

Australian Capital Territory

HEALTH RECORDS (PRIVACY AND ACCESS) AMENDMENT BILL 2005 (No 2)

Explanatory Statement

Circulated with the authority of
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Minister for Health

EXPLANATORY STATEMENT

Outline

The *Health Records (Privacy and access) Amendment Bill 2005 (No 2)* addresses a number of concerns that have been raised in regards to some aspects of the current Act that do not work well in practice and some issues that are not covered by the current Act. The other amendments relate to maintaining consistency with the National Health Privacy Code.

The Bill amends the *Health Records (Privacy and Access) Act 1997* by:

- Adding a provision to include minimum periods for retaining health records;
- Amending section 7 to ensure access to health records by third parties protects the consumer's privacy;
- Amending the Act to allow access to health records in defined circumstances by families, guardians and carers of deceased people where the person dies intestate or is legally incompetent;
- Amending the Act to allow access to health information by carers in limited circumstances; and
- Allowing the disclosure of identifiable data for research purposes in controlled circumstances.

Revenue/Cost Implications

There are no additional costs involved with the Bill.

Clause 1 – Name of Act – states the title of the Act, which is the *Health Records (Privacy and access) Amendment Bill 2005 (No 2)*.

Clause 2 – Commencement – states when the Act commences. The Act will commence on a day fixed by the Minister by written notice.

Clause 3 – Legislation amended – pt 2 – states that this Act amends the *Health Records (Privacy and Access) Act 1997*.

Clause 4 – Section 5 other than privacy principles – substitutes a new section 5 to accommodate the move of the privacy principles to schedule 1 of the Act.

Clause 5 – Section 5, principle 4 – substitutes a new Principle 4 to provide for timeframes for the destruction of health records (Principle 4.1 section 2 and 3), to require record keepers to maintain a register of destroyed or transferred records (Principle 4.2) and to require entities other than health service providers to destroy or permanently deidentify health information if it is no longer needed for the purpose it was collected.

Clause 6 – Section 5, principle 6 – substitutes a new Principle 6 to allow a treating health service provider to disclose personal health information about a consumer if the disclosure is made for compassionate reasons and the disclosure would be reasonably expected by the consumer and is not contrary to any wishes previously expressed by the consumer. These changes will not impinge upon the consumers right to confidential treatment of health information as provided for in section 17(3) of the Act.

Clause 7 – Section 5, principle 10 – substitutes a new Principle 10 which apart from updating the language and style allows for identifiable data to be disclosed for research purposes under controlled circumstances (Clause 3 and Clause 8), to allow disclosure to a carer where access is necessary for them to carry out their functions as carers safely and effectively (Clause 4 and Clause 10), to allow greater control by the consumer by way of an approved form when third parties seek access to health records (Clause 7) to allow an immediate family member access for compassionate reasons to personal health information of a consumer in situations where such disclosure would have been

expected by the consumer and are not contrary to any wishes expressed by the consumer (Clause 11).

Clause 8 – Section 5 privacy principles (as amended) – relocates the privacy principles to Schedule 1 of the Act.

Clause 9 – Section 7 – substitutes a new section which apart from updating the language and style allows greater control by the consumer by way of an approved form when a consumer consents to the providing of a health status report.

Clause 10 – Access otherwise than under pt 3, Section 8(2) (a) – substitutes a new subparagraph to accommodate the more specific amendments to the Act that were passed earlier this year to protect the identity of people making reports under the *Children and Young People Act 1999*.

Clause 11 – Statement of principle regarding right of access, Section 10(2) (b) – substitutes a new subparagraph to accommodate the more specific amendments to the Act that were passed earlier this year to protect the identity of people making reports under the *Children and Young People Act 1999*.

Clause 12 – Section 13 – substitutes a new section which apart from updating the language and style imposes an obligation on the record keeper to disclose information where an appropriate consent has been signed by the consumer in accordance with Schedule 1, Principle 10 clause 2(c).

Clause 13 – Section 14A heading – substitutes a new section heading consequential on the amendment made below in clause 14.

Clause 14 – Section 14A (a) – substitutes a new section to accommodate the more specific amendments to the Act that were passed earlier this year to protect the identity of people making reports under the *Children and Young People Act 1999*.

Clause 15 – Section 16 – substitutes a new section which retains the policy intent of the section but updates the language and style to make the application of the section clearer and easier to administer.

Clause 16 – No access to health record where material given in confidence. New Section 17(4) – inserts a new subsection to make it clear that there will be no access to a health record even to a legal representative where the consumer has notified the record keeper that the material provided is confidential in accordance with section 17.

Clause 17 – New schedule 1 heading – inserts a new heading for schedule 1 consequential on the amendment made in clause 5 above which moves all the privacy principles from section 5 of the Act to Schedule 1.

Clause 18 – Dictionary, note 2, new dot point – inserts a new dot point to alert readers to the definition of domestic partner as contained in section 169 of the *Legislation Act 2001*.

Clause 19 – Dictionary, definition of consumer – substitutes a new definition for consumer to allow access to health records by an immediate family member where a consumer dies intestate.

Clause 20 – Dictionary, new definition of destroy – inserts a new definition for destroy in the dictionary to make it clear that destroying a health record includes deleting a health record.

Clause 21 – Dictionary, definition of guardian – substitutes a new definition for guardian to include for a young person a person with parental responsibility under section 18 of the *Children and Young People Act 1999*.

Schedule 1 Other Amendments

Item 1.1 – Section 4B, note 1 – substitutes a new note 1 to alert readers that the Criminal Code applies to all offences against this Act.

Item 1.2 – Sections 20 to 22 – these amendments restate the offence provisions in current drafting style and harmonises the offences in the Act with the Criminal Code.

Item 1.3 – Dictionary, definition of false representation – has been omitted as false representation is now stated in the Criminal Code.