



Epidemiological Studies (Confidentiality) Act 1981

No. 148, 1981

Compilation No. 4

Compilation date:	21 October 2016
Includes amendments up to:	Act No. 61, 2016
Registered:	15 November 2016

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Epidemiological Studies (Confidentiality) Act 1981* that shows the text of the law as amended and in force on 21 October 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

1 Short title

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

2 Commencement

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

3 Interpretation

(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 or she 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, herself 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.
- (4) Unless the contrary intention appears, a reference in this Act to information or a document concerning the affairs of a person includes a reference to information or a document, as the case may be, concerning the affairs of a deceased person.

3A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

4 Secrecy relating to prescribed studies

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 or her by reason of his or her having assisted, or assisting, in the conduct of that study.

Penalty: Imprisonment for 6 months or 10 penalty units.

5 Authorisation of use of documents

Notwithstanding section 4, the Minister may, by writing signed by him or her, 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 the access was given in accordance with the authorization.

Note: The defendant bears an evidential burden in relation to establishing that the access was given in accordance with the authorization. See subsection 13.3(3) of the *Criminal Code*.

6 Secrecy relating to certain documents

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 or her by reason of his or her having been given access to that document.

Penalty: Imprisonment for 6 months or 10 penalty units.

7 Certain persons may be given information

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.

8 Documents not to be produced in court etc.

- (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 or her by reason of his or her 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 or her by reason of his or her having had, or having, that access.

9 Extension

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 or her services;

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

10 Oaths and declarations of secrecy

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: Imprisonment for 6 months or 10 penalty units.

11 Publication of results of studies etc.

- (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 (including a deceased 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.

12 Application

- (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.

13 Regulations

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.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Epidemiological Studies (Confidentiality) Act 1981	148, 1981	26 Oct 1981	26 Oct 1981 (s 2)	
Health Legislation Amendment Act 1984	135, 1984	25 Oct 1984	s 4, 5: 25 Oct 1984 (s 2(1))	—
Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001	111, 2001	17 Sept 2001	s 4 and Sch 1 (items 8–10): 17 Sept 2001 (s 2)	s 4
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 4 (items 275–288): 4 July 2008 (s 2(1) item 64)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (item 230): 21 Oct 2016 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
s 3	am No 135, 1984; No 73, 2008
s 3A	ad No 111, 2001
s 4	am No 73, 2008; No 61, 2016
s 5	am No 111, 2001; No 73, 2008
s 6	am No 73, 2008; No 61, 2016
s 8	am No 73, 2008
s 9	am No 73, 2008
s 10	am No 61, 2016
s 11	am No 135, 1984
