufficient to establish that a consumer is receiving or needs **urgent health services** for prioritising the giving of records by a provider (the **record holder**) if another health service provider advises the record holder that the consumer is receiving or needs urgent health services.
- 12 However—
- (a) an advice under clause 11 need not be in writing; and
 - (b) the record keeper may be satisfied that a consumer is receiving or needs urgent health services without an advice mentioned in clause 11.
- 13 The requirement under clause 5, clause 6 or clause 7 to give a copy of the consumer's health record is taken to be satisfied if the original of the record is given.
- 14 To remove doubt, clause 13 does not require a provider to give the original of the consumer's health record.
- 15 In this principle:
- health record** means a health record held by, or on behalf of, the provider.
- health service practice** means the business or premises where a health service provider provides health services.
- provider** means—
- (a) the provider of a health service practice; or
 - (b) if the provider is legally incompetent—the guardian of the provider; or
 - (c) if the provider is dead—the legal representative of the provider.

relocate, a practice, includes—

- (a) relocate to another premises or location; or
- (b) stop, temporarily or otherwise, the provision of health services at a particular location.

transfer notice—see clause 2 (a).

transfer request—see clause 3 (a).

transfer request period—see clause 3 (b).

Principle 12.1: Consumer moves to another health service provider

- 1 If a consumer moves from 1 health service provider (the *first provider*) to another health service provider (the *second provider*), the consumer may ask the first provider to give the second provider a copy or written summary of the consumer's health record.
- 2 If the first provider receives a request under clause 1 (a *transfer request*), the first provider must—
 - (a) if a fee has been determined under section 34 for this principle— not later than 7 days after the day the first provider receives the transfer request, give the consumer notice that the consumer must pay a stated fee before the first provider will give the second provider the requested copy or written summary of the consumer's health record; or
 - (b) not later than 30 days after the day the first provider receives the transfer request, give the second provider the requested copy or written summary of the consumer's health record.

- 3 If the consumer pays the fee stated in a notice under clause 2 (a), the first provider must give the second provider the requested copy or written summary of the consumer's health record not later than the later of—
 - (a) 7 days after the day the fee is paid; and
 - (b) 30 days after the day the first provider receives the transfer request.
- 4 If the consumer is receiving or needs urgent health services, the first provider must give the second provider the requested copy or written summary of the consumer's health record as soon as practicable but not later than 7 days after the day the first provider receives the transfer request.
- 5 It is sufficient to establish that a consumer is receiving or needs **urgent health services** for prioritising the giving of records by the first provider (the **record holder**) if another health service provider advises the record holder that the consumer is receiving or needs urgent health services.
- 6 However—
 - (a) an advice under clause 5 need not be in writing; and
 - (b) the record keeper may be satisfied that a consumer is receiving or needs urgent health services without an advice mentioned in clause 5.
- 7 The requirement under clause 2 (b), clause 3 or clause 4 to give a copy of the consumer's health record to the second provider is taken to be satisfied if the original of the record is given.
- 8 To remove doubt, clause 7 does not require the first provider to give the original of the consumer's health record to the second provider.

9 In this principle:

first provider—

- (a) see clause 1; and
- (b) includes—
 - (i) if the first provider becomes legally incompetent—a guardian of the provider; or
 - (ii) if the first provider dies—a legal representative of the provider.

health record means a health record held by, or on behalf of, the first provider.

second provider—see clause 1.

transfer request—see clause 2.

Principle 12.2: Health service provider moves to another health service practice

- 1 If a health service provider (the *provider*) moves from 1 health service practice (the *first practice*) to another health service practice and a consumer continues to see the provider, the consumer may ask the first practice to give the provider a copy or written summary of the consumer's health record.
- 2 If the first practice receives a request under clause 1 (a *transfer request*), the first practice must—
 - (a) if a fee has been determined under section 34 for this principle— not later than 7 days after the day the first practice receives the transfer request, give the consumer notice that the consumer must pay a stated fee before the first practice will give the provider the requested copy or written summary of the consumer's health record; or

- (b) not later than 30 days after the day the first practice receives the transfer request, give the provider the requested copy or written summary of the consumer's health record.
- 3 If the consumer pays the fee stated in a notice under clause 2 (a), the first practice must give the provider the requested copy or written summary of the record not later than the later of—
- (a) 7 days after the day the fee is paid; and
- (b) 30 days after the day the first practice receives the transfer request.
- 4 If the consumer is receiving or needs urgent health services, the first practice must give the provider the requested copy or written summary of the consumer's health record as soon as practicable but not later than 7 days after the day the first practice receives the transfer request.
- 5 It is sufficient to establish that a consumer is receiving or needs **urgent health services** for prioritising the giving of records by the first practice (the **record holder**) if another health service provider advises the first practice that the consumer is receiving or needs urgent health services.
- 6 However—
- (a) an advice under clause 5 need not be in writing; and
- (b) the record keeper may be satisfied that a consumer is receiving or needs urgent health services without an advice mentioned in clause 5.
- 7 The requirement under clause 2 (b), clause 3 or clause 4 to give a copy of the consumer's health record to the provider is taken to be satisfied if the original of the record is given.
- 8 To remove doubt, clause 7 does not require the first practice to give the original of the consumer's health record to the provider.

9 In this principle:

first practice—see clause 1.

health record means a health record held by, or on behalf of, the first provider.

health service practice means the business or premises where a health service provider provides health services.

provider—see clause 1.

transfer request—see clause 2.

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
- director-general (see s 163)
- domestic partner (s 169)
- entity
- health services commissioner
- human rights commission
- individual.

child—

- (a) means a person who is under 12 years old; and
- (b) in relation to a person, includes an adopted child or stepchild of that person.

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

commission means the human rights commission.

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 child or young person—a person with parental responsibility for the consumer; and
- (b) if the consumer is a legally incompetent person—a guardian of the consumer; and

- (c) if the consumer has died and there is a legal representative of the deceased consumer—a legal representative of the deceased consumer; and
- (d) 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 [Human Rights Commission Act 2005](#), section 8 (2).

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, for a legally incompetent person, means—

- (a) a person who is—
 - (i) a legally appointed guardian of the legally incompetent person; or
 - (ii) an attorney, appointed under an enduring power of attorney that has become operative, of the legally incompetent person; and
- (b) a person 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.

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 service provider in relation to the health, an illness or a disability of the consumer.

person with parental responsibility, for a child or young person, means a parent or someone else with parental responsibility for the child or young person under the [Children and Young People Act 2008](#), division 1.3.2.

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.

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—see the [Children and Young People Act 2008](#), section 12.

Endnotes

1 About the endnotes

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 are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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

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

3 Legislation history

Health Records (Privacy and Access) Act 1997 A1997-125

notified 24 December 1997 (Gaz 1997 No S420)
commenced 1 February 1998 (s 2)

as amended by

Legislation (Consequential Amendments) Act 2001 A2001-44 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 A2002-11 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))
amds 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 commenced 1 November 2006 (s 2 (3) (as am
by [A2006-3](#) amdt 1.3) and see [Human Rights Commission Act 2005
A2005-40](#), s 2 (as am by [A2006-3](#) s 4) and [CN2006-21](#))

**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)

Health Legislation Amendment Act 2006 (No 2) A2006-46 sch 2 pt 2.9

notified LR 17 November 2006

s 1, s 2 commenced 17 November 2006 (LA s 75 (1))

sch 2 pt 2.9 commenced 18 November 2006 (s 2 (1))

Children and Young People (Consequential Amendments) Act 2008**A2008-20 sch 3 pt 3.15**

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

s 3 commenced 18 July 2008 (s 2 (1))

sch 3 pt 3.15 commenced 27 October 2008 (s 2 (4) and see [Children and Young People Act 2008](#) A2008-19, s 2 and [CN2008-13](#))

Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.40

notified LR 1 September 2009

s 1, s 2 commenced 1 September 2009 (LA s 75 (1))

sch 3 pt 3.40 commenced 22 September 2009 (s 2)

Health Legislation Amendment Act 2010 A2010-2 pt 3

notified LR 16 February 2010

s 1, s 2 commenced 16 February 2010 (LA s 75 (1))

pt 3 commenced 16 August 2010 (s 2 and LA s 79)

Health Practitioner Regulation National Law (ACT) Act 2010 A2010-10 sch 2 pt 2.11

notified LR 31 March 2010

s 1, s 2 commenced 31 March 2010 (LA s 75 (1))

sch 2 pt 2.11 commenced 1 July 2010 (s 2 (1) (a))

Health Legislation Amendment Act 2010 (No 2) A2010-11

notified LR 30 March 2010

s 1, s 2 commenced 30 March 2010 (LA s 75 (1))

remainder commenced 30 September 2010 (s 2 and LA s 79)

Statute Law Amendment Act 2010 A2010-18 sch 3 pt 3.7

notified LR 13 May 2010

s 1, s 2 commenced 13 May 2010 (LA s 75 (1))

sch 3 pt 3.7 commenced 3 June 2010 (s 2)

Endnotes

3 Legislation history

Statute Law Amendment Act 2011 A2011-3 sch 3 pt 3.23

notified LR 22 February 2011

s 1, s 2 commenced 22 February 2011 (LA s 75 (1))

sch 3 pt 3.23 commenced 1 March 2011 (s 2)

Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.77

notified LR 30 June 2011

s 1, s 2 commenced 30 June 2011 (LA s 75 (1))

sch 1 pt 1.77 commenced 1 July 2011 (s 2 (1))

Statute Law Amendment Act 2014 A2014-18 sch 3 pt 3.10

notified LR 20 May 2014

s 1, s 2 commenced 20 May 2014 (LA s 75 (1))

sch 3 pt 3.10 commenced 10 June 2014 (s 2 (1))

Statute Law Amendment Act 2014 (No 2) A2014-44 sch 1 pt 1.1

notified LR 5 November 2014

s 1, s 2 commenced 5 November 2014 (LA s 75 (1))

sch 1 pt 1.1 commenced 19 November 2014 (s 2)

Veterinary Surgeons Act 2015 A2015-29 sch 2 pt 2.6

notified LR 20 August 2015

s 1, s 2 commenced 20 August 2015 (LA s 75 (1))

sch 2 pt 2.6 commenced 1 December 2015 (s 2 (1) and [CN2015-22](#))

Red Tape Reduction Legislation Amendment Act 2015 A2015-33 sch 1 pt 1.34

notified LR 30 September 2015

s 1, s 2 commenced 30 September 2015 (LA s 75 (1))

sch 1 pt 1.34 commenced 14 October 2015 (s 2)

Health Legislation Amendment Act 2016 A2016-11 pt 4

notified LR 1 March 2016

s 1, s 2 commenced 1 March 2016 (LA s 75 (1))

pt 4 commenced 2 March 2016 (s 2)

**Protection of Rights (Services) Legislation Amendment Act 2016
(No 2) A2016-13 sch 1 pt 1.24**

notified LR 16 March 2016

s 1, s 2 commenced 16 March 2016 (LA s 75 (1))

sch 1 pt 1.24 commenced 1 April 2016 (s 2 and see [Protection of Rights \(Services\) Legislation Amendment Act 2016](#) A2016-1 s 2)

Statute Law Amendment Act 2021 A2021-12 sch 3 pt 3.23

notified LR 9 June 2021

s 1, s 2 commenced 9 June 2021 (LA s 75 (1))

sch 3 pt 3.23 commenced 23 June 2021 (s 2 (1))

Endnotes

4 Amendment history

4 Amendment history

Name of Act

s 1 sub [A2005-41](#) amdt 1.92

Commencement

s 2 om [A2001-44](#) amdt 1.2068

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 [A2001-44](#) 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

Compliance with privacy principles

s 6 am [A2011-3](#) amdt 3.232

Consent by consumer to obtaining health status report

s 7 sub [A2005-63](#) s 9
am [A2016-11](#) s 9, s 10; pars renum R26 LA; [A2021-12](#)
amdt 3.53

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; [A2011-3](#) amdt 3.232; [A2016-11](#) s 11, s 12;
ss renum R26 LA

Statement of principle regarding right of access—children and young people
s 10A ins [A2016-11](#) s 13

Provision of health services and keeping of records—terms and conditions
s 11 am [A2011-3](#) amdt 3.232; [A2014-18](#) amdt 3.46

Requests for access
s 12 am [A2011-3](#) amdt 3.232; [A2016-11](#) s 14, s 15

Response to request for access
s 13 am [A2005-4](#) s 4
sub [A2005-63](#) s 12
am [A2014-18](#) amdt 3.40; [A2016-11](#) s 16; pars renum R26 LA

Disclosure in accordance with consent
s 13A ins [A2005-63](#) s 12

Giving access to health records—generally
s 13B hdg sub [A2016-11](#) s 17
s 13B ins [A2005-63](#) s 12
am [A2016-11](#) ss 18-20

Giving access to health records—children and young people
s 13BA ins [A2016-11](#) s 21

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
am [A2016-11](#) s 22

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; [A2008-20](#) amdt 3.29

No access to health record where risk to life or health of consumer or another person
s 15 am [A2005-4](#) s 6; [A2011-3](#) amdt 3.232

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
am [A2014-18](#) amdt 3.40

Record keeper to give nominated health service provider health record
s 16B ins [A2005-63](#) s 15

Endnotes

4 Amendment history

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
am [A2010-10](#) amdt 2.54; [A2014-18](#) amdt 3.40, amdt 3.41;
[A2015-29](#) amdt 2.40

No access to health record where material given in confidence

s 17 am [A2005-63](#) s 16; [A2011-3](#) amdt 3.232; [A2016-11](#) s 23; pars
renum R26 LA

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

Miscellaneous

pt 6 note ins [A2002-11](#) amdt 2.50

Children and young people

s 25 hdg sub [A2016-11](#) s 24
s 25 am [A2016-11](#) s 25, s 26

Legal professional privilege not affected by this Act

s 28 om [A2002-11](#) amdt 2.51

Unqualified record keeper to obtain and act on expert advice

s 30 am [A2011-3](#) amdt 3.232

Jurisdiction of Magistrates Court

s 31 am [A2005-13](#) amdt 1.41, amdt 1.42; [A2005-41](#) amdt 1.98;
[A2016-11](#) s 27; pars renum R26 LA

Appeals

s 32 am [A2004-60](#) amdt 1.156; ss renum R5 LA; [A2009-20](#) amdt 3.96; [A2010-18](#) amdt 3.7, amdt 3.8; ss renum R16 LA

Court orders under other laws

s 33 am [A2011-3](#) amdt 3.232

Determination of fees

s 34 sub [A2001-44](#) amdt 1.2070
am [A2011-3](#) amdt 3.228

Approved forms

s 35 sub [A2001-44](#) amdt 1.2070
am [A2005-41](#) amdt 1.99; [A2011-3](#) amdt 3.229
om [A2021-12](#) amdt 3.54

Regulation-making power

s 36 sub [A2001-44](#) amdt 1.2070
am [A2005-63](#) s 17; ss renum R9 LA; [A2014-18](#) amdt 3.42,
amdt 3.43

Saving

s 37 am [A2011-3](#) amdt 3.230

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 [A2001-44](#) 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
am [A2006-46](#) amdt 2.26; [A2010-10](#) amdt 2.55; [A2010-2](#) s 13;
[A2010-11](#) s 4; [A2011-22](#) amdt 1.240; [A2014-18](#) amdt 3.44,
amdt 3.46; [A2015-33](#) amdt 1.105; [A2016-11](#) ss 28-35; pars
renum R26 LA; [A2021-12](#) amdt 3.55, amdt 3.56

Endnotes

4 Amendment history

Dictionary

dict

ins [A2005-41](#) amdt 1.100
am [A2005-63](#) s 19; [A2010-11](#) s 5; [A2011-22](#) amdt 1.241,
amdt 1.242; [A2016-13](#) amdt 1.68
def **child** reloc from s 4 [A2005-41](#) amdt 1.94
sub [A2016-11](#) s 36
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)
am [A2016-11](#) s 37; pars renum R26 LA
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)
am [A2008-20](#) amdt 3.30
sub [A2016-11](#) s 38
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
am [A2014-44](#) amdt 1.1
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
am [A2011-3](#) amdt 3.231
def **personal information** reloc from s 4 [A2005-41](#) amdt 1.94

def **person with parental responsibility** ins [A2016-11](#) s 39
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
sub [A2010-10](#) amdt 2.56
om [A2014-18](#) amdt 3.45
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
sub [A2016-11](#) s 40

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	A2001-44	24 January 2002
2	A2002-11	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
10	A2006-3	23 February 2006
11	A2006-3	25 February 2006
12	A2006-3	1 November 2006
13	A2006-46	18 November 2006
14	A2008-20	27 October 2008
15*	A2009-20	22 September 2009
16	A2010-18	3 June 2010
17	A2010-18	1 July 2010
18	A2010-18	16 August 2010
19	A2010-18	30 September 2010
20	A2011-3	1 March 2011
21	A2011-22	1 July 2011
22	A2014-18	10 June 2014

Republication No	Amendments to	Republication date
23	A2014-44	19 November 2014
24	A2015-33	14 October 2015
25	A2015-33	1 December 2015
26	A2016-11	2 March 2016
27	A2016-13	1 April 2016

© Australian Capital Territory 2021