

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 20 August 1981

(Minister for Health)

A BILL

FOR

An Act to provide for confidentiality in relation to certain epidemiological studies

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Epidemiological Studies (Confidentiality) Act 1981*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
“Commonwealth epidemiological study” means an epidemiological study conducted by, or on behalf of, the Commonwealth;

“court” includes a tribunal, authority or person having power to require the production of documents or the answering of questions, but does not include the Commonwealth Ombudsman;

“document” includes any record of information, however recorded or stored, whether in written or printed form, on film, by electronic means or otherwise and, without limiting the generality of the foregoing, includes an article containing an image produced by photography, x-rays or otherwise;

“epidemiological study” means a study of—

(a) the incidence or distribution, within the population of a country, or a part of a country, or within a particular group of persons, or within a sample or sub-sample of such a population or group, of—

(i) a disease;

(ii) a physical or mental state; or

(iii) a condition, circumstance, occurrence, activity, form of behaviour, course of conduct, or state of affairs, that is or may be disadvantageous to, or result in a disadvantage to, the person concerned or to the community; or

(b) the factors responsible for such an incidence or distribution, or both, and includes a series of such studies;

“prescribed study” means—

(a) the Vietnam Veterans Study; or

(b) a Commonwealth epidemiological study declared by the regulations to be a study to which this Act applies;

“Vietnam Veterans Study” means the Commonwealth epidemiological study that commenced in 1980 in relation to—

(a) persons who were members of the Defence Force at any time between 1 January 1962 and 31 December 1972, whether or not they served in Vietnam; and

(b) members of the Australian Public Service who served in Vietnam at any time between 1 January 1962 and 31 December 1972.

(2) A reference in this Act to a person who has assisted, or is assisting, in the conduct of an epidemiological study includes a reference to a person who has conducted, or is conducting, or has supervised or is supervising the conduct of, the study but does not include a reference to a person who has assisted, or is assisting, in the conduct of the study by reason only that he was or is one of the persons to whom the study related or relates or has provided, or is providing, information about one of the persons (whether himself or another person) to whom the study related or relates.

(3) A reference in this Act to information concerning the affairs of a person shall be read as including—

- (a) a reference to information as to the existence or non-existence of a document concerning the affairs of a person; and
- (b) a reference to information relating to the whereabouts of a document concerning the affairs of a person.

Secrecy relating to prescribed studies

4. Subject to sections 5 and 7, a person who has assisted, or is assisting, in the conduct of a prescribed study shall not, either directly or indirectly, except for the purpose of the conduct of that study, make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his having assisted, or assisting, in the conduct of that study.

Penalty: \$1,000 or imprisonment for 6 months.

Authorization of use of documents

5. Notwithstanding section 4, the Minister may, by writing signed by him, authorize the giving of access, in a form or forms specified in the instrument of authorization, to documents prepared or obtained in the conduct of a prescribed study to persons assisting in the conduct of another prescribed study, and, where such an authorization is given, it is a defence to a prosecution for a contravention of section 4 that is constituted by the giving of access to a document if it is established that the access was given in accordance with the authorization.

Secrecy relating to certain documents

6. Subject to section 7, a person who has assisted, or is assisting, in the conduct of a prescribed study and has been given access, by virtue of an authorization under section 5, to a document prepared or obtained in the conduct of another prescribed study shall not, either directly or indirectly, except for the purpose of the conduct of either of those studies, make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his having been given access to that document.

Penalty: \$1,000 or imprisonment for 6 months.

Certain persons may be given information

7. Sections 4 and 6 do not prohibit a person who has assisted, or is assisting, in the conduct of a prescribed study from giving information concerning the affairs of another person to—

- (a) the person who supplied the information;
- (b) where the information concerns the affairs of only one person—that person;

- (c) where the information concerns the affairs of 2 or more persons—any of those persons with the consent of the other person, or each other person, whose affairs that information concerns; or
- (d) a person nominated by a person to whom the information may be given by virtue of paragraph (a), (b) or (c) as a person to whom that information may be given.

Documents not to be produced in court, &c.

8. (1) A person who has assisted, or is assisting, in the conduct of a prescribed study shall not be required—

- (a) to produce in a court, or permit a court to have access to, a document prepared or obtained in the course of the conduct of that study, being a document concerning the affairs of another person; or
- (b) to divulge or communicate to a court any information concerning the affairs of another person acquired by him by reason of his having assisted, or assisting, in the conduct of that study.

(2) A person who has assisted, or is assisting, in the conduct of a prescribed study and has been given access, by virtue of an authorization under section 5, to a document shall not be required—

- (a) to produce in a court, or permit a court to have access to, that document, being a document concerning the affairs of another person; or
- (b) to divulge or communicate to a court any information concerning the affairs of another person acquired by him by reason of his having had, or having, that access.

Extension

9. Without limiting the generality of sections 4, 6 and 8, those sections extend to a person who has assisted, or is assisting, in the conduct of an epidemiological study—

- (a) as an officer of the Public Service of a State or of the Northern Territory;
- (b) as an employee of a body corporate, or of another person, involved in the conduct of the study; or
- (c) in accordance with a contract for the provision of his services,

and extend to a person whether or not he received or receives, or was or is entitled to receive, remuneration in respect of the assistance provided by him.

Oaths and declarations of secrecy

10. A person who is, or is about to become, a person to whom section 4 or 6 applies shall, if and when required to do so by the Minister, or by a person authorized in writing by the Minister for the purposes of this section, take an oath, or make an affirmation or declaration, in a manner and form, and before a person, prescribed by the regulations, not to make a record of, or divulge or communicate, information in contravention of this Act.

Penalty: \$1,000 or imprisonment for 6 months.

Publication of results of studies, &c.

11. (1) Nothing in this Act prohibits the publication of conclusions based on, statistics derived from, or particulars of procedures used in, a prescribed study, but such conclusions, statistics or particulars shall not be published in a manner that enables the identification of an individual person.

(2) In this section, “publication”, in relation to conclusions, statistics or particulars, includes—

- (a) the divulging or communication to a court of the conclusions, statistics or particulars; and
- (b) the production to a court of, or the permitting of a court to have access to, a document containing the conclusions, statistics or particulars.

Application

12. (1) For the purposes of the application of this Act in relation to the Vietnam Veterans Study, this Act extends to information acquired, and documents prepared or obtained, before the commencement of this Act.

(2) For the purposes of the application of this Act in relation to a Commonwealth epidemiological study declared by the regulations to be a study to which this Act applies, this Act extends to information acquired, and documents prepared or obtained, before the commencement of those regulations.

Regulations

13. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

