

2015

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Health Legislation Amendment Bill 2015

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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Health Legislation Amendment Bill 2015

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Health Legislation Amendment Act 2015*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

8 **3 Legislation amended**

9 This Act amends the following legislation:

- 10 • [Civil Law \(Wrongs\) Act 2002](#)
11 • [Health Act 1993](#)
12 • [Health Records \(Privacy and Access\) Act 1997](#).

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

Part 2 Civil Law (Wrongs) Act 2002

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

insert

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

Examples—opioid drugs

- heroin
- methadone
- morphine

1 **Part 3 Health Act 1993**

2 **5 Local Health and Hospitals Network**
3 **Part 3A**

4 *omit*

5 **6 Dictionary, definition of *council***

6 *omit*

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

9 *omit*

10 the council (see s 19E),

11 **8 Legislation repealed**

12 All legislative instruments made under the *Health Act 1993*, part 3A
13 are repealed.

1 **Part 4** **Health Records (Privacy and**
2 **Access) Act 1997**

3 **9 Consent by consumer to obtaining health status report**
4 **Section 7 (4) (a) (i)**

5 *omit*

6 young person or

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

8 *insert*

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

12 **11 Statement of principle regarding right of access**
13 **New section 10 (4A) and (4B)**

14 *insert*

15 (4A) However, if the health services commissioner receives a request
16 under section 12 in relation to a health record prepared by a health
17 service provider, the health services commissioner—

18 (a) need not give access in accordance with subsection (3) (a), (b)
19 or (c); and

20 (b) may instead refer the request to the health service provider.

21 (4B) If the health services commissioner refers a request to a health
22 service provider under subsection (4A) (b), the health service
23 provider is taken to have received it under section 12.

- 1 **12 Section 10 (6)**
- 2 *omit*
- 3 **13 New section 10A**
- 4 *insert*
- 5 **10A Statement of principle regarding right of access—**
- 6 **children and young people**
- 7 The right of access to a health record conferred by section 10 (1) is
- 8 exercisable—
- 9 (a) for a consumer who is a child—on behalf of the child by the
- 10 person with parental responsibility for the child; and
- 11 (b) for a consumer who is a young person—
- 12 (i) if the young person has sufficient maturity and
- 13 developmental capacity to understand the nature of the
- 14 young person’s request to access a health record and the
- 15 nature of the record—by the young person personally; or
- 16 (ii) in any other case—on behalf of the young person by the
- 17 person with parental responsibility for the young person.
- 18 **14 Requests for access**
- 19 **Section 12 (1)**
- 20 *after*
- 21 section 10
- 22 *insert*
- 23 or section 10A

1 **15 Section 12 (2) (d) (i)**

2 *substitute*

- 3 (i) a request by a person with parental responsibility for a
4 child or young person unless, in the 12 months before
5 making the request, the person with parental
6 responsibility consented to the treatment of the child or
7 young person that gave rise to the health record that is the
8 subject of the request; or

9 **16 Response to request for access**
10 **New section 13 (2) (aa)**

11 *before paragraph (a), insert*

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

17 **17 Section 13B heading**

18 *substitute*

19 **13B Giving access to health records—generally**

20 **18 Section 13B (1)**

21 *after*

22 person

23 *insert*

24 (other than a child or young person)

1 **19 Section 13B (3) (c)**

2 *omit*
3 a young person,

4 **20 Section 13B (3) (c) (i)**

5 *omit*
6 young person or

7 **21 New section 13BA**

8 *insert*

9 **13BA Giving access to health records—children and young**
10 **people**

- 11 (1) This section applies if a record keeper must give a child or young
12 person access to a health record.
- 13 (2) Access to a health record must be given—
- 14 (a) if the record keeper has given a notice under
15 section 13 (2) (c) (ii) and the fee stated in the notice has been
16 paid—no later than the later of the following:
- 17 (i) 1 week after the day the fee is paid;
- 18 (ii) 30 days after the day the record keeper received the
19 request for access to the health record; or
- 20 (b) if the record keeper has not given a notice under
21 section 13 (2) (c) (ii)—no later than 30 days after the day the
22 record keeper receives the request for access to the health
23 record.

- 1 (3) However, before giving access to the record to a person (the
2 *relevant person*), the record keeper must take reasonable steps to
3 require evidence of, and be satisfied about—
- 4 (a) the relevant person's identity; and
- 5 (b) if someone else has authorised the access to be given to the
6 relevant person—the identity and authority of the other person;
7 and
- 8 (c) if the consumer is a child or a young person who does not have
9 sufficient maturity and developmental capacity to understand
10 the nature of the young person's request to access the record
11 and the nature of the record—the fact that the relevant person
12 (or, if paragraph (b) applies, the person authorising the relevant
13 person) is the person with parental responsibility for the child
14 or young person.
- 15 (4) Before giving access to a relevant person who is a young person, the
16 record keeper may require that the young person—
- 17 (a) meet with the record keeper so that the record keeper can
18 explain the nature of the record to the young person; or
- 19 (b) consent to a person with parental responsibility for the young
20 person attending that meeting.
- 21 (5) Before giving access to a relevant person who has parental
22 responsibility for a young person, the record keeper may—
- 23 (a) require that the young person consent to the access; or
24 (b) discuss the access with the young person.
- 25 (6) If the record keeper requires evidence under this section before
26 giving access to a health record and the evidence is not provided or
27 does not satisfy the record keeper, the record keeper need not
28 provide access to the health record.

1 **22 Access taken to have been refused**
2 **Section 13D (a) (iii)**

3 *after*
4 health records
5 *insert*
6 —generally

7 **23 No access to health record where material given in**
8 **confidence**
9 **New section 17 (2) (ba)**

10 *insert*
11 (ba) a person with parental responsibility for the consumer; or

12 **24 Section 25 heading**

13 *substitute*

14 **25 Children and young people**

15 **25 Section 25**

16 *omit*
17 where a consumer is a young person,
18 *substitute*
19 if a consumer is a child or young person,

1 **26 Section 25 (a)**

2 *omit*

3 a guardian of

4 *substitute*

5 a person with parental responsibility for

6 **27 Jurisdiction of Magistrates Court**
7 **Section 31 (1) (a) (iii) and (iv)**

8 *substitute*

9 (iii) a child or young person; or

10 (iv) a young person who has or does not have sufficient
11 maturity and developmental capacity to understand the
12 nature of the young person's request to access a health
13 record relating to the young person and the nature of the
14 record; or

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

17 **28 The privacy principles**
18 **Schedule 1, principle 10, clause 4**

19 *omit*

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

21 *substitute*

22 the consumer's carer

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

2 *substitute*

3 (a) the consumer cannot give or withhold consent to the
4 disclosure, whether or not because the consumer is a—

5 (i) child or a young person who does not have sufficient
6 maturity and developmental capacity to understand the
7 nature of the young person's request to access a health
8 record and the nature of the record; or

9 (ii) legally incompetent person; and

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

11 *substitute*

12 (i) if the consumer is a child or a young person who does not
13 have sufficient maturity and developmental capacity to
14 understand the nature of the young person's request to
15 access a health record and the nature of the record—by a
16 person with parental responsibility for the consumer; or

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

19 **31 Schedule 1, principle 10, clause 10**

20 *omit*

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

22 *substitute*

23 the consumer's carer

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

2 *omit*

3 young person

4 *substitute*

5 child, young person who does not have sufficient maturity and
6 developmental capacity to understand the nature of the young
7 person's request to access the health record and the nature of the
8 record

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

10 *omit*

11 record keeper's opinion

12 *substitute*

13 provider's opinion

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

15 *substitute*

16 (a) the consumer cannot give or withhold consent to the
17 disclosure, whether or not because the consumer is—

18 (i) a child or a young person who does not have sufficient
19 maturity and developmental capacity to understand the
20 nature of the young person's request to access the health
21 record and the nature of the record; or

22 (ii) a legally incompetent person; and

35 Schedule 1, principle 10, new clause 12

after the note, insert

12 In this principle:

carer, of a consumer, means a person who gives care, support or assistance to the consumer but does not include—

- (a) a person who gives short-term care, support or assistance to the consumer; or
- (b) a person who gives care, support or assistance to the consumer—
 - (i) under a commercial arrangement, or an arrangement that is substantially commercial; or
 - (ii) in the course of doing voluntary work for a charitable, welfare or community organisation; or
 - (iii) as part of a course of education or training; or

Examples—people not included as carers

- 1 Yiannis is the principal of Haig Park Primary School. Although Yiannis owes a duty of care to the students at Haig Park Primary School, Yiannis is not a carer for the purposes of principle 10.
- 2 The ACAT makes an order under the *Guardianship and Management of Property Act 1991*, s 7 (2) appointing Tash as a guardian for Olympia. Even though Tash has a guardianship order in relation to Olympia, Tash is not a carer for the purposes of principle 10. Tash would need to give Olympia care, support or assistance to be a carer.

- (c) a person just because the person—
 - (i) is the domestic partner, parent, child or other relative, or guardian of the consumer; or
 - (ii) lives with the consumer.

36 Dictionary, definition of *child*

substitute

child—

- (a) means a person who is under 12 years old; and
- (b) in relation to a person, includes an adopted child or stepchild of that person.

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

substitute

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

38 Dictionary, definition of *guardian*

substitute

guardian, for a legally incompetent person, means—

- (a) a person who is—
 - (i) a legally appointed guardian of the legally incompetent person; or
 - (ii) an attorney, appointed under an enduring power of attorney that has become operative, of the legally incompetent person; and
- (b) a person who has power to make decisions about the medical treatment or health care of the legally incompetent person.

1 **39 Dictionary, new definition of *person with parental***
2 ***responsibility***

3 *insert*

4 *person with parental responsibility*, for a child or young person,
5 means a parent or someone else with parental responsibility for the
6 child or young person under the *Children and Young People*
7 *Act 2008*, division 1.3.2.

8 **40 Dictionary, definition of *young person***

9 *substitute*

10 *young person*—see the *Children and Young People Act 2008*,
11 section 12.

Endnotes

1 Presentation speech

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

2 Notification

Notified under the [Legislation Act](#) on 2015.

3 Republications of amended laws

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