



# Health Records (Privacy & Access) Act 1997



**Information for record keepers about  
requests for access to records**

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# Health Records (Privacy & Access) Act 1997

## Information for record keepers about requests for access to records

The Health Records (Privacy and Access) Act 1997 (the Act) came into force on 1 February 1998. The Act deals with privacy issues in relation to health records and gives consumers of a health service a right to access information in their health records, subject to a number of conditions. The Act also lays down procedures to be followed when consumers make requests for access. This pamphlet provides information for record keepers about requests for access, and other responsibilities, under the Act.

Changes were made to the Act as a result of the 2009 GP Taskforce which investigated access to primary health care in the ACT. The changes came into effect on 1 October 2010 and are reflected in this booklet.

Record keepers should familiarise themselves with the twelve privacy principles in the Act, which outline their responsibilities.

# Access to health records by persons other than the consumer

As a general rule, a record keeper who has control of a health record must not disclose personal health information about a consumer (the patient or the person about whom a record has been created) to someone other than the consumer, unless the Act provides for disclosure to someone else.

## Who is entitled to access?

The following people may be entitled to access a consumer's health record:

- the health service provider;
- members of a treating team;
- a person authorised by the consumer to have access which may include a legal representative;
- a parent or guardian of the consumer;
- a legal representative of a consumer who has died;
- people who need access to a record for the purpose of managing, funding or assessing the quality of the health services provided; and
- in certain circumstances:
  - an immediate family member of the consumer;
  - the person responsible for the consumer's care; and
  - an entity carrying out research or compilation or analysis of statistics.

A "treating team" includes the health service providers involved in the diagnosis, care or treatment of a consumer for a particular episode of care. If it is not obvious from the circumstances, the consumer must be informed about who is included in the treating team.

A current health service provider named by the consumer and the referring health service providers, if any, are also considered to be members of the treating team. For example, if a consumer nominates a GP when admitted to hospital, the GP would be considered as a member of the treating team.

“Management, funding or quality” functions entitle people to have access to a health record for those purposes only, and to have access only to relevant parts of a record. This allows information management, practice staff, quality assurance committees and others to have access when necessary in the course of their official duties. For example, some administrative staff may have access to health records in the course of their duties.

The Act uses the definition “young person” to mean a person under 18 years old who lacks sufficient mental and emotional maturity to provide informed consent by themselves.

However, if a person under the age of 18 is of sufficient mental and emotional maturity to understand the nature of a health service and to provide informed consent to a health service, then he or she becomes the consumer, and his or her parent, guardian or a person holding parental responsibility does not have the right to access the health records without the consent of that consumer.

For a person over 18 years of age who is incapacitated, someone else may be granted access to their health records, for example, a legally appointed guardian or an attorney with the power to make decisions about the person’s medical treatment or health care. Not all guardians or people given power of attorney have these powers.

# What records are covered by the legislation?

## Personal information held by a health service provider

Any record held by a health service provider containing personal information is covered by the legislation. A health service provider includes any person or organisation providing a health service in the ACT. A health service is defined very broadly. The definition covers any activity to assess, record, improve or maintain the physical, mental or emotional health of a consumer, and includes a disability, palliative care or aged care service. Some service providers may not see themselves as providing a health service but will still be covered by the Act: examples include masseurs, unqualified counsellors and alternative health therapists.

## Personal health information held by anyone

Information about a person's health held by any person or organisation, whether or not they are a health service provider, is also covered by the Act. For example, an employer or educational institution may hold records that contain information regarding a person's health. This information need not be recorded in a health record; however, the employer or institution is a record keeper and must comply with the Act.

Records may be in documentary or electronic form and include clinical notes, medical imaging and reports, test results and copies of records.

Personal information kept by a health service provider can be defined as either fact or opinion. Matters of fact include: history, findings on examination, results of investigations, diagnosis and preliminary diagnosis, management plans and information about action taken. The term 'matters of opinion' refers to non-medical notes such as the health provider's personal notes. The legislation applies to all matters of fact in a health record, but only applies to expressions of opinion recorded after 1 February 1998, when the Act first came into force. A record keeper may choose not to provide access to expressions of opinion contained in a record before February 1998.

# Responsibilities of record keepers

Schedule 1 of the Act specifies the privacy principles. Record keepers must keep records for the following periods:

- for consumers 18 years of age or more, seven years from the date the last entry was made; and
- for consumers less than 18 years of age, seven years from the date the consumer turns 18, that is, until the consumer turns 25.

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

A record keeper must not alter or destroy a health record about a consumer, even if it is later found or claimed to be inaccurate. Any inaccuracies can be corrected by a later entry or, if necessary, separated from the main record. For example, an inaccurate record may be kept in a sealed envelope.

# Access to health records by the consumer

A consumer has a right of access, in accordance with the Act, to a health record held by a health service provider or to a record held by anyone that contains their personal health information.

## Forms of access

There are three forms of access described in the legislation. They allow a consumer to:

- inspect the health record;
- receive a copy of the health record or, if the consumer agrees, an accurate summary; or
- view the health record and have the contents explained.

When a practice merges or closes a record keeper may choose to provide the original health record to the consumer. However, record keepers usually retain the originals for medico-legal purposes.

The choice about the form of access lies with the consumer but, once a request has been made, the record keeper may offer to:

- discuss the record with the consumer, even if an explanation has not been requested; or
- provide a summary of the record to the consumer rather than the whole record.

The consumer may accept or reject these offers.

An offer to discuss a record is intended to improve communication between the consumer and the health service provider and to avoid situations where the records may be misinterpreted. If there is a concern that their interpretation might lead to harm to a person, the record keeper may exempt the record.

The option to provide a summary of a record is intended to allow health service providers who keep up to date summaries to provide the information in a way that may be easier to understand and more helpful for the consumer than an entire record.



# Records which may not be made available

Some records, or parts of records, may not be made available. The legislation specifies the following situations in which access may not be given:

- the health record is not in the custody of the record keeper;
- the health record does not relate to the consumer;
- the production of the health record contravenes other legislation or an order of a court;
- the health record, or part of the health record, relates to a report under the *Children and Young People Act 2008*; or a notification under section 103 of the *Children's Services Act 1986* and the information in the health record could identify the person who made the report;
- the record keeper believes, on reasonable grounds, that the provision of the record or a part of the record constitutes a significant risk to the life or the physical, mental or emotional health of a consumer or another person;
- the record includes material or information given in confidence by someone other than the consumer, a guardian or a health service provider; or
- the consumer asked the record keeper to keep information in the health record confidential. The record keeper should mark the record as confidential when the consumer asks. In a case where the consumer later becomes legally incompetent or dies, that information would be withheld.

# The process of seeking access to a health record

In most cases the process for seeking access to a health record is relatively simple:

- the consumer, or the consumer's representative, approaches the record keeper and asks for access;
- the record keeper reviews the record and responds to the consumer to say where, when and how access can be provided; and
- if a fee is chargeable for giving access to a health record, the fee is paid. The Minister may determine the fees for the purposes of the Act.

## The request

A person wishing to gain access to a personal health record may make a written or oral request for access to the record. The record keeper may ask that the request be in writing. If someone other than a consumer (or a parent who consented to the treatment of the child within the last twelve months) is making a request it must be in writing. Where a person authorised by the consumer is seeking access, that person must have a written authority, signed by the consumer.

Many health service providers have their own request forms for people to seek access. If an approved form is notified under the Act that form must be used.

The request must contain:

- the name and address of the consumer;
- sufficient information to identify the record to which access is sought; and
- the form of access sought.

The record keeper is entitled to request:

- proof of the identity of the person making the request; and
- proof that the person seeking access has the proper authority.

A person who obtains access to personal health information by false representation and without proper authority commits an offence. A record keeper who provides access to a health record in good faith and not knowing the request is defective is not legally liable.

## Access to a health record

Having received the request, the record keeper may find it necessary to review the record in order to determine whether the information being requested is available and whether any part of the record should be exempt.

Within two weeks after the day the request is received, the record keeper must:

- give notice if the health record, or part of the record, cannot be produced and provide the reasons;
- give notice if the health record, or part of the record, is exempt from access and state the ground for the exemption;
- give access to the health record in accordance with the Act; or
- if a fee is payable, give notice that access will be provided on payment of the fee.

## How access is to be given

In giving access to a health record, the record keeper must:

- if the person wishes to inspect the health record, indicate a time and place where this can occur;
- if the person requests a copy of the health record or a summary, give a copy of the health record or summary; or
- if the person wishes to view the health record and have its content explained, indicate a time and place when an explanation can be given by a qualified health service provider.

## Transfer or closure of a health service provider's practice

The Act sets out obligations for health service providers who sell or close down a practice. The practitioner must take practicable steps to inform all consumers that the practice is about to close down and how they can access their records. The Health Service Provider or their legal representative must publish a notice in a local newspaper 30 days prior to the closure or relocation. The notice must state that the practice is to be transferred or closed down, that consumers may make a transfer request within 2 weeks of the publication date, and whether a fee is payable to transfer the records to the consumer or their nominated health service provider.

The notice must state who will hold the health records and the address where the records will be held. If a transfer request is not made, within four weeks of publishing the notice, the records must be transferred to the record keeper identified in the notice.

A number of Checklists have been developed to assist record keepers to comply with changes to the Act that came into effect on 1 October 2010. They include a step by step approach (including a sample newspaper advertisement) for practices that have closed, relocated or practices that are relocating as a result of a merger. The Checklists can be found at: <http://www.health.act.gov.au/professionals/practice-closure-merger-or-relocation/>

Providers who close a practice must inform the ACT Government Health Directorate of the practice notice details as soon as practicable after publication of the notice. An online form and further information is available at [www.health.act.gov.au/healthpracticedetails](http://www.health.act.gov.au/healthpracticedetails). The ACT Government Health Directorate is required to forward the information to the Health Services Commissioner.

## Transfer of consumer to another health service provider

If a consumer transfers from one provider to another, the consumer may ask the first provider to give a copy or written summary of the consumer's health record to the second provider. In this circumstance, the first provider must give the second provider the consumer's record, or a copy of that record. The first provider may also give the second provider a written summary of the record.

The same requirements apply in circumstances where a provider transfers to another practice, and where the consumer wishes to continue to see the provider. The consumer may ask the first practice to give the record, or a copy of the record, to the provider. The first practice may also give a written summary of the record to the provider.

## Urgent requests

Urgent requests should be actioned as soon as possible.

There may be occasions when a medical opinion may be required to verify the urgency of the request but this would not usually be necessary.

Urgent requests, once established, must be completed by the record keeper within 7 days after the day the transfer request is received.

## Fees for access

The Minister determines the maximum fees that can be charged under the Act. A fee may be charged to view a record; to transfer a record, for a copy of a record; for provision of a summary of a record; or for a consultation during which the record is explained.

If a fee is payable, the health record must be provided as soon as practicable but no later than 30 days after the request is received or one week after the fee is paid.

## Complaints

A person may make a complaint to the Health Services Commissioner about a breach of the privacy principles, or a refusal to give access to a health record in accordance with the Act.



ACT HUMAN RIGHTS  
COMMISSION

## More information

More information about the *Health Records (Privacy and Access) Act 1997* can be obtained from:

Health Services Commissioner,  
ACT Human Rights Commission

**Telephone** (02) 6205 2222

**TTY** (02) 6205 1666

**Facsimile** (02) 6207 1034

**Email** [human.rights@act.gov.au](mailto:human.rights@act.gov.au)

**Website** [www.hrc.act.gov.au](http://www.hrc.act.gov.au)

**Location** Level 4, 12 Moore Street,  
Canberra City ACT

**Postal Address** GPO Box 158,  
Canberra ACT 2601

Legislation can be viewed on the internet at  
[www.legislation.act.gov.au](http://www.legislation.act.gov.au).

More information about accessing your  
health records can be found on the ACT  
Government Health Directorate website at:  
[www.health.act.gov.au/healthrecords](http://www.health.act.gov.au/healthrecords)