

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Health Records (Privacy and Access) Amendment Bill 2005 (No 2)

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Section 5, other than privacy principles	2
5 Section 5, principle 4	3
6 Section 5, principle 6	5
7 Section 5, principle 10	6
8 Section 5, privacy principles (as amended)	10
9 Section 7	11
10 Access otherwise than under pt 3 Section 8 (2) (a)	12

J2005-49

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

	Page	
11	Statement of principle regarding right of access Section 10 (2) (b)	13
12	Section 13	13
13	Section 14A heading	18
14	Section 14A (a)	18
15	Section 16	19
16	No access to health record where material given in confidence New section 17 (4)	23
17	New schedule 1 heading	23
18	Dictionary, note 2, new dot point	23
19	Dictionary, definition of <i>consumer</i>	23
20	Dictionary, new definition of <i>destroy</i>	24
21	Dictionary, definition of <i>guardian</i>	24
Schedule 1	Other amendments	25

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Health Records (Privacy and Access) Amendment Bill 2005 (No 2)

A Bill for

An Act to amend the *Health Records (Privacy and Access) Act 1997*

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

1 **1 Name of Act**

2 This Act is the *Health Records (Privacy and Access) Amendment*
3 *Act 2005 (No 2)*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 **3 Legislation amended**

16 This Act amends the *Health Records (Privacy and Access)*
17 *Act 1997*.

18 **4 Section 5, other than privacy principles**

19 *substitute*

20 **5 The privacy principles**

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

5 Section 5, principle 4

substitute

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.

- 1 (b) the destruction is not prohibited under any other law and
2 happens after—
- 3 (i) if the consumer is under 18 years old when the
4 information is collected—the day the consumer turns
5 25 years old; or
- 6 (ii) if the consumer is an adult when the information is
7 collected—7 years after the day a service was last
8 provided to the consumer by the record keeper.

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

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

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

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

18 1 A record keeper must keep a register of records that have been
19 destroyed or transferred to another entity.

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

21 2 The register must identify the following for records that have been
22 destroyed or transferred:

- 23 (a) the consumer to whom the record relates;
- 24 (b) the period of time the record covers;
- 25 (c) for a destroyed record—the date the record was destroyed;
- 26 (d) for a transferred record—the entity to which the record has
27 been transferred.

1 **Principle 4.3: Storage, security and destruction of**
2 **personal health information—destruction of health**
3 **information**

- 4 1 Health information may be kept by a health service provider if it is
5 needed for the purpose for which it was collected, or another
6 purpose allowed under a law of the Territory, even if its destruction
7 is allowed under principle 4.1.
- 8 2 An entity other than a health service provider must take reasonable
9 steps to destroy, or permanently deidentify, health information if it
10 is no longer needed for the purpose for which it was collected or for
11 any other purpose allowed under a law of the Territory.

12 **6 Section 5, principle 6**

13 *substitute*

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

- 16 1 A health service provider who is a member of a treating team for a
17 consumer may have access to the personal health information about
18 the consumer so far as necessary for the provision by the provider of
19 a health service to the consumer.
- 20 2 If a person reasonably requires access to personal health information
21 about a consumer for the purpose of the management, funding or
22 quality of a health service received, or being received, by the
23 consumer, the person may have access to the extent necessary for
24 that purpose without the consumer's consent.
- 25 3 A treating health service provider for a consumer may disclose
26 personal health information about the consumer to an immediate
27 family member if—
- 28 (a) the disclosure is made for compassionate reasons; and

1 (b) the provider believes, on reasonable grounds, that the
2 disclosure would be expected by the consumer; and

3 (c) the disclosure is not contrary to any wishes previously
4 expressed by the consumer that the provider is, or ought
5 reasonably to be, aware of.

6 *Note* Section 17 deals with information subject to confidentiality.

7 4 An entity must not require a consumer, directly or indirectly, to
8 obtain or grant access to a health record about the consumer unless
9 the entity is required or allowed to make the requirement under—

10 (a) a law of the Territory; or

11 (b) a law of the Commonwealth; or

12 (c) an order of a court.

13 **7 Section 5, principle 10**

14 *substitute*

15 **Principle 10: Limits on disclosure of personal health**
16 **information**

17 1 A record keeper who has possession or control of a health record
18 must not disclose personal health information about a consumer
19 from the record to an entity other than the consumer.

20 2 Clause 1 does not apply to the disclosure of personal health
21 information about a consumer to an entity if—

22 (a) the information is being shared between members of a treating
23 team for the consumer only to the extent necessary to improve
24 or maintain the consumer's health or manage a disability of the
25 consumer; or

- 1 (b) the consumer is reasonably likely to have been aware, or to
2 have been made aware under principle 2, that information of
3 the kind disclosed is usually disclosed to the entity; or
- 4 (c) the consumer has consented to the disclosure; or
- 5 (d) the record keeper believes, on reasonable grounds, that the
6 disclosure is necessary to prevent or lessen a serious and
7 imminent risk to the life or physical, mental or emotional
8 health of the consumer or someone else; or
- 9 (e) the disclosure is required or allowed under—
- 10 (i) a law of the Territory (including this Act); or
- 11 *Note* Disclosure is allowed under cl 8, cl 9 and cl 10.
- 12 (ii) a law of the Commonwealth; or
- 13 (iii) an order of a court; or
- 14 (f) the disclosure of the information is necessary for the
15 management, funding or quality of the health service received,
16 or being received, by the consumer.
- 17 3 Clause 1 also does not apply to the disclosure of personal health
18 information about a consumer to an entity if—
- 19 (a) the disclosure is necessary for the purpose of research or the
20 compilation or analysis of statistics; and
- 21 (b) it is impracticable to seek the consumer's consent before
22 disclosure; and
- 23 (c) the purpose mentioned in paragraph (a) cannot be achieved by
24 the disclosure of information that does not identify the
25 consumer and from which the consumer's identity cannot
26 reasonably be worked out; and

- 1 (d) the entity is required for any disclosed information
2 (*identifiable information*) that identifies the consumer, or from
3 which the consumer's identity can be reasonably worked out—
- 4 (i) to provide protection that is at least equal to that of this
5 Act and that prevents any further disclosure of it; and
- 6 (ii) to take reasonable steps to deidentify the information and
7 destroy identifiable information at the earliest possible
8 opportunity; and
- 9 (iii) to ensure that identifiable information is not made
10 publicly available.
- 11 4 Clause 1 also does not apply to the disclosure of personal health
12 information about a consumer to a person responsible for the
13 consumer's care (the *carer*) if—
- 14 (a) the consumer cannot give or withhold consent to the
15 disclosure, whether or not because the consumer is a young
16 person or legally incompetent person; and
- 17 (b) in the record keeper's opinion, the disclosure is necessary to
18 enable the carer to safely and effectively provide appropriate
19 services to, or care for, the consumer.
- 20 5 In relation to the sharing of information among the treating team
21 under clause 2 (a), unless it is obvious from the circumstances and
22 context of the health service, the person in charge of the treating
23 team must tell the consumer about the identity of each member of
24 the treating team who will have access to the personal health
25 information about the consumer.
- 26 6 However, the treating team leader need not tell the consumer about
27 the identity of individuals who are required to handle health records,
28 or personal health information about the consumer, for the
29 management, funding or quality of the health service received, or
30 being received, by the consumer.

- 1 7 A consent given by a consumer for clause 2 (c) must—
2 (a) be in writing and signed—
3 (i) if the consumer is a young person or legally incompetent
4 person—by a guardian of the consumer; or
5 (ii) in any other case—by the consumer; and
6 (b) name the health service provider who made the record.
- 7 *Note* If a form is approved under s 35 for this provision, the form must be
8 used.
- 9 8 An entity to which information is disclosed under clause 2, clause 3
10 or clause 4 must not use or disclose the information for a purpose
11 other than the purpose for which the information was given to the
12 entity.
- 13 9 If there is an emergency and a consumer cannot give or withhold
14 consent to the disclosure of personal health information about the
15 consumer, the treating health service provider may discuss relevant
16 personal health information with an immediate family member of
17 the consumer to the extent reasonable and necessary for the proper
18 treatment of the consumer.
- 19 10 A treating health service provider for a consumer may disclose
20 personal health information about the consumer to a person
21 responsible for the consumer's care (the *carer*) if—
22 (a) the consumer cannot give or withhold consent to the
23 disclosure, whether or not because the consumer is a young
24 person or legally incompetent person; and
25 (b) in the record keeper's opinion, the disclosure is necessary to
26 enable the carer to safely and effectively provide appropriate
27 services to, or care for, the consumer.

- 1 11 A treating health service provider for a consumer may disclose
2 personal health information about the consumer to an immediate
3 family member if—
- 4 (a) the consumer cannot give or withhold consent to the
5 disclosure, whether or not because the consumer is a young
6 person or legally incompetent person; and
- 7 (b) the disclosure is made for compassionate reasons; and
- 8 (c) the provider believes, on reasonable grounds, that the
9 disclosure would be, or would have been, expected by the
10 consumer; and
- 11 (d) the disclosure is not contrary to any wishes previously
12 expressed by the consumer of which the provider is aware or
13 ought reasonably to be aware.

14 **Example for par (a)**

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

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

23 **8 Section 5, privacy principles (as amended)**

24 *relocate to schedule 1*

9 Section 7*substitute***7 Consent by consumer to obtaining health status report**

- (1) A person must not, without a consumer's consent—
- (a) ask someone other than the consumer for a health status report about the consumer; or
 - (b) give someone other than the consumer a health status report about the consumer.
- (2) A person must not obtain a health status report about a consumer from a health service provider without the consumer's consent.
- (3) If a person obtains the consumer's consent for subsection (1) or (2) the person must—
- (a) tell the consumer in writing of the consumer's right to ask for a copy of the health status report and to give the person a statement commenting on the health status report; and
 - (b) if the consumer asks for a copy of the report—give a copy of the report to the consumer as soon as practicable; and
 - (c) if the consumer gives the person a statement commenting on the health status report—
 - (i) consider the comments; and
 - (ii) keep the statement with the report for as long as the person keeps the report.
- (4) A consent given by a consumer for subsection (1) or (2) must—
- (a) be in writing and signed—
 - (i) if the consumer is a young person or legally incompetent person—by a guardian of the consumer; or

- 1 (ii) in any other case—by the consumer; and
- 2 (b) if the health service report is to be, or has been, prepared or
- 3 substantially prepared by a health service provider—name the
- 4 health service provider.
- 5 *Note* If a form is approved under s 35 for this provision, the form must be
- 6 used.
- 7 (5) This section does not apply to the extent (if any) that a health status
- 8 report is asked for, obtained or provided in accordance with—
- 9 (a) a law of the Territory; or
- 10 (b) a law of the Commonwealth; or
- 11 (c) an order of a court.

12 **10 Access otherwise than under pt 3**

13 **Section 8 (2) (a)**

14 *substitute*

- 15 (a) subject to any prohibition on giving access to the health record
- 16 under any of the following provisions:
- 17 (i) section 14A (No access to health record relating to
- 18 Children and Young People Act complaint etc);
- 19 (ii) section 15 (No access to health record where risk to life
- 20 or health of consumer or another person);
- 21 (iii) section 17 (No access to health record where material
- 22 given in confidence); and

1 **11 Statement of principle regarding right of access**
2 **Section 10 (2) (b)**

3 *substitute*

4 (b) to the extent that any of the following provisions has a contrary
5 application:

- 6 (i) section 14 (Grounds for nonproduction);
7 (ii) section 14A (No access to health record relating to
8 Children and Young People Act complaint etc);
9 (iii) section 15 (No access to health record where risk to life
10 or health of consumer or another person);
11 (iv) section 17 (No access to health record where material
12 given in confidence).

13 **12 Section 13**

14 *substitute*

15 **13 Response to request for access**

- 16 (1) This section—
17 (a) applies if a record keeper receives a request for access to a
18 health record under section 12; but
19 (b) does not apply to an oral request if the record keeper has asked
20 under section 12 (3) (a) for the request to be made in writing.
21 (2) Within 2 weeks after the day the record keeper receives the request,
22 the record keeper must—
23 (a) if the record keeper relies on a ground mentioned in section 14
24 for nonproduction of the record or part of the record—give the
25 consumer written notice that the record keeper will not give
26 access to the record; or

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

21 **13A Disclosure in accordance with consent**

- 22 (1) This section applies if—
- 23 (a) a consumer has a right of access to a health record; and
- 24 (b) the consumer consents under schedule 1, principle 10,
25 clause 2 (c) to the disclosure of personal health information
26 about the consumer from the record to an entity.
- 27 (2) The record keeper must disclose the information to the entity.

1 (3) For the purpose of accessing the information in the record, the entity
2 is taken to be the consumer.

3 (4) To remove any doubt and without limiting subsection (3), the entity
4 has the same right of access to the information in the record as the
5 consumer.

6 **13B Giving access to health records**

7 (1) This section applies if a record keeper must give a person access to a
8 health record.

9 (2) Access to the health record must be given—

10 (a) if the record keeper has given a notice under
11 section 13 (2) (c) (ii) and the fee stated in the notice has been
12 paid—no later than the later of the following:

13 (i) 1 week after the day the fee is paid;

14 (ii) 30 days after the day the record keeper received the
15 request for access to the health record; or

16 (b) if the record keeper has not given a notice under
17 section 13 (2) (c) (ii)—no later than 30 days after the day the
18 record keeper receives the request for access to the health
19 record.

20 (3) However, before giving access to the record to a person (the
21 *relevant person*), the record keeper must take reasonable steps to
22 require evidence of, and be satisfied about—

23 (a) the relevant person's identity; and

24 (b) if someone else has authorised the access to be given to the
25 relevant person—the identity and authority of the other person;
26 and

27 (c) if the consumer is a young person, a legally incompetent
28 person or dead—the fact that the relevant person (or, if

- 1 paragraph (b) applies, the person authorising the relevant
2 person) is—
- 3 (i) for a young person or legally incompetent person—a
4 guardian of the person; or
- 5 (ii) for a deceased consumer—
- 6 (A) a legal representative of the deceased consumer; or
- 7 (B) if there is no legal representative of the deceased
8 consumer—an immediate family member of the
9 deceased consumer.
- 10 (4) If the record keeper requires evidence under subsection (3) before
11 giving access to a health record and the evidence is not provided or
12 does not satisfy the record keeper, the record keeper need not
13 provide access to the health record.

14 **13C How access to health record given**

- 15 (1) This section applies if a record keeper must give a person access to a
16 health record.
- 17 (2) Access to the health record must be given as follows:
- 18 (a) for a request to inspect the record or, if the health record is
19 stored in electronic form, a print-out of the record—by making
20 the record or print-out available to the consumer at a time, and
21 at a place in the ACT, stated in a written notice given to the
22 consumer;
- 23 (b) for a request to receive a copy of the record—by giving the
24 consumer—
- 25 (i) a copy of the record; or
- 26 (ii) if the consumer agrees—an accurate summary of the
27 record; or

- 1 (iii) if the record, or part of the record, was made before the
2 commencement of this Act and the record keeper does
3 not give a copy of the record to the consumer—a written
4 summary of the factual matters contained in the record or
5 part of the record;
- 6 (c) for a request to view the record and have its content
7 explained—by giving the consumer a written notice stating—
- 8 (i) if the record keeper is a suitably qualified health service
9 provider, and is willing to do so—that the record keeper
10 will be available to explain the record at a time, and at a
11 place in the ACT, stated in the notice; or
- 12 (ii) in any other case—the name and address of a suitably
13 qualified health service provider who practises in the
14 ACT and will be available in the ACT with the record, by
15 arrangement with the consumer, to explain the record.

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

17 **13D Access taken to have been refused**

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

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

- 1 (ii) if the record keeper unreasonably fails to make the record
2 or print-out available to the consumer for inspection in
3 accordance with the notice; or
- 4 (c) if the record keeper has given a notice under
5 section 13C (2) (c) (i) about the record—
- 6 (i) if the notice does not state a time that is reasonable for
7 the record keeper to be available; or
- 8 (ii) if the record keeper unreasonably fails to explain the
9 content of the record in accordance with the notice; or
- 10 (d) if the record keeper has given a notice under
11 section 13C (2) (c) (ii) about the record—if the health service
12 provider named in the notice unreasonably fails—
- 13 (i) to make an arrangement with the consumer to explain the
14 content of the record; or
- 15 (ii) to comply with an arrangement made to explain the
16 content of the record.

17 **13 Section 14A heading**

18 *substitute*

19 **14A No access to health record relating to Children and
20 Young People Act complaint etc**

21 **14 Section 14A (a)**

22 *substitute*

- 23 (a) the record or part of a record relates to—
- 24 (i) a report under the *Children and Young People Act 1999*,
25 section 158 or section 159; or

- 1 (ii) a notification under the *Children's Services Act 1986*,
2 section 103; and

3 **15 Section 16**

4 *substitute*

5 **16 Refusal for risk to life or health of consumer—offer by**
6 **record keeper**

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

22 **16A Refusal for risk to life or health of consumer—nomination**
23 **by consumer**

- 24 (1) This section applies if—
- 25 (a) a record keeper has given a notice under section 13 (2) (b)
26 about a health record on the ground mentioned in
27 section 15 (a); and

- 1 (b) any of the following apply:
- 2 (i) the record keeper has not made an offer under section 16;
- 3 (ii) the record keeper has made an offer under section 16 but
- 4 the consumer has not accepted it;
- 5 (iii) the consumer has had a discussion with the health service
- 6 provider named by the record keeper in an offer under
- 7 section 16, but is not satisfied with the outcome of the
- 8 discussion.
- 9 (2) The consumer may give a written notice (a ***nomination***) to the
- 10 record keeper nominating a health service provider for this section if
- 11 the health service provider has consented to being nominated.
- 12 (3) The nomination lapses if—
- 13 (a) the record keeper gives the consumer a notice under
- 14 section 16B about the health record; or
- 15 (b) the nominated health service provider—
- 16 (i) dies or otherwise stops being a health service provider; or
- 17 (ii) refuses to act or fails to act within a reasonable time.
- 18 (4) If a nomination lapses, the consumer may make another nomination
- 19 under this section.

20 **16B Record keeper to give nominated health service provider**

21 **health record**

- 22 (1) This section applies if a record keeper receives a nomination under
- 23 section 16A in relation to a health record.
- 24 (2) The record keeper must give the health record, or a copy of it, to the
- 25 nominated health service provider within 2 weeks after the day the
- 26 record keeper receives the nomination.

- 1 (3) However, the record keeper need not comply with subsection (2) if,
2 within the 2-week period—
- 3 (a) the record keeper gives a notice under section 16D in relation
4 to the nomination; or
- 5 (b) the nomination lapses.

6 **16C Functions of nominated health service provider**

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

- 9 (a) to form an opinion about the validity of the notice under
10 section 13 (2) (b); and
- 11 (b) if the nominated health service provider considers it
12 appropriate—to explain the grounds of the claim to the
13 consumer; and
- 14 (c) to discuss the content of the health record with the consumer;
15 and
- 16 (d) if the provider is satisfied that to allow the consumer to inspect
17 the record would not be a significant risk to the life or the
18 physical, mental or emotional health of the consumer—to
19 allow the consumer to inspect the record or, if the consumer
20 wishes to have a copy of the record and the record keeper
21 agrees, to have a copy of the record; and
- 22 (e) if the provider is not satisfied as mentioned in paragraph (d)—
23 to decline to allow the consumer to have access to the record.

24 **16D Unsuitable consumer-nominated health service provider**

- 25 (1) This section applies if—
- 26 (a) a record keeper receives a notice under section 16A
27 nominating a health service provider; and

- 1 (b) the record keeper believes, on reasonable grounds, that the
2 nominated health service provider is not a suitable person to
3 act as the nominated health service provider.
- 4 (2) Within 2 weeks after the day the record keeper receives the
5 nomination, the record keeper may give the consumer a written
6 notice stating that the record keeper objects to the nominated health
7 service provider.
- 8 (3) The notice—
- 9 (a) must state the ground of the objection; and
- 10 (b) may suggest the class of health service providers from which a
11 health service provider should be nominated.
- 12 (4) However, the record keeper must not give a notice under
13 subsection (2)—
- 14 (a) if—
- 15 (i) the health service provider who wrote the health record is
16 registered with a registration board; and
- 17 (ii) the nominated health service provider is registered by the
18 same board; or
- 19 (b) if the nominated health service provider is registered with the
20 medical board and has the ability to understand and interpret
21 the health record; or
- 22 (c) if the nominated health service provider—
- 23 (i) provides the same kind of service as the health service
24 provider who wrote the health record; and
- 25 (ii) has the ability to understand and interpret the health
26 record.

1 **16 No access to health record where material given in**
2 **confidence**
3 **New section 17 (4)**

4 *insert*

5 (4) In subsection (3):

6 *consumer*, for a consumer who has died, does not include a legal
7 representative of the deceased consumer.

8 **17 New schedule 1 heading**

9 *insert*

10 **Schedule 1 The privacy principles**

11 (see s 5)

12 **18 Dictionary, note 2, new dot point**

13 *insert*

- 14 • domestic partner (s 169)

15 **19 Dictionary, definition of *consumer***

16 *substitute*

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

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

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

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

7 **20 Dictionary, new definition of *destroy***

8 *insert*

9 *destroy* a record includes delete the record.

10 **21 Dictionary, definition of *guardian***

11 *substitute*

12 *guardian* means—

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

17 (b) for a legally incompetent person—

18 (i) a person who is—

19 (A) a legally appointed guardian of the legally
20 incompetent person; or

21 (B) an attorney, appointed under an enduring power of
22 attorney that has become operative, of the legally
23 incompetent person; and

24 (ii) who has power to make decisions about the medical
25 treatment or health care of the legally incompetent
26 person.

Schedule 1 Other amendments

(see s 3)

[1.1] Section 4B, note 1

substitute

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*).

[1.2] Sections 20 to 22

substitute

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

- 1 (d) the person makes the representation with the intention of
2 causing the other person—
3 (i) to give a consent under this Act; or
4 (ii) to do something without the consent required for it under
5 this Act.

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

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

- 10 (4) A person commits an offence if—

11 (a) the person represents to a consumer that the consumer is
12 legally required to consent to the provision of a health status
13 report to anyone; and

14 (b) the representation is false.

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

17 **21 Destroying etc health records and related material**

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

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

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

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

-
- 1 **22** **Unlawfully requesting or obtaining access to health**
2 **records**
- 3 (1) A person commits an offence if—
- 4 (a) the person threatens or intimidates someone else with the
5 intention of—
- 6 (i) causing the other person to give the person access to a
7 health record; or
- 8 (ii) otherwise obtaining access to a health record; and
- 9 (b) the person is not entitled to access to the health record.
- 10 Maximum penalty: 50 penalty units, imprisonment for 6 months or
11 both.
- 12 (2) A person commits an offence if—
- 13 (a) the person makes a representation to someone else; and
- 14 (b) the representation is false; and
- 15 (c) the person is reckless about whether the representation is false;
16 and
- 17 (d) the person makes the representation with the intention of—
- 18 (i) causing the other person to give the person access to a
19 health record; or
- 20 (ii) otherwise obtaining access to a health record; and
- 21 (e) the person is not entitled to access to the health record.
- 22 Maximum penalty: 50 penalty units, imprisonment for 6 months or
23 both.
- 24 (3) Subsection (2) does not apply if the representation is not false in a
25 material particular.

Schedule 1 Other amendments

Amendment [1.3]

- 1 **[1.3] Dictionary, definition of *false representation***
- 2 *omit*
-

Endnotes

- 1 Presentation speech**
Presentation speech made in the Legislative Assembly on 2005.
- 2 Notification**
Notified under the Legislation Act on 2005.
- 3 Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
-

© Australian Capital Territory 2005