



Australian Capital Territory

Health Legislation Amendment Act 2016

A2016-11

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Australian Capital Territory

Health Legislation Amendment Act 2016

A2016-11

An Act to amend legislation about health, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Health Legislation Amendment Act 2016*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the following legislation:

- *Civil Law (Wrongs) Act 2002*
- *Health Act 1993*
- *Health Records (Privacy and Access) Act 1997*.

Note This Act also repeals legislative instruments (see s 8).

Part 2 Civil Law (Wrongs) Act 2002

4 Protection of good samaritans from liability New section 5 (2A)

insert

- (2A) Despite subsection (2) (b), if a good samaritan administers the drug known as naloxone, honestly and without recklessness, to a person apparently suffering from an overdose of an opioid drug for the purpose of resuscitating the person, the protection under subsection (1) applies even if the good samaritan's capacity to exercise appropriate care and skill was, at the time of administering the drug, impaired by a recreational drug.

Examples—opioid drugs

- heroin
- methadone
- morphine

Part 3 Health Act 1993

5 Local Health and Hospitals Network Part 3A

omit

6 Dictionary, definition of *council*

omit

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

omit

the council (see s 19E),

8 Legislation repealed

All legislative instruments made under the [Health Act 1993](#), part 3A are repealed.

Part 4 Health Records (Privacy and Access) Act 1997

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

omit

young person or

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

insert

- (ia) if the consumer is a child or young person—by the person with parental responsibility for the child or young person; or

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

insert

- (4A) 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.
- (4B) If the health services commissioner refers a request to a health service provider under subsection (4A) (b), the health service provider is taken to have received it under section 12.

12 Section 10 (6)

omit

13 New section 10A

insert

**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.

**14 Requests for access
Section 12 (1)**

after

section 10

insert

or section 10A

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

substitute

- (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

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

before paragraph (a), insert

- (aa) if the health services commissioner is the record keeper and refers the request to a health service provider under section 10 (4A)—give the consumer written notice that the request has been referred to the health service provider who prepared the health record; or

17 Section 13B heading

substitute

13B Giving access to health records—generally**18 Section 13B (1)**

after

person

insert

(other than a child or young person)

19 Section 13B (3) (c)

omit

a young person,

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

omit

young person or

21 New section 13BA

insert

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) (c) (ii) and the fee stated in the notice has been paid—no later than the later of the following:
 - (i) 1 week after the day the fee is paid;
 - (ii) 30 days after the day the record keeper received the request for access to the health record; or
 - (b) if the record keeper has not given a notice under section 13 (2) (c) (ii)—no later than 30 days after the day the record keeper receives the request for access to the health record.

- (3) However, before giving access to the record to a person (the *relevant person*), the record keeper must take reasonable steps to require evidence of, and be satisfied about—
- (a) the relevant person's identity; and
 - (b) if someone else has authorised the access to be given to the relevant person—the identity and authority of the other person; and
 - (c) if the consumer is a 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.

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

after

health records

insert

—generally

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

insert

(ba) a person with parental responsibility for the consumer; or

24 Section 25 heading

substitute

25 Children and young people

25 Section 25

omit

where a consumer is a young person,

substitute

if a consumer is a child or young person,

26 Section 25 (a)

omit

a guardian of

substitute

a person with parental responsibility for

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

substitute

(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

(iva) a person with parental responsibility for a child or young person; or

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

omit

a person responsible for the consumer's care (the *carer*)

substitute

the consumer's carer

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

substitute

- (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

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

substitute

- (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
- (ia) if the consumer is a legally incompetent person—by a guardian of the consumer; or

31 Schedule 1, principle 10, clause 10

omit

a person responsible for the consumer’s care (the *carer*)

substitute

the consumer’s carer

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

omit

young person

substitute

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

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

omit

record keeper's opinion

substitute

provider's opinion

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

substitute

- (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

35 Schedule 1, principle 10, new clause 12

after the note, insert

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.

36 Dictionary, definition of *child*

substitute

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.

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

substitute

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

38 Dictionary, definition of *guardian*

substitute

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.

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

insert

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.

40 Dictionary, definition of *young person*

substitute

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 19 November 2015.

2 Notification

Notified under the [Legislation Act](#) on 1 March 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Health Legislation Amendment Bill 2016, which originated in the Legislative Assembly as the Health Legislation Amendment Bill 2015 and was passed by the Assembly on 18 February 2016.

Acting Clerk of the Legislative Assembly

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