

2005

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

**HEALTH RECORDS (PRIVACY AND ACCESS) AMENDMENT
BILL 2005**

EXPLANATORY MEMORANDUM

Circulated by the authority of the Minister for Health

Simon Corbell MLA

HEALTH RECORDS (PRIVACY AND ACCESS) AMENDMENT BILL 2005

Summary

The intention of this legislation is to protect the identity of persons making child protection reports to Care and Protection Services under the *Children and Young People Act 1999*, from being accessed under the *Health Records (Privacy and Access) Act 1997*.

The identification of a reporter and their information could place the child or young person, other adults, the reporter and agency staff at risk.

When a reporter makes a report pursuant to ss 158 or 159 of the *Children and Young People Act 1999* and keeps a copy of the written report or notes of the action (in compliance with the *Territory Records Act 2002*) on a health services file record, these internal records may be available to a person when requested under the *Health Records (Privacy and Access) Act 1997*.

Records or parts of records held by ACT Health, the Departments of Education and Training, Disability, Housing and Community Services, and Justice and Community Services and non-government funded agencies, general practitioners and other allied health providers will probably fall within the definition of a health record. In particular, an agency's record of a mandated or voluntary report to the Chief Executive under the *Children and Young People Act 1999* will almost invariably be a health record for the purposes of this legislation.

The Bill prohibits access to a health record, or part of a health record, if that record, or part of record, identifies a person who made a report under either the voluntary or mandatory reporting provisions of the *Children and Young People Act 1999* or if the record keeper is satisfied that the identity of the reporter could be worked out from the record or part of a record.

Revenue / Cost Implications

There are no revenue/cost implications

Details of the Bill follow.

Clause notes

Clauses 1,2 and 3.

These are mechanical clauses that state the name of the Act, define the commencement date and specify the amended act.

Clause 4 **substitute Section 13 (2) (c)**

This clause requires a record keeper to give a notice in writing to a consumer stating the grounds on which access to a health record is denied where access to that health record is prohibited under section 14A, section 15 or section 17 of the Act.

Clause 5 **New section 14A**

This clause inserts a requirement that a record keeper must not give access to a health record, or part of a health record under section 10 of the *Health Records (Privacy and Access) Act 1997*, if it relates to a report under either the voluntary or mandatory reporting provisions of the *Children and Young People Act 1999* and if that record, or part of a health record, would identify the person who made the report, or enable the identity of the reporter to be worked out. Specifying Section 10 of the *Health Records (Privacy and Access) Act 1997* clarifies that access to a health record relating to a child protection report remains possible in certain cases, most importantly, access by the police as part of an investigation.

Clause 6 **No access to health record where risk to life or health of consumer or another person**
Section 15

Amendment of this existing clause also clarifies, for the purposes of Section 15, that access to a health record remains possible in certain cases, most importantly, access by the police as part of an investigation.