

Statement of compatibility with human rights

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

Health Services Amendment Bill 2018

This bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the bill

This Bill amends the *Health Services Act* to give effect to the changed governance arrangements to the Northern Territory Health system. The Bill removes all references to the Health Service Boards and the Service administrators from the *Health Services Act*, and provides that the Chief Operating Officers of the Health Services report directly to the Chief Executive Officer of the Department of Health. The Bill otherwise largely retains the existing health system and governance arrangements between the Chief Executive Officer of the Department of Health, the System Manager and the Health Services.

The Bill further provides for the offence provisions in the *Health Services Act* to be updated in order to be consistent with Part IIAA of the Criminal Code and current drafting practices.

Human rights implications

Right to health

The Bill engages the right referred to in Article 12 of the International Covenant on Economic, Social and Cultural Rights, being that everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.

The Bill promotes this right by giving effect to a more streamlined governance structure that maintains and strengthens accountability across the Health Services. This allows the Health Services to focus on service delivery.

Presumption of innocence

The Bill engages the presumption of innocence, contained in Article 14(2) of the International Covenant on Civil and Political Rights, being that everyone charged with

a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

When 'strict liability' or 'absolute liability' applies to an offence, the prosecution must only prove the physical elements of the offence beyond reasonable doubt for a person to be found guilty of that offence. Where strict liability applies, section 43AX of the Criminal Code provides for the defence of 'honest and reasonable mistake of fact'.

The application of strict and absolute liability to an offence can be considered a limitation of the presumption of innocence because the defendant can be found guilty, or an element of an offence can be proven, without the prosecution being required to find fault. However, in some circumstances it will be justified for an offence or an element of an offence to be strict or absolute liability.

Clause 19 of the Bill inserts a section into the *Health Services Act* which makes it an offence to disclose confidential information obtained in the course of performing a function or exercising a power under the *Health Services Act*. The prosecution must prove that the information was confidential and that the person was reckless in relation to that circumstance. They must also prove that the person intentionally engaged in conduct that resulted in the disclosure of the information, and that the disclosure was not for a purpose connected to the administration of the *Health Services Act* or to a person who was otherwise entitled to the information.

Strict liability applies as to whether or not the person obtained the information in the course of performing a function connected with the administration of or exercising a power under the *Health Services Act*. This element of the offence is straightforward. The prosecution must still prove all other elements of the offence beyond reasonable doubt, and even so the defence of honest and reasonable mistake of fact is still available to the defendant in relation to this element.

Conclusion

This bill is compatible with human rights as it promotes the right to health, and any limitations on the presumption of innocence are reasonable, necessary and proportionate.