



AUSTRALIAN CAPITAL TERRITORY

Health Records (Privacy and Access) Act 1997

No. 125 of 1997

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AUSTRALIAN CAPITAL TERRITORY

Health Records (Privacy and Access) Act 1997

No. 125 of 1997

An Act to provide for the privacy and integrity of, and access to, personal health information, and for related purposes

[Notified in ACT Gazette S420: 24 December 1997]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Health Records (Privacy and Access) Act 1997*.

Commencement

2. This Act commences on 1 February 1998.

Objects of Act

3. The objects of this Act are—
- (a) to provide for privacy rights in relation to personal health information;
 - (b) to provide for the integrity of records containing personal health information;

- (c) to provide for access to personal health information contained in health records;
- (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.

Interpretation

4. In this Act, unless the contrary intention appears—

“child”, in relation to a person, includes an adopted child or step-child of the person;

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

“Commissioner” means the Community and Health Services Complaints Commissioner appointed under section 8 of the *Community and Health Services Complaints Act 1993*;

“consent” includes implied consent;

“consumer” means an individual—

- (a) who uses, or has used, a health service; or
- (b) in relation to whom a health record has been created;

and includes—

- (c) a person authorised by the consumer under subsection 13 (7) to have access to the health record;
- (d) where the consumer is a young person or a legally incompetent person—a guardian of the consumer; and
- (e) where the consumer has died—a legal representative of the deceased consumer;

“deceased consumer” means a deceased person who, before his or her death, was a consumer;

“disability” has the same meaning as in the *Community and Health Services Complaints Act 1993*;

“factual matter”, in relation to a consumer, means—

- (a) a history of the health, an illness or a disability of the consumer;

- (b) any findings on an examination of the consumer in relation to the health, an illness or a disability of the consumer;
- (c) the results of any investigation into the health, an illness or a disability of the consumer;
- (d) a diagnosis, or preliminary diagnosis, of an illness or disability of the consumer;
- (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;

“false representation” means a representation that is—

- (a) false in a material particular; and
- (b) made—
 - (i) with knowledge that it is false in that particular; or
 - (ii) without belief that it is true in that particular;

“guardian” means—

- (a) in relation to a young person—a parent or legally appointed guardian of the young person; or
- (b) in relation to a legally incompetent person—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 who has power to make decisions about the medical treatment or health care of the legally incompetent person;

“health record” means any record—

- (a) held by a health service provider and containing personal information; or
 - (b) containing personal health information;
- and includes a part, or parts, of such a record;

“health service” means—

- (a) any activity that is intended or claimed (expressly or by implication), by the person performing 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 that, under the regulations, is an exempt service;

“health service provider” means a person (including a body corporate, government agency or other body) that provides a health service in the Territory;

“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 Territory;
- (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”, in relation to a consumer, means a person who—

- (a) is—
 - (i) a parent of the consumer;
 - (ii) a spouse or de facto spouse of the consumer; or
 - (iii) a child or sibling, at least 18 years of age, of the consumer; or
- (b) is—
 - (i) another relative of the consumer; or

(ii) a close friend of the consumer;

and a member of the same household as 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;

“Medical Board” means the Board established by section 7 of the *Medical Practitioners Act 1930*;

“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 health information”, in relation to a consumer, means any personal information—

- (a) relating to the health, an illness or a disability of the consumer; or
- (b) collected by a health provider in relation to the health, an illness or a disability of the consumer;

whether or not the information is recorded in a health record;

“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;

“record” means a record in documentary or electronic form that consists of or includes personal health information in relation to a consumer, and includes—

- (a) a photograph or other pictorial or digital representation of any part of the consumer;
- (b) test results, medical imaging materials and reports, and clinical notes, relating to the consumer;
- (c) a part, or parts, of any such record; and
- (d) a copy of any such record, part or parts;

but does not include research material that does not disclose the identity of the consumer;

“record-keeper” means a person (including a body corporate, government agency or other body) that has possession or control of a health record;

“Registration Board” means a Board specified in, or prescribed under, the definition of “Board” in subsection 4 (1) of the *Community and Health Services Complaints Act 1993*;

“sibling”, in relation to a person, means a brother, sister, half-brother, half-sister, adoptive brother, adoptive sister, step-brother or step-sister of the person;

“this Act” includes the regulations;

“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” means a person under 18 years of age, other than a person who is of sufficient age, and of sufficient mental and emotional maturity, to—

- (a) understand the nature of a health service; and
- (b) give consent to a health service.

PART II—PRIVACY PROVISIONS

The Privacy Principles

5. Subject to this Act, the following Privacy Principles have the force of law:

THE PRIVACY PRINCIPLES

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

1. A collector shall 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 shall 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 shall 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;
- (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;
- (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;
- (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 shall 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: Storage and security of personal health information

A record-keeper who has possession or control of a health record shall ensure that—

- (a) the record is protected, by such security safeguards as are reasonable in the circumstances, against—
 - (i) loss;
 - (ii) unauthorised access, use, modification or disclosure; and
 - (iii) other misuse; and
- (b) if the record is given to another person—everything reasonably within the power of the record-keeper is done to prevent unauthorised use or disclosure of any information contained in the record.

Principle 5: Information relating to records kept by record-keeper

1. A record-keeper who has possession or control of health records shall, 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;
 - (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 persons other than the consumer

1. A health service provider who is a member of a treating team may have access to the personal health information of a consumer so far as is reasonably necessary for the provision by that provider of a health service to that consumer.

2. If a person reasonably requires access, for the purpose of the management, funding or quality of a health service received, or being received, by a consumer, to personal health information relating to the consumer, the person may have such access, without the consent of the consumer, to the extent reasonably necessary for that purpose.

3. Except where required or authorised by—

- (a) a law of the Territory;
- (b) a law of the Commonwealth; or
- (c) an order of a court of competent jurisdiction;

a person or agency shall not require a consumer, whether directly or indirectly, to obtain or grant access to any health record relating to the consumer.

Principle 7: Alteration of health records

1. A person shall 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 shall 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 shall, 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;
- (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 shall 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 shall 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 shall—
 - (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 shall not use the information for any other purpose unless—
 - (a) the consumer has consented to use of the information for that other purpose;
 - (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;
 - (c) use of the information for that other purpose is required or authorised by—
 - (i) a law of the Territory;
 - (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 shall 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. Except where personal health information is being shared between members of a treating team only to the extent necessary to improve or maintain the consumer's health or manage a disability of the consumer, a record-keeper who has possession or control of a health record shall not disclose the information to a person or agency (other than the consumer) unless—

- (a) the consumer is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person or agency;
- (b) the consumer has consented to the disclosure;
- (c) 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 of another person;
- (d) the disclosure is required or authorised by—
 - (i) a law of the Territory (including this Act);
 - (ii) a law of the Commonwealth; or
 - (iii) an order of a court of competent jurisdiction; or
- (e) the disclosure of the information is necessary for the management, funding or quality of the health service received by the consumer.

2. In relation to the sharing of information among the treating team, unless it is obvious from the circumstances and context of the health service, the person in charge of the treating team shall inform the consumer about 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.

4. A person, body or agency to whom information is disclosed under clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

5. Where there is an emergency and a consumer is unable to give or withhold consent to the disclosure of personal health information, the treating health service provider may discuss relevant personal health information with an immediate family member of the consumer to the extent that it is reasonable and necessary to do so for the proper treatment of the consumer.

Principle 11: Transfer or closure of the practice of a health service provider

1. This Principle applies if the practice of a health service provider (in this Principle called the “provider”) is, or is proposed to be—

- (a) sold or otherwise transferred; or
- (b) closed down.

2. The provider or, if the provider is deceased, the legal representatives of the provider, shall—

- (a) publish a notice in a newspaper circulating in the locality of the practice stating that—
 - (i) the practice has been, or is about to be, transferred or closed down (as the case may be); and
 - (ii) the health records of the practice, other than those returned to a consumer or passed on to a nominated practitioner at the consumer’s request, will be transferred to a specified person (being a person to whom paragraph 3 (a) or (b) of this Principle applies) at a specified address; and
- (b) take such other steps as are practicable to inform every such consumer—
 - (i) that the practice has been, or is about to be, transferred or closed down (as the case may be); and

- (ii) about the arrangements (as stated in the notice under paragraph (a)) for dealing with those health records.

3. Not earlier than 21 days after giving notice in accordance with clause 2 of this Principle, the person or persons giving the notice shall transfer each health record held by, or on behalf of, the practice—

- (a) to the health service provider (if any) who takes over the practice;
- (b) to a competent record-keeper for safe storage in the Territory (until such time, if any, as the record is destroyed as part of a program of archival destruction); or
- (c) to the consumer to whom the record relates or to a practitioner nominated by that consumer.

4. Subject to the restriction stated in clause 3 of this Principle, a person shall comply with the requirements of this Principle as soon as practicable.

5. Despite any other provision of these Principles, a person who transfers a health record in accordance with this Principle does not, by so doing, contravene these Principles.

Principle 12: Transfer of consumer to another health service provider or of health service provider to another practice

1. Where—

- (a) a consumer transfers from one health service provider to another; or
- (b) a health service provider transfers from one practice to another and a consumer continues to see the provider;

the record-keeper shall, on request, provide the consumer's health record, or a copy or written summary of it—

- (c) if paragraph (a) applies—to the health service provider to whom the consumer has transferred; or
- (d) if paragraph (b) applies—to the relevant health service provider.

2. The amount of a fee that is chargeable for providing, in accordance with clause 1 of this Principle, a copy of a health record, or a written summary of a health record, is—

- (a) if the Minister determines, under section 34, a fee for the purposes of this Principle—an amount not exceeding the amount of the fee so determined; or

- (b) in any other case—nil.

Compliance with the Privacy Principles

6. (1) A person to whom a Privacy Principle applies shall 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;
- (b) a law of the Commonwealth; or
- (c) an order of a court of competent jurisdiction.

Consent by consumer to obtaining personal health information etc. or health status report

7. (1) A person shall not, without the consent of the consumer—

- (a) request a health status report, in relation to a consumer, from a person other than the consumer; or
- (b) provide a health status report, in relation to a consumer, to a person other than the consumer.

(2) A person shall not, without the consent of the consumer, obtain a health status report in relation to a consumer from a health service provider.

(3) Where a person requests or obtains the consent of a consumer to requesting or obtaining a health status report in relation to the consumer, the person shall—

- (a) inform the consumer in writing of the right of the consumer to request a copy of the health status report;
- (b) if the consumer so requests—as soon as practicable give a copy of the health status report to the consumer; and
- (c) if the consumer gives to the person a statement containing comments by the consumer in relation to the health status report—
 - (i) give due consideration to the comments; and
 - (ii) retain the statement for as long as the person retains the report.

(4) A consent given by a consumer for the purposes of subsection (1) or (2) shall—

- (a) be in writing and signed—
 - (i) if the consumer is a young person or a legally incompetent person—by a guardian of the consumer; or
 - (ii) 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—specify the name of the health service provider.

(5) This section does not apply to the extent, if any, that a health status report is requested, obtained or provided in accordance with—

- (a) a law of the Territory;
- (b) a law of the Commonwealth; or
- (c) an order of a court of competent jurisdiction.

PART III—ACCESS TO PERSONAL HEALTH INFORMATION

Access otherwise than under this Part

8. (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, under section 15 or 17, on giving access to a health record; and
 - (b) except as stated in paragraph (a)—despite any other provision of this Part.

This Part not to prevent alternative arrangements

9. (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 first-mentioned 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 first-mentioned 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.

Statement of principle regarding right of access

10. (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;
 - (ii) a law of the Commonwealth; or
 - (iii) an order of a court of competent jurisdiction; or
- (b) to the extent that section 14, 15 or 17 has a contrary application.

(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 (5), where the record-keeper receives a request under section 12, the record-keeper shall—
 - (a) in the case of a request that specifies access of a kind mentioned in paragraph (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 paragraph (3) (c)—
 - (i) if subparagraph (3) (c) (i) applies—provide access in accordance with paragraph (3) (c); or
 - (ii) if subparagraph (3) (c) (i) does not apply—nominate a suitable health service provider for the purposes of paragraph (3) (c).
- (5)** The right of access is subject, in the case of access in a way mentioned in paragraph (3) (b) or (c), to the payment of any fee or charge payable under this Act.
- (6)** Where the consumer is under 18 years of age, the right of access conferred by subsection (1) is exercisable—
 - (a) if the consumer does not have the status under this Act of a young person—by the consumer personally; or
 - (b) in any other case—on behalf of the consumer by a guardian of the consumer.
- (7)** 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.

Provision of health services and keeping of records—terms and conditions

11. (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 Territory;
 - (ii)** the contract has been, or is to be, performed wholly or partly in the Territory;
 - (iii)** the consumer is present, or resides, in the Territory 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 Territory, the record-keeper shall 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 shall 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 the purposes of this section, it is immaterial whether—

- (a)** the health service in question was provided in the Territory; or
- (b)** except in the case of subsection (3)—the health record in question is kept or located in the Territory.

(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.

Requests for access

12. (1) A consumer who has a right of access under section 10 to a health record may ask the record-keeper for access to the record.

(2) A request shall—

- (a) state the name and, unless it is already known to the record-keeper, the address, of the consumer;
- (b) sufficiently identify the health record to which access is sought;
- (c) specify the way in which the consumer wishes to have access, being a way mentioned in subsection 10 (3); and
- (d) be in writing if it is—
 - (i) a request by a guardian of a young person unless, in the period of 12 months before making the request, the guardian consented to the treatment of the young person that gave rise to the health record that is the subject of the request;
 - (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.

Response to request

13. (1) This section applies if a record-keeper receives a request under section 12, other than an oral request in respect of which the record-keeper has made a request under paragraph 12 (3) (a), in respect of a health record (in this section called the “record”).

(2) Within 14 days after receiving a request, the record-keeper shall—

- (a) unless paragraph (b) or (c) applies, either—
 - (i) give access to the record in accordance with subsections (4) and (5); or
 - (ii) if the Minister has determined, under section 34, a fee payable for giving such access—give a notice in writing to the consumer stating that the record-keeper will give access to the record on payment of a specified fee (being a fee not exceeding the fee so determined);

- (b) if the record-keeper relies on a ground specified in section 14 for non-production of the record or a part of the record—give a notice in writing to the consumer stating the ground for non-production of the record; or
- (c) if, on a ground specified in section 15 or 17, the record-keeper is prohibited from giving access to the record or a part of the record—give a notice in writing to the consumer stating the ground on which the record-keeper is so prohibited.

(3) If the record-keeper gives a notice under paragraph (2) (b) or (c) that relates only to a part of the record, the record-keeper shall comply with paragraph (2) (a) in respect of the remainder of the record.

(4) Subject to subsection (8), the time within access shall be given is—

- (a) if—
 - (i) the record-keeper has given a notice under subparagraph (2) (a) (ii); and
 - (ii) the fee specified in the notice is paid;the later of—
 - (iii) 7 days after receiving payment of the fee; or
 - (iv) 30 days after receiving the request; or

(b) if the record-keeper has not given a notice under subparagraph (2) (a) (ii)—30 days after receiving the request.

(5) Access shall be given as follows:

- (a) in the case of a request to inspect the record, or 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 Territory, specified in a notice in writing given to the consumer;
- (b) in the case of a request to receive a copy of the record—by giving to the consumer—
 - (i) a copy of the record;
 - (ii) if the consumer agrees—an accurate summary of the record; or
 - (iii) if the record, or a part of the record, was made before the date of 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) in the case of a request to view the record and have its content explained—by giving the consumer a 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 health information at a time, and at a place in the Territory, specified in the notice; or
 - (ii) in any other case—the name and address of a suitable health service provider who will be available in the Territory with the record, by arrangement with the consumer, to explain the health information.

(6) A person giving an explanation for the purposes of subparagraph (5) (c) (i) or (ii) may make a charge for the service that does not exceed the amount of the person's usual charge for a consultation of a comparable duration.

(7) Where a consumer—

- (a) has a right of access; and
- (b) has given an authority in writing, signed by the consumer, to the record-keeper to provide access to a person named in the authority;

the access shall be given to the person so named.

(8) The record-keeper is entitled, before giving access to the record to a person (in this subsection called the “relevant person”), to require—

- (a) proof of identity of the relevant person;
- (b) if another person has authorised the access to be given to the relevant person—proof of identity and authority of that other person; and
- (c) if the consumer is a legally incompetent person, a young person or a deceased consumer—proof that the relevant person or, if paragraph (b) applies, the person authorising the relevant person, is—
 - (i) in the case of a legally incompetent person or a young person—a guardian of the person; or
 - (ii) in the case of a deceased consumer—a legal representative of the deceased consumer.

- (9) A record-keeper is taken to have refused access to the record—
- (a) if the record-keeper fails to comply with a requirement of this section; or
 - (b) in the case of a notice given by the record-keeper under paragraph (5) (a) or subparagraph (5) (c) (i)—
 - (i) if the notice does not specify a date and time that, in all the circumstances, are reasonable; or
 - (ii) if the record-keeper unreasonably fails to allow inspection of the record, or to give a reasonable explanation, as the case requires, in accordance with the notice; or
 - (c) in the case of a notice given by the record-keeper under subparagraph (5) (c) (ii)—if the health service provider specified in the notice unreasonably fails—
 - (i) to make an arrangement with the consumer to explain the health information; or
 - (ii) to comply with an arrangement so made.

Grounds for non-production

14. The grounds for non-production 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;
 - (ii) a law of the Commonwealth; or
 - (iii) an order of a court of competent jurisdiction.

No access to health record where risk to life or health of consumer or another person

15. A record-keeper shall not give access to a health record or part of a health record 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.

Refusal on ground of risk to life or health of consumer

16. (1) This section applies if a record-keeper has given a notice under paragraph 13 (2) (c), in respect of a health record, on the ground stated in paragraph 15 (a).

(2) If the record-keeper considers that it would be desirable for a suitably qualified health service provider to discuss the health record with the consumer, the record-keeper may include in, or attach to, the relevant notice to the consumer under paragraph 13 (2) (c), an offer—

- (a) if the record-keeper is a suitably qualified health service provider—to discuss the health record with the consumer; or
- (b) whether or not paragraph (a) applies—to arrange for a specified health service provider, being a provider who practises in the Territory, is suitably qualified and has consented to being so nominated, to do so.

(3) Where—

- (a) the record-keeper does not make such an offer;
- (b) if such an offer is made—the consumer does not accept it; or
- (c) if such a discussion is held—the consumer is not satisfied with the outcome of the discussion;

the consumer may give a notice in writing to the record-keeper nominating, for the purposes of this section, a health service provider who has consented to being so nominated.

(4) Subject to subsection (5), if—

- (a) a record-keeper receives a notice under subsection (3) 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 under this section as the nominated health service provider;

the record-keeper may, within 14 days after receiving the notice, give a notice in writing to the consumer—

- (c) stating that the record-keeper objects to the nominated health service provider and specifying the ground of the objection; and
- (d) if the record-keeper considers it appropriate to do so—suggesting the class of health service providers from which a health service provider should be nominated.

- (5)** Subsection (4) does not apply in any of the following cases:
- (a) where—
 - (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 with the same Board;
 - (b) where the nominated health service provider is registered with the Medical Board and has the ability to understand and interpret the health record;
 - (c) in any other case—where 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.
- (6)** The nomination of a health service provider lapses if—
- (a) the record-keeper gives a notice in accordance with subsection (4); or
 - (b) the nominated health service provider—
 - (i) dies;
 - (ii) ceases to be a health service provider; or
 - (iii) refuses, or fails within a reasonable time, to act.
- (7)** If a nomination lapses, the consumer may make another nomination under subsection (3).
- (8)** If a record-keeper receives a notice under subsection (3) nominating a health service provider, the record-keeper shall give the health record, or a copy of it, to the nominated health service provider within 14 days after receiving the notice unless, within that period—
- (a) the record-keeper gives a notice under subsection (4) in respect of the first-mentioned notice; or
 - (b) the first-mentioned notice lapses.
- (9)** The functions of a nominated health service provider are—
- (a) to form an opinion on the validity or otherwise of the notice referred to in subsection (1);
 - (b) if the nominated health service provider thinks 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 then—
 - (i) if the provider is satisfied that to do so would not constitute a significant risk to the life or the physical, mental or emotional health of the consumer—to allow the consumer to inspect the health record or, if the consumer so wishes and the record-keeper agrees, to have a copy of it; or
 - (ii) if the provider is not so satisfied—to decline to allow the consumer to have access to the health record.

No access to health record where material given in confidence

17. (1) A record-keeper shall 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;
- (b) a guardian of the consumer; or
- (c) 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;
- (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.

PART IV—COMPLAINTS AND REQUESTS TO REVIEW

Grounds

18. (1) A complaint may be made to the Commissioner about an act or omission that is alleged to contravene the Privacy Principles in relation to a consumer.

(2) In the case of a complaint about an act or omission that is alleged to contravene the Privacy Principles in relation to a deceased consumer, it is immaterial whether the contravention occurred, or is alleged to have occurred, in the lifetime or after the death of the deceased consumer.

(3) A complaint may be made to the Commissioner to review an act or omission that is alleged to constitute a refusal to give access in accordance with this Act to a health record relating to a consumer.

(4) A request may be made to the Commissioner to review a claim by a record-keeper in respect of a health record that there is—

- (a) a ground under section 14 for non-production of the health record; or
- (b) a ground under section 15 or 17 on which the record-keeper is prohibited from giving access to the health record.

(5) A complaint or request to review may be made by—

- (a) unless paragraph (b) applies—the consumer;
- (b) if the consumer is a young person or a legally incompetent person—the guardian of the consumer;
- (c) if the complaint or request concerns a health record relating to a deceased consumer—the legal representative of the deceased consumer; or
- (d) a person approved by the Commissioner to make the complaint or request on the consumer's behalf.

Application of the *Community and Health Services Complaints Act 1993*

19. (1) A complaint under subsection 18 (1) or (3) has effect as a complaint for the purposes of the *Community and Health Services Complaints Act 1993* (in this section called the “Complaints Act”).

(2) A request to review under subsection 18 (4) has effect as a request to review for the purposes of the Complaints Act.

(3) A complaint or request to review under section 18 shall—

- (a) comply with the relevant requirements of the Complaints Act; and

- (b) be dealt with in accordance with the Complaints Act.

PART V—OFFENCES

Unlawfully requiring consent etc.

20. (1) A person shall not, by any unlawful threat or intimidation, or by any false representation, require or purport to require another person—

- (a) to give a consent under this Act; or
- (b) to do, without the requisite consent, any act for which a consent under this Act is required.

(2) A person shall not make a false representation to a consumer that the consumer is legally required to consent to the provision of a health status report to any person.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

Unlawful destruction etc. or removal of health records

21. (1) A person shall not destroy, deface or damage a health record or related material with intent to evade or frustrate the operation of this Act.

(2) A person shall not remove a health record from the Territory with intent to evade or frustrate the operation of this Act.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

Unlawfully requesting or obtaining access to health records

22. A person shall not, by any unlawful threat or intimidation, or by any false representation, request or obtain access to a health record.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

Persons not to be unlawfully penalised

23. (1) A person shall not, by any unlawful threat or intimidation, or by any false representation, persuade or attempt to persuade another person—

- (a) to refrain from making or pursuing—
 - (i) a request under Part III for access;
 - (ii) a complaint to the Commissioner under subsection 18 (1) or (3); or
 - (iii) a request to review to the Commissioner under subsection 18 (4); or
- (b) to withdraw any such request, complaint or request to review.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(2) It is a defence to a prosecution under subsection (1) if the defendant proves that—

- (a) he or she had another ground for engaging in the conduct complained of; and
- (b) the ground was a reasonable one.

Conduct of directors, servants and agents

24. (1) Where, for the purposes of the prosecution of an offence against this Part, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to prove that—

- (a) a director, servant or agent of the body corporate, or a servant or agent of the person—
 - (i) engaged in that conduct; and
 - (ii) had that state of mind; and
- (b) that conduct was within the scope of the actual or apparent authority of that director, servant or agent.

(2) In subsection (1), a reference to the state of mind of a body corporate or person includes a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body corporate or person; and

(b) the reasons of the body corporate or person for the intention, opinion, belief or purpose.

(3) Any conduct engaged in—

(a) on behalf of a body corporate by a director, servant or agent of the body corporate; or

(b) on behalf of a natural person by a servant or agent of the person;

within the scope of the actual or apparent authority of that director, servant or agent, is taken, for the purposes of such a prosecution, to have been engaged in also by the body corporate or person.

(4) Subsection (3) does not apply if the body corporate or person proves that it, he or she took reasonable precautions, and exercised due diligence, to avoid the conduct.

(5) Where—

(a) a natural person is convicted of an offence against this Part; and

(b) the person would not have been convicted of the offence but for subsections (1) and (3);

the person is not liable to be punished by imprisonment for that offence.

(6) In this section, a reference to a director of a body corporate shall be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(7) In this section, a reference to engaging in conduct shall be read as including a reference to failing or refusing to engage in conduct.

PART VI—MISCELLANEOUS

Young persons

25. Subject to this Act, where a consumer is a young 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.

Legally incompetent persons

26. (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.

Deceased consumers

27. (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.

Legal professional privilege not affected by this Act

28. Despite any other section, this Act does not—

- (a) apply in relation to a document that is the subject of legal professional privilege; or
- (b) affect the law or practice relating to legal professional privilege.

Defect or invalidity—protection if person acts in good faith etc.

29. 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).

Unqualified record-keeper to obtain and act on expert advice

30. If a record-keeper lacks the skill or training necessary to perform a function under this Act, the record-keeper shall, 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.

Jurisdiction of Magistrates Court

31. (1) Application may be made to the Magistrates Court (in this section called the “Court”) for—

- (a) a declaration that, for the purposes of this Act, a person has, or does not have, the status under this Act of—
 - (i) a legally incompetent person;
 - (ii) a guardian of a legally incompetent person;
 - (iii) a young person;
 - (iv) a guardian of a young person; or
 - (v) a legal representative of a deceased person;
- (b) a declaration that, for the purposes of this Act, anything done or purportedly done under this Act was, or was not, validly done;
- (c) an order restraining a person from destroying, defacing or damaging, or removing from the Territory, any health record or related material; or
- (d) such other order (including a restraining order) in relation to a matter arising under this Act as the Court may think proper to make.

(2) An application may be made by—

- (a) the 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).

(4) The Court shall not make, vary or revoke a restraining order in respect of a person unless it is proved that the application for the Court to do so has been served on, or brought to the notice of, the person.

(5) Despite subsection (4), if the Court is satisfied by oral or affidavit evidence that the interests of justice so require, the Court may make, vary or revoke an interim restraining order in the absence of such proof.

(6) If the Court makes a restraining order (including an interim restraining order), the Registrar of the Court shall cause a copy of the order to be served as follows:

- (a) if practicable, and subject to paragraph (b)—on the respondent personally;
- (b) if the Court makes an order for the substituted or other service of such a copy—in accordance with that order.

(7) In relation to proceedings and orders on, or arising out of, an application for a restraining order (including an interim restraining order), the following provisions of the *Magistrates Court Act 1930* apply so far as they are reasonably capable of doing so:

- (a) section 206B;
- (b) section 206E, other than paragraph (1) (f);
- (c) section 206G;
- (d) subsections 206H (1), (3), (4) and (5) and 206J (1);
- (e) sections 206L, 206M and 206N.

Appeals

32. (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) Part XIXA (other than sections 387 and 388) of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to such an appeal.

(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.

Court orders under other laws

33. (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 shall have regard to the relevant provisions of this Act.

Fees

34. The Minister may, by notice in the *Gazette*, determine fees for the purposes of this Act.

Regulations

35. (1) The Executive may make regulations for the purposes of this Act.

- (2) In particular, the regulations may—
 - (a) extend, by not more than 21 days, the time within which something shall or may be done for the purposes of this Act;
 - (b) make provision in respect of the retention and transfer of health records;
 - (c) prescribe qualifications to be held, or other requirements to be met, by record-keepers for the purpose of having possession or control of health records;
 - (d) prescribe forms of request in writing for the purposes of paragraph 12 (2) (d) or (3) (a); and
 - (e) prescribe penalties not exceeding—
 - (i) if the offender is a natural person—10 penalty units; or
 - (ii) if the offender is a body corporate—50 penalty units;for offences against the regulations.

Amendments of other Acts

36. The Acts specified in the Schedule are amended as set out in the Schedule.

Saving

37. This Act shall not 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

Section 36

AMENDMENTS OF OTHER ACTS

Freedom of Information Act 1989

Section 6—

After subsection (1) insert the following subsections:

“(1A) An agency is exempt from the operation of this Act in respect of documents that are health records within the meaning of the *Health Records (Privacy and Access) Act 1997* (in this section called ‘the Health Records Act’).

“(1B) The Community and Health Services Complaints Commissioner (within the meaning of the Health Records Act) is exempt from the operation of this Act in respect of documents created or received by the Commissioner in connection with—

- (a) a complaint made to the Commissioner under subsection 18 (1) or (3) of the Health Records Act;
- (b) a request to review made to the Commissioner under subsection 18 (4) of the Health Records Act; or
- (c) the performance of a function or the exercise of a power under the *Community and Health Services Complaints Act 1993* in relation to such a complaint or request to review.”.

Community and Health Services Complaints Act 1993

Subsection 4 (1) (definition of “Board”)—

- (a) Omit from paragraph (ha) “or”.
- (b) Add at the end of paragraph (hb) “or”.

Subsection 4 (1)—

Insert the following definition:

“ ‘Health Records Act’ means the *Health Records (Privacy and Access) Act 1997*;”.

SCHEDULE—continued

Section 9—

- (a) After subparagraph (i) (ii) insert the following subparagraph:
“(ia) the Health Records Act;”.
- (b) After paragraph (j) insert the following paragraph:
“(ja) to perform the functions and exercise the powers conferred on the Commissioner by the Health Records Act;”.
- (c) Omit from paragraph (k) “complaint”, substitute “complaint under this Act, or a complaint or request to review under section 18 of the Health Records Act,”.

Subsection 23 (1)—

After “complaint received” insert “under Division 1, or under subsection 18 (1) or (3) of the Health Records Act,”.

Section 28—

After subsection (1) insert the following subsection:

“(1A) In the case of a complaint under subsection 18 (1) or (3) of the Health Records Act, subsection (1) has effect as if paragraphs (a) and (b) were omitted and the following paragraphs were substituted:

- ‘(a) the complainant is not entitled, under the Health Records Act, to make the complaint;
- (b) the complaint does not disclose a ground of complaint referred to in subsection 18 (1) or (3) of the Health Records Act;’ .”.

New Part IVA—

After section 39 insert the following Part:

“PART IVA—REQUESTS TO REVIEW UNDER THE HEALTH RECORDS ACT

Application of this Part

“39A. This Part applies in relation to a request to review under subsection 18 (4) of the Health Records Act.

Formal requirements

- “39B. (1) A request to review shall—
- (a) be in writing;

SCHEDULE—continued

- (b) be signed by the person making it; and
- (c) set out that person's name and address.

“(2) The Commissioner may accept a request to review that fails to comply with subsection (1).

Procedure on receipt of request to review

“39C. (1) The Commissioner shall consider a request to review, and for that purpose the Commissioner may make any appropriate enquiries and seek any relevant information.

“(2) In considering a request to review, the Commissioner shall—

- (a) take into account the objects and provisions, so far as material, of the Health Records Act; and
- (b) refrain from making a decision that is adverse or unfavourable to a person unless—
 - (i) the person has been given a fair opportunity to make representations to the Commissioner in respect of the matter; and
 - (ii) the Commissioner has given due consideration to any representations so made.

“(3) If—

- (a) the request to review involves a claim in respect of a health record on the ground stated in paragraph 15 (a) of the Health Records Act; and
- (b) the Commissioner forms the opinion that the Commissioner should not proceed with considering the request to review because the person making the request has not made adequate use of the procedure specified in section 16 of that Act;

the Commissioner may—

- (c) give a notice in writing to the person setting out—
 - (i) the Commissioner's opinion accordingly;
 - (ii) any comments or suggestions that the Commissioner considers may be of assistance to the person; and
 - (iii) a summary of the operation, in relation to the matter, of subsection (4); and

SCHEDULE—continued

- (d) give a copy of the notice, with any modifications that the Commissioner considers appropriate, to any other person who, in the Commissioner’s opinion, has a proper interest in receiving it.

“(4) Where the Commissioner gives a notice under paragraph (3) (c), the Commissioner shall not proceed with considering the request to review until the Commissioner is satisfied that—

- (a) the person making the request to review has made adequate use of that procedure and that the matter is not resolved; or
- (b) the use of that procedure by the person is impracticable or, for some other reason, would be unlikely to resolve the matter.

Withdrawal of request to review

“39D. (1) The person who made a request to review may, at any time, withdraw the request by notice in writing to the Commissioner.

“(2) Where a request is withdrawn, the Commissioner shall—

- (a) if the relevant record-keeper (within the meaning of the Health Records Act) has been informed of the request—within 14 days, inform the record-keeper of the withdrawal; and
- (b) subject to section 40—take no further action in relation to the request.

Decision in relation to a request to review

“39E. (1) At the conclusion of the Commissioner’s consideration of a request to review, the Commissioner shall—

- (a) make a decision in respect of the request; and
- (b) give a copy of the decision to the person making the request and to any other person who appears to the Commissioner to be affected by the decision.

“(2) The Commissioner may give a copy of the decision to any other person to whom, or body to which, in the Commissioner’s opinion the decision ought to be given.

Magistrates Court may review decision

“39F. (1) Application may be made to the Magistrates Court for review of a decision under paragraph 39E (1) (a).

“(2) In reviewing a decision, the Magistrates Court shall proceed by way of a hearing *de novo*, but may have regard to the proceedings (including any evidence given) before the Commissioner.

SCHEDULE—continued

Appeals

“39G. (1) An appeal to the Supreme Court may be brought as of right from an order of the Magistrates Court on an application under section 39F.

“(2) Part XIXA (other than sections 387 and 388) of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to such an appeal.”.

Subsection 40 (1)—

After paragraph (a) insert the following paragraph:

“(aa) a request to review under subsection 18 (4) of the Health Records Act;”.

New section 41A—

After section 41 insert the following section in Division 1 of Part V:

Requests to review—application of this Part

“41A. In the case of an investigation of a request to review—

(a) Division 2 of this Part applies—

- (i) with the omission of references to ‘complaint’ and the substitution of references to ‘request to review’; and
- (ii) with the omission of references to ‘complainant’ and the substitution of references to ‘person making the request to review’; and

(b) Division 3 of this Part does not apply.”.

Paragraph 73 (1) (a)—

Omit “section 22”, substitute “section 22 or a complaint under subsection 18 (1) or (3) of the Health Records Act”.

Subsection 73 (2)—

After “this Act” (first occurring) insert “or subsection 18 (1) or (3) of the Health Records Act”.

Paragraph 74 (a)—

Omit “this Act”, substitute “this Act or subsection 18 (1) or (3) of the Health Records Act”.

SCHEDULE—continued

Paragraphs 74 (c) and (d)—

After “report” insert “or decision”.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 13 November 1997]