Tonga

PERSONAL HEALTH INFORMATION PROTECTION ACT 2025

Act 31 of 2025

PERSONAL HEALTH INFORMATION PROTECTION ACT 2025

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Tonga

PERSONAL HEALTH INFORMATION PROTECTION ACT 2025

Act 31 of 2025

AN ACT IN RESPECT OF PERSONAL HEALTH INFORMATION AND RELATED MATTERS IN ORDER TO PROTECT THE PRIVACY OF INDIVIDUALS AND PRESERVE THE CONFIDENTIALITY OF PERSONAL HEALTH INFORMATION AND THE ACCESS, COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATIH INFORMATION SHALL BE GOVERNED BY CLEAR RULES AND PRINCIPLES

I assent,
TUPOU VI,
16th December 2025.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART 1 - PRELIMINARY

1 Short Title

This Act may be cited as the Personal Health Information Protection Act 2025.

2 Purposes

The purposes of this Act are –

(a) to establish rules for the access, collection, use and disclosure of personal health information about persons that protect the confidentiality of that information and the privacy of persons with respect to that information, while facilitating the effective provision of health care;

(b) to provide persons with a right of access to personal health information about themselves, subject to limited and specific exceptions set out in this Act;

(c) to provide persons with a right to require the correction or amendment of personal health information about themselves, subject to limited and specific exceptions set out in this Act;

(d) to provide an appeal process with respect to personal health information; and

(e) to provide remedies for contraventions of this Act.

3 Interpretation

(1) In this Act, unless the context otherwise requires –

"agent" in relation to a health information custodian, means a person that, with the authorization of the custodian, acts for or on behalf of the custodian in respect of personal health information for the purposes of the custodian, and not the agent's own purposes;

"capable" means mentally capable, and "capacity" has a corresponding meaning;

"CEO" means the Chief Executive Officer responsible for health;

"collect" in relation to personal health information, means to gather, acquire or obtain the information from any source by any means, and "collection" has a corresponding meaning;

"de-identify" in relation to the personal health information of a person, means to remove any information, in accordance with such requirements as may be prescribed by Regulations, that identifies the person or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify the person, and "de-identification" has a corresponding meaning;

"disclose" in relation to personal health information in the custody or under the control of a health information custodian, except as defined in Part 6, means to release the information or to make it available to a person, and "disclosure" has a corresponding meaning;

"genetic test information" means –

(a) personal health information about a person that is derived from a test of the person's gene products or chromosomes performed when the person does not have any symptoms of illness related to the condition being tested and that indicates a likelihood of or

susceptibility to illness, disease, impairment or other disorders, whether physical or mental, and

(b) any other personal health information that is prescribed by Regulations, but does not include information derived from routine physical measurements, physical examinations, the taking of a family history of the person or other personal health information that is prescribed by Regulations;

"guardian" means a person who is a guardian under the law or a person who is appointed as a guardian by the Court under section 8 of the Guardianship Act [Cap. 6.04];

"health care" means any observation, examination, assessment, care, service or procedure that is done for a health-related purpose and that –

(a) is carried out or provided to diagnose, treat or maintain a person's physical or mental condition;

(b) is carried out or provided to prevent disease or injury or to promote health;

(c) is carried out or provided as part of palliative care, and includes the compounding, dispensing or selling of a drug, a medical device, equipment or any other item to a person, or for the use of a person;

"health care practitioner" means –

(a) a person who is registered under the Medical, Dental and Allied Health Practitioners Act 2021, the Nurses, Nurse Practitioners and Midwives Act 2021, or the Pharmacy Act [Cap. 12.14], and who provides health care;

(b) personal support workers; or

(c) any person who provides health care and who is practicing a profession that is prescribed by Regulations, but does not include a person who is a traditional healer;

"health information custodian" means, subject to subsections (4) and (5), a person described in one of the following paragraphs who has custody or control of personal health information as a result of or in connection with performing the person's powers or duties or the work described in the paragraph, if any, but not otherwise –

(a) a health care practitioner;

(b) a person who operates a hospital;

(c) a health care agency, mental health facility or a mental health practitioner within the meaning of the Mental Health Act [Cap. 12.10];

(d) a person who operates a pharmacy within the meaning of Pharmacy Act [Cap. 12.14];

(e) a person who operates an ambulance service;

(f) a health officer within the meaning of the Public Health Act [Cap. 12.15], or an authorised officer appointed under section 6 of the Public Health Act [Cap. 12.15];

(g) the Minister, together with the Ministry, if the context so requires;

(h) a person that is, or a class of persons that are, prescribed by Regulations, who compiles and maintains a registry or repository of –

(i) personal health information for the primary purpose of data analysis or research; or

(ii) personal health information that relates to a specific disease or condition or that relates to the storage or donation of body parts or bodily substances;

(i) an employer;

(j) an insurer or an insurance agent; or

(k) any other person that is, or class of persons that are, prescribed by Regulations as health information custodians if they have custody or control of personal health information as a result of or in connection with performing powers or duties that are or work that is prescribed by Regulations;

"health number" means the number assigned to any person in Tonga under the Health Services Act [Cap. 12.06];

"identifying information" means, with respect to personal health information, information that identifies a person or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify a person;

"incapable" means mentally incapable, and "incapacity" has a corresponding meaning;

"individual" in relation to personal health information, means the person, whether living or deceased, with respect to whom the information was or is being accessed, collected, created or used;

"information manager" means an agent who, on behalf of the Ministry -

(a) processes, stores or disposes of records of the Ministry that contain personal health information; or

(b) provides information management or information technology services to the Ministry with respect to records of the Ministry that contain personal health information;

"information practices" in relation to a health information custodian, means the actions of the custodian in relation to personal health information and includes –

(a) when and how the custodian accesses, collects, creates, uses, modifies, discloses, retains and disposes of the information; and

(b) the administrative, technical and physical safeguards and practices that the custodian maintains with respect to the information;

"Minister" means the Minister of Health;

"Ministry" means the Ministry of Health;

"personal health information" means identifying information about a person, in oral or recorded form, if the information –

(a) relates to the physical or mental health or well-being of the person;

(b) relates to the provision of health care to the person, including the identification of any person providing health care to the person;

(c) relates to the eligibility for health care in respect of the person;

(d) relates to the donation by the person of any body part or bodily substance of the person under the Corneal and Tissue Grafting Act [Cap. 12.02], or is derived from the testing or examination of any such body part or bodily substance;

(e) identifies the person providing health care to the person or the person's substitute decision maker under Part 3;

(f) relates to the person's health number; or

(g) relates to information collected with respect to the birth or death of a person under the Births, Deaths and Marriages Registration Act [Cap. 6.01];

"proceeding" means a proceeding held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a Board established under the Medical, Dental and Allied Health Practitioners Act 2021, the Nurses, Nurse Practitioners and Midwives Act 2021, or the Pharmacy Act [Cap. 12.14], or an arbitrator or mediator in a proceeding;

"quality of care information" has the meaning set out in Part 6;

"record" means a record of information in any form or in any medium and includes information that is written, photographed, copied, recorded, digitized or stored in any manner;

"relative" means either of two persons who are blood related to each other, including through marriage or adoption;

"research" means a systematic investigation designed to develop or establish facts, principles or generalizable knowledge, or any combination thereof, and includes research development, testing and evaluation;

"researcher" means a person who conducts research;

"research ethics board" means the National Health Ethics Committee of the Ministry;

"spouse" means either of two persons who are married to each other in accordance to the Births, Deaths and Marriages Registration Act;

"substitute decision-maker" in relation to a person, means, unless the context requires otherwise, a person who is authorized under this Act to consent on behalf of the person to the access, collection, use or disclosure of personal health information about the person, or a person appointed by the Court under section 30 of this Act.

(2) A reference to a record includes a part of a record unless the context otherwise requires.

(3) Personal health information includes identifying information that is not personal health information described in subsection (1) but that is contained in a record that contains personal health information described in that subsection.

(4) A person described in paragraph (a) of the definition of "health information custodian" in subsection (1) is not a health information custodian if the person is employed by or is acting for or on behalf of a health information custodian.

(5) A health information custodian who receives personal health information as a result of acting as an agent for another health information custodian is not a health information custodian with respect to the information.

(6) A reference in this Act to a person includes, where the person is incapable, the person's substitute decision maker.

4 Deemed to be acting

For the purposes of this Act, a person who is an agent of a health information custodian shall, with respect to personal health information be deemed to be acting on behalf of the custodian when exercising powers or performing duties for or on behalf of the custodian, and not on the person's own behalf.

5 Interpretation, health information custodian

(1) Subject to sub-section (2), a health information custodian who operates more than one facility, program or service described in one of the paragraphs of the definition of "health information custodian" in section 3(1) shall be deemed to be a separate custodian with respect to personal health information of which it has custody or control as a result of or in connection with operating each of the facilities, programs or services that it operates.

(2) Where a health information custodian who operates more than one facility, program or service wishes to share personal health information between those facilities, programs or services in order to provide integrated health care or services at those facilities, programs or services, the custodian may apply in writing to the Minister to act as a single health information custodian on behalf of those facilities, programs or services.

(3) Where the Minister receives a request under this section from a health information custodian to act as a single custodian, the Minister shall approve

the request if the Minister is of the opinion that it is appropriate in the circumstances, having regard to the public interest and –

(a) the applicant's ability to provide persons with reasonable access to their personal health information;

(b) the applicant's ability to comply with the rules for the collection, use and disclosure of personal health information under Part 4; and

(c) whether the sharing of personal health information is necessary in order to effectively provide integrated health care.

(4) The Minister may afford a person an opportunity to be heard before approving or rejecting a request under subsection (3).

(5) Any decision the Minister may make under subsection (4) shall be final.

(6) Subject to subsection (7), a health information custodian does not cease to be a health information custodian with respect to personal health information until custody or control of the information passes to another person who is legally authorized to hold the records.

(7) If a health information custodian dies, the estate trustee of the health information custodian shall be deemed to be the health information custodian with respect to the personal health information held by the deceased health information custodian until custody or control of the information passes to another person who is legally authorized to hold the records.

6 Interpretation, collection, use and disclosure

(1) For the purposes of this Act, the providing of personal health information between a health information custodian and an agent of the custodian is a use by the custodian, and not a disclosure by the person providing the information or a collection by the person to whom the information is provided.

(2) A provision of this Act that applies to the collection, use or disclosure of personal health information about a person by a health information custodian with the consent of the person, whatever the nature of the consent, does not affect the collection, use or disclosure that this Act permits or requires the health information custodian to make of the information without the consent of the person.

(3) A provision of this Act that permits a health information custodian to disclose personal health information about a person without the consent of the person –

(a) does not require the custodian to disclose it unless required to do so by law;

(b) does not relieve the custodian from a legal requirement to disclose the information; and

(c) does not prevent the custodian from obtaining the person’s consent for the disclosure.

7 Application of Act

(1) Except if this Act or its Regulations specifically provide otherwise, this Act applies to quality-of-care information and to –

(a) the collection of personal health information by a health information custodian;

(b) the use or disclosure of personal health information by –

(i) a health information custodian; or

(ii) a person who is not a health information custodian and to whom a health information custodian disclosed the information; and

(c) the access, collection, use or disclosure of a health number by any person.

(2) In the event of a conflict between a provision of this Act or its Regulations and a provision of any other Act or its Regulations, this Act and its Regulations prevail unless this Act, its Regulations or the other Act specifically provide otherwise.

(3) For the purpose of this section, there is no conflict unless it is not possible to comply with both this Act and its Regulations and any other Act or its Regulations.

(4) For greater certainty, this Act binds the Crown, including all ministries, agencies and employees of the Crown.

8 Non-application of Act

(1) This Act does not apply to personal health information about a person after the earlier of 120 years after a record containing the information was created and 50 years after the death of the person.

(2) Nothing in this Act shall be construed to interfere with –

(a) anything in connection with a subrogated claim or a potential subrogated claim;

(b) any legal privilege, including solicitor-client privilege;

(c) the law of evidence or information otherwise available by law to a party or a witness in a proceeding;

(d) the power of a court or a tribunal to compel a witness to testify or to compel the production of a document;

(e) a hearing or appeal in relation to a complaint about a health care practitioner under the Medical, Dental and Allied Health Practitioners Act 2021, the Nurses, Nurse Practitioners and Midwives Act 2021 or the Pharmacy Act [Cap. 12.14]; or

(f) any provision of any other Act or any court order, if the provision or order prohibits a person from making information public or from publishing information.

PART 2 – PRACTICES TO PROTECT PERSONAL HEALTH INFORMATION

DIVISION 1 – GENERAL

9 Information practices

(1) A health information custodian that has custody or control of personal health information shall have in place information practices and policies that comply with the requirements prescribed by Regulations.

(2) A health information custodian shall comply with its information practices and policies.

(3) A health information custodian that uses electronic means to collect, use, modify, disclose, retain or dispose of personal health information shall comply with such requirements as may be prescribed by Regulations.

(4) A person who provides goods or services for the purpose of enabling a health information custodian to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information shall comply with such requirements as may be prescribed by Regulations.

10 Electronic audit log

(1) A health information custodian that uses electronic means to collect, use, disclose, modify, retain or dispose of personal health information shall –

(a) maintain, or require the maintenance of, an electronic audit log described in subsection (2); and

(b) audit and monitor the electronic audit log as often as is prescribed by Regulations.

(2) The electronic audit log shall include, for every instance in which a record or part of a record of personal health information that is accessible by electronic means is viewed, handled, modified or otherwise dealt with -

(a) the type of information that was viewed, handled, modified or otherwise dealt with;

(b) the date and time on which the information was viewed, handled, modified or otherwise dealt with;

(c) the identity of all persons who viewed, handled, modified or otherwise dealt with the personal health information; and

(d) the identity of the person to whom the personal health information relates.

11 Accuracy

(1) A health information custodian that uses personal health information about a person shall take reasonable steps to ensure that the information is as accurate, complete and up to date as is necessary for the purposes for which it uses the information.

(2) A health information custodian that discloses personal health information about a person shall –

(a) take reasonable steps to ensure that the information is as accurate, complete and up to date as is necessary for the purposes of the disclosure that are known to the custodian at the time of the disclosure; or

(b) clearly set out for the recipient of the disclosure the limitations, if any, on the accuracy, completeness or up to date character of the information.

12 Steps to ensure collection

A health information custodian shall take steps that are reasonable in the circumstances to ensure that personal health information is not collected without authority.

13 Limits on use of de-identified information

(1) Subject to subsection (2) and to any other exceptions that may be prescribed by Regulations, no person shall use or attempt to use information that has been de-identified to identify a person, either alone or with other information, unless this Act or another Act permits the information to be used to identify the person.

(2) The limitation in subsection (1) does not prevent any of the following from using information that they de-identified, either alone or with other information, to identify a person –

(a) a health information custodian;

(b) a prescribed by Regulations entity;

(c) a person who is prescribed by Regulations who compiles or maintains a registry of personal health information; or

(d) any other person who is prescribed by Regulations.

14 Security

(1) A health information custodian shall take steps that are reasonable in the circumstances to ensure that all personal health information in the custodian's custody or control is protected against theft, loss and unauthorized access, use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal.

(2) Subject to subsection (4) and to the exceptions and additional requirements, if any, that are prescribed by Regulations, if personal health information about a person that is in the custody or control of a health information custodian is stolen or lost or if it is used or disclosed without authority, the health information custodian shall –

(a) notify the person at the first reasonable opportunity of the theft or loss or of the unauthorized use or disclosure; and

(b) include in the notice a statement that the person is entitled to make a complaint to the CEO under Part 8.

(3) If the circumstances surrounding a theft, loss, unauthorized access, use or disclosure referred to in subsection (2) meet the requirements that are prescribed by Regulations, the health information custodian shall notify the CEO of the theft or loss or of the unauthorized access, use or disclosure.

(4) If the health information custodian is a researcher who has received the personal health information from another health information custodian under section 48(1), the researcher is not required to notify the person if the information is stolen or lost or if it is used or disclosed without authority, unless the health information custodian that disclosed the personal health information under section 48(1) of this Act –

(a) first obtains the person's consent to having the researcher contact the person; and

(b) informs the researcher that the person has given the consent.

DIVISION 2 – RECORDS

15 Handling of records

(1) A health information custodian shall ensure that the records of personal health information that it has in its custody or under its control are retained, transferred and disposed of in a secure manner and in accordance with such requirements as may be prescribed by Regulations.

(2) Despite subsection (1), a health information custodian that has custody or control of personal health information that is the subject of a request for access under section 58 of this Act, shall retain the information for as long as necessary to allow the person to exhaust any recourse under this Act that the person may have with respect to the request.

(3) In subsection (1), disposal in a secure manner, does not include destruction of the records unless the records are destroyed in such a manner that the reconstitution of the records is not possible in the circumstances.

16 Place where records kept

(1) A health information custodian may keep a record of personal health information about a person in the person's home in any reasonable manner to which the person consents.

(2) A health care practitioner may keep a record of personal health information about a person in a place other than the person's home and other than a place in the control of the practitioner –

(a) the record is kept in a reasonable manner;

(b) the person consents; and

(c) such requirements as may be prescribed by Regulations, are satisfied.

DIVISION 3 – ACCOUNTABILITY AND OPENNESS

17 Contact person

(1) A health information custodian shall designate a contact person described in subsection (3).

(2) A health information custodian that is not a natural person shall designate a contact person described in subsection (3).

(3) A contact person is an agent of the health information custodian and is authorized on behalf of the custodian to –

(a) facilitate the custodian's compliance with this Act;

(b) ensure that all agents of the custodian are appropriately informed of their duties under this Act;

(c) respond to inquiries from the public about the custodian's information practices;

(d) respond to requests of a person for access to or correction of a record of personal health information about the person that is in the custody or under the control of the custodian; and

(e) receive complaints from the public about the custodian's alleged contravention under this Act.

(4) A health information custodian that is a natural person and that does not designate a contact person under subsection (1) shall perform on his own the functions described in subsection (3).

18 Written public statement

(1) A health information custodian shall make available to the public a written statement that –

(a) provides a general description of the custodian's information practices;

(b) describes how to contact –

(i) the contact person described in section 17(3), if the custodian has one; or

(ii) the custodian, if the custodian does not have that contact person;

(c) describes how a person may obtain access to or request correction of a record of personal health information about the person that is in the custody or control of the custodian; and

(d) describes how to make a complaint to the custodian and to the CEO under this Act.

(2) If a health information custodian uses or discloses personal health information about a person, without the person's consent, in a manner that is outside the scope of the custodian's description of its information practices under subsection (1)(a), the custodian shall –

(a) inform the person of the uses and disclosures at the first reasonable opportunity unless, under section 57 of this Act, the person does not have a right of access to a record of the information;

(b) make a note of the uses and disclosures; and

(c) keep the note as part of the records of personal health information about the person that it has in its custody or under its control or in a form that is linked to those records.

(3) A health information custodian referred to in this section and a contact person designated under section 17(1) shall be situated in Tonga.

19 Agents and information

(1) A health information custodian is responsible for personal health information in the custody or control of the health information custodian and may permit the custodian's agents to access, collect, use, disclose, retain or dispose of personal health information on the custodian's behalf only if –

(a) the custodian is permitted or required to access, collect, use, disclose, retain or dispose of the information, as the case may be;

(b) the access, collection, use, disclosure, retention or disposal of the information, as the case may be, is necessary in the course of the agent's duties and is not contrary to this Act or another law; and

(c) such requirements as may be the prescribed by Regulations are met.

(2) A permission granted to an agent under subsection (1) may be subject to such conditions or restrictions as the health information custodian may impose.

(3) Subject to any exception that may be prescribed by Regulations, an agent of a health information custodian may access, collect, use, disclose, retain or dispose of personal health information only if –

(a) the collection, use, disclosure, retention or disposal of the information, as the case may be –

(i) is permitted by the custodian in accordance with subsection (1);

(ii) is necessary for the purpose of carrying out his duties as agent of the custodian;

(iii) is not contrary to this Act or another law, and

(iv) complies with any conditions or restrictions that the custodian has imposed under subsection (2); and

(b) such requirements as may be the prescribed by Regulations are met.

(4) A health information custodian shall –

(a) take steps that are reasonable in the circumstances to ensure that no agent of the custodian collects, uses, discloses, retains or disposes of personal health information unless it is in accordance with subsection (3); and

(b) remain responsible for any personal health information that is collected, used, disclosed, retained or disposed of by the custodian's agents, regardless of whether or not the collection, use, disclosure, retention or disposal was carried out in accordance with subsection (3).

(5) An agent of a health information custodian shall –

(a) comply with the conditions or restrictions imposed by the health information custodian on the agent's collection, use, disclosure, retention or disposal of personal health information under subsection (2); and

(b) notify the custodian at the first reasonable opportunity if personal health information that the agent collected, used, disclosed, retained or disposed of on behalf of the custodian is stolen or lost or if it is used or disclosed without authority.

PART 3 – CONSENT, CAPACITY, REPRESENTATIVE

DIVISION 1 – CONSENT

20 Elements of consent

(1) Where this Act, or any other Act, requires the consent of a person, the person shall be capable of giving consent and the consent must be specific consent that –

(a) relates to the personal health information for which the consent is sought;

(b) is informed;

(c) is given voluntarily;

(d) is not obtained through misrepresentation or fraud; and

(e) is current in the circumstances.

(2) A consent is informed if the person who gives the consent has, at the time of giving the consent, the information that a reasonable person would require in the circumstances to make a decision about the matter to which the consent relates.

(3) Where the consent relates to the collection, use or disclosure of personal health information, the information mentioned in subsection (2) that a reasonable person would require shall include –

(a) the purpose of the collection, use or disclosure;

(b) the nature and extent of the information to be collected, used or disclosed;

(c) to the extent reasonably possible, whether the information will be used or disclosed outside Tonga;

(d) to the extent reasonably possible, the reasonably foreseeable consequences of giving or withholding consent to the collection, use or disclosure;

(e) to the extent reasonably possible, the identity of the person who will access, collect, use, disclose or receive the information; and

(f) that the person may give or withhold consent.

(4) Subject to subsection (5), a consent to the access, collection, use or disclosure of personal health information about a person may be expressed or implied.

(5) A consent to the disclosure of personal health information about a person shall be expressed, and not implied, if –

(a) a health information custodian makes the disclosure to a person that is not a health information custodian; or

(b) a health information custodian makes the disclosure to another health information custodian and the disclosure is not for the purposes of providing health care or assisting in providing health care.

(6) Subsection (5) does not apply to a type of disclosure that is prescribed by Regulations and that does not include information about a person's state of health.

(7) A consent that is required as a condition of receiving a service or benefit shall not be considered to be involuntary merely because the giving of the consent is a condition of receiving the service or benefit, provided that the information to which the consent relates is reasonably required.

(8) As a condition of providing a service or benefit, a person shall not require a person to consent to the collection, use or disclosure of more information than is reasonably required to provide the service or benefit.

(9) A consent that relates to the collection, use or disclosure of genetic test information shall be a consent that is specific only to the genetic test information and shall be separate from any consent given for the collection, use or disclosure of any other kind of personal health information.

(10) A person giving a consent may specify limitations and conditions that apply to the consent including the time after which the consent will cease to be effective.

(11) A consent that a person gives, to a collection, use or disclosure of information that is personal health information is a valid consent if it meets the requirements of this Act for consent.

21 Revocation of consent

(1) A person who gives a consent under this Act, whether express or implied, may revoke it at any time but the revocation shall not have retroactive effect.

(2) If a person places a condition on the person's consent to have a health information custodian collect, use or disclose personal health information about the person, the condition is not effective to the extent that it purports to prohibit or restrict any recording of personal health information by a health information custodian that is required by law or by established standards of professional practice or institutional practice.

22 Assumption of validity

A health information custodian who receives a consent under this Act is entitled to assume that the consent fulfils the requirements of this section and has not been revoked, unless it is not reasonable to assume so.

23 Deceased person

If a person is deceased, a person described in one of the following paragraphs may consent on the deceased's behalf or provide personal health information relating to the deceased –

(a) the deceased's estate trustee; or

(b) the person who has assumed responsibility for the administration of the deceased's estate, if the deceased does not have an estate trustee.

DIVISION 2 – CAPACITY

24 Capacity

(1) A person is capable with respect to giving a consent under this Act if the person –

(a) understands the nature of the personal health information to which the consent relates; and

(b) appreciates the reasonably foreseeable consequences of giving or withholding the consent.

(2) A person may be capable with respect to giving a consent under this Act as it relates to some parts of personal health information, but incapable with respect to other parts.

(3) A person may be capable with respect to giving a consent under this Act at one time and incapable at another.

25 Presumption of capacity

(1) A person is presumed to be capable with respect to giving consent under this Act.

(2) A person may rely on the presumption described in subsection (1) unless the person has reasonable grounds to believe that the person is incapable with respect to giving a consent.

26 Who can give consent or provide information

(1) If this Act requires the consent of a person, refers to a consent given by a person, or to the provision of personal health information relating to the person, a person described in one of the following paragraphs may give the consent if the person is incapable or provide the information on the person's behalf –

(a) if the person is capable with respect to giving a consent, the person or any person whom the person has authorized in writing to act on his behalf or to provide the information on the person's behalf;

(b) if the person is incapable with respect to giving a consent, the person who is authorized under section 29 to consent on behalf of the person or to provide the information on the person's behalf;

(c) if the person has died, the person who is authorized under section 23 to consent in the place of the person or to provide the information on the person's behalf; or

(d) a person whom any other Act authorizes or requires to act on behalf of the person or to provide the information on the person's behalf.

(2) A person who is authorized by this Act to consent on behalf of a person or provide personal health information on the person's behalf is also entitled to refuse or revoke consent on behalf of the person or to refuse to provide the information on the person's behalf.

(3) Subsection (1) does not apply to a consent that a person gives under another Act, to an access, collection, use or disclosure of information that is personal health information.

27 Incapable person: persons who may consent

(1) If a person is incapable with respect to giving a consent, a person described in one of the following paragraphs may, on the person's behalf, consent to a collection, use or disclosure of the information or provide the information on the person's behalf –

(a) the person's guardian, if the consent relates to the guardian's authority to make a decision on behalf of the person;

(b) the person's representative appointed by the Court under section 29 of this Act, if the representative has authority to give the consent;

(c) the person's spouse;

(d) a child or parent of the person or other person who is lawfully entitled to give or refuse consent in the place of the parent. This paragraph does not include a parent who has only a right of access to the person. If another person is lawfully entitled to consent in the place of the parent, this paragraph does not include the parent;

(e) a parent of the person with only a right of access to the person;

(f) a brother or sister of the person; or

(g) any other relative of the person.

(2) A person described in subsection (1) may consent only if the person –

(a) is capable with respect to giving a consent;

(b) is at least 16 years old or is a parent of the person to whom the personal health information relates;

(c) is not prohibited by court order or separation agreement from having access to the person to whom the personal health information relates or from giving or refusing consent on the person's behalf;

(d) is available; and

(e) is willing to assume the responsibility of making a decision on whether or not to consent.

(3) For the purpose of subsection (2)(d), a person is available if it is possible, within a time that is reasonable in the circumstances, to communicate with the person and obtain a decision on whether or not to consent.

(4) A person described in a paragraph of subsection (1) may make a decision on whether or not to consent only if no person described in an earlier paragraph meets the requirements of subsection (2).

(5) Despite subsection (4), a person described in a paragraph of subsection (1) who is present or has otherwise been contacted may make a decision on whether or not to consent if the person believes that –

(a) no other person described in an earlier paragraph or the same paragraph exists; or

(b) although such other person exists, the other person is not a person described in subsection (1)(a), (b) or (c) and would not object to the person who is present or otherwise has been contacted making the decision.

28 Factors to consider re-consent

A person who makes a decision about whether or not to consent under this Act on behalf of or in the place of a person or provides personal health information relating to the person on the person's behalf shall take into consideration –

(a) the wishes, values and beliefs that –

(i) if the person is capable, the person knows the person holds and believes the person would want reflected in decisions made concerning personal health information relating to him; or

(ii) if the person is incapable or deceased, the person knows the person held when capable or alive and believes the person would have wanted reflected in decisions made concerning personal health information relating to the person;

(b) whether the benefits that the person expects from the collection, use or disclosure of the information outweigh the risk of negative consequences occurring as a result of the collection, use or disclosure;

(c) whether the purpose for which the collection, use or disclosure is sought can be accomplished without the collection, use or disclosure; and

(d) whether the collection, use or disclosure is necessary to satisfy any legal obligation.

29 Application for review of determination of incapacity

(1) A person to whom personal health information relates who is determined to be incapable with respect to giving a consent may apply to the Court for a review of the determination.

(2) The parties to the application are –

(a) the person applying for the review;

(b) the custodian of the personal health information; and

(c) all other persons specified by the Court.

(3) The Court may confirm the determination of incapacity or may determine that the person is capable with respect to giving a consent.

(4) If a determination that a person is incapable with respect to giving a consent is confirmed on the final disposition of an application under this section, the person shall not make a new application under this section within six months after the final disposition of the earlier application, unless the Court gives leave in advance.

(5) The Court may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the person's capacity.

DIVISION 3 – REPRESENTATIVE

30 Application for appointment of representative

(1) A person who is 16 years old and who is incapable with respect to giving consent may apply to the Court for appointment of a representative to consent on the person's behalf or to provide personal health information on the person's behalf.

(2) If the person has not applied to the Court under subsection (1), as soon as possible after determining that the person is incapable of appointing a representative, the health information custodian shall inform the person of the right to apply to the Court for the appointment of a representative.

(3) Subsections (1) and (2) do not apply if the person to whom the personal health information relates has a guardian who has authority to give or refuse consent on the person's behalf or to provide personal health information on the person's behalf.

(4) The parties to the application are –

(a) the person;

(b) the proposed representative;

(c) every person who is described section 27(1), (3), (4) or (6); and

(d) any other person ordered by the Court.

(5) In an appointment under this section, the Court may authorize the representative to consent on the person's behalf or to provide personal health information on the person's behalf to –

(a) a particular collection, use or disclosure at a particular time;

(b) a collection, use or disclosure of the type ordered by the Court in circumstances ordered by the Court, if the person is determined to be

incapable with respect to giving consent at the time the consent is sought; or

(c) any collection, use or disclosure at any time, if the person is determined to be incapable with respect to giving consent at the time the consent is sought.

(6) The Court shall appoint a person as representative for the person only if the person consents to the appointment and –

(a) the Court is satisfied that the person is 16 years old and is apparently capable for the purposes of making a decision on whether or not to consent on behalf of the person, or providing personal health information relating to the person; and

(b) the Court is of the opinion that the appointment is in the person's best interest, having regard to the factors set out in section 28.

(7) The Court may –

(a) appoint as representative a different person than the one named in the application;

(b) limit the duration of the appointment;

(c) impose any other condition on the appointment; and

(d) on any person's application, remove, vary or suspend a condition imposed on the appointment or impose an additional condition on the appointment.

(8) The Court may terminate an appointment made under this section if –

(a) the incapable person or the representative requests the termination;

(b) the representative is no longer capable with respect to giving consent or providing personal health information;

(c) the appointment is no longer in the incapable person's best interests, having regard to the factors set out in section 28; or

(d) the incapable person has a guardian who has authority to give or refuse consent or to provide personal health information relating to the person.

PART 4 – RULES FOR THE COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION

DIVISION 1 – GENERAL LIMITATIONS AND REQUIREMENTS

31 Requirement for consent

A health information custodian shall not collect, use or disclose personal health information about a person unless –

(a) it has the person's consent under this Act and the collection, use or disclosure, as the case may be, to the best of the custodian's knowledge, is necessary for a lawful purpose; or

(b) the collection, use or disclosure, as the case may be, is permitted or required by this Act.

32 Other information

(1) A health information custodian shall not collect, use or disclose personal health information if other information will serve the purpose of the collection, use or disclosure.

(2) A health information custodian shall not collect, use or disclose more personal health information than is reasonably necessary to meet the purpose of the collection, use or disclosure, as the case may be.

(3) This section does not apply to personal health information that a health information custodian is required by law to collect, use or disclose.

33 Use and disclosure of personal health information

A health information custodian that collects personal health information in contravention of this Act shall not use it or disclose it unless required by law to do so.

34 Fundraising

(1) Subject to subsection (2), a health information custodian may access, collect, use or disclose personal health information about a person for the purpose of fundraising activities only if –

(a) the person expressly consents; or

(b) the person consents by way of an implied consent and the information consists only of the person's name and such types of contact information as may be prescribed by Regulations.

(2) The manner in which consent is obtained under subsection (1) and the resulting collection, use or disclosure of personal health information for the purpose of fundraising activities shall comply with the requirements and restrictions that are prescribed by Regulations, if any.

35 Marketing

A health information custodian shall not collect, use or disclose personal health information about a person for the purpose of marketing anything or for the purpose of market research unless the person expressly consents and the custodian collects, uses or discloses the information, as the case may be, subject to such requirements and restrictions, as may be prescribed by Regulations.

36 Health numbers

(1) In this section –

"health number" means a health number issued to a person under the Health Services Act [Cap. 12.06]; and

"health service" means a health service provided under the Health Services Act [Cap. 12.06].

(2) Despite section 53(1) of this Act, a person who is neither a health information custodian nor acting as an agent of a health information custodian shall not collect or use another person's health number except –

(a) for purposes related to the provision of health services to that other person;

(b) for the purposes for which a health information custodian has disclosed the number to the person;

(c) if the person is prescribed by Regulations and is collecting or using the health number, as the case may be, with the express consent of the other person, for the purpose of accurately identifying the other person's records of personal health information, verifying their identity or linking their records of personal health information, subject to the additional requirements, if any, that are prescribed by Regulations;

(d) if the person is a Board established under the Medical, Dental and Allied Health Practitioners Act 2021, the Nurses, Nurse Practitioners and Midwives Act 2021, or the Pharmacy Act [Cap. 12.14], and is collecting or using health numbers for purposes related to its duties or powers;

(e) if the person is prescribed by Regulations and is collecting or using the health number, as the case may be, for purposes related to health administration, health planning, health research or epidemiological studies; or

(f) if the person is prescribed by Regulations and is collecting or using the health number, as the case may be, for purposes related to the NHIS, as defined in Part 7 of this Act.

(3) Despite section 53(1) of this Act and subject to the exceptions and additional requirements, if any that are prescribed by Regulations, a person who is neither a health information custodian nor acting as an agent of a health information custodian shall not disclose a health number except as required by law.

(4) Subsections (2) and (3) do not apply to –

(a) a person who collects, uses or discloses a health number for the purposes of a proceeding;

(b) an entity prescribed by Regulations under section 49 (1) of this Act that collects, uses or discloses the health number in the course of carrying out its functions under that section; or

(c) a health data entity that the Minister approves under section 51(8) of this Act and that collects, uses or discloses the health number in the course of carrying out its functions under sections 51 and 52 of this Act.

(5) Subject to the additional requirements, if any, that are prescribed by Regulations, a health information custodian that is providing health care to a person may collect, use or disclose the person's health number with the consent of the person for the purpose of accurately identifying the person's records of personal health information, verifying their identity or linking their records of personal health information, even where the health information custodian is not providing a health service.

(6) Subject to the additional requirements, if any, that are prescribed by Regulations, a health information custodian that has collected a health number for purposes related to the provision of a health service to a person may use the health number for the purpose of accurately identifying the person's records of personal health information, verifying their identity or linking their records of personal health information.

(7) Nothing in subsection (5) or (6) limits a health information custodian's authority to collect, use or disclose a health number where otherwise permitted or required by this Act.

37 Fees for personal health information

(1) A health information custodian may charge a person a prescribed by Regulations fee for collecting or using personal health information.

(2) When disclosing personal health information, a health information custodian shall not charge fees to a person that exceed the amount prescribed by Regulations or the amount of reasonable cost recovery, if no amount is prescribed by Regulations.

DIVISION 2 – COLLECTION

38 Indirect collection

(1) A health information custodian may collect personal health information about a person indirectly if –

(a) the person consents to the collection being made indirectly;

(b) the information to be collected is reasonably necessary for providing health care or assisting in providing health care to the person and it is not reasonably possible to collect, directly from the person –

(i) personal health information that can reasonably be relied on as complete and accurate for the purposes for which the information is reasonably required; or

(ii) personal health information in a timely manner;

(c) the custodian is collecting the information for a purpose related to –

(i) investigating a breach of an agreement or a contravention of the laws;

(ii) the conduct of a proceeding or a possible proceeding; or

(iii) the statutory function of the custodian;

(d) the custodian collects the information from a person who is not a health information custodian for the purpose of carrying out research conducted in accordance with section 41(3) or research that a Research Ethics Board has been approved and meets the criteria set out under section 48, except if the person is prohibited by an Act from disclosing the information to the custodian;

(e) the custodian is an entity that is prescribed by Regulations for the purpose referred to under section 49(1) of the Act and the custodian is collecting personal health information from a person who is not a health information custodian for the purpose of that subsection;

(f) the custodian collects the information from a person who is permitted or required by an Act or by a treaty, agreement or arrangement made under an Act to disclose it to the custodian; or

(g) subject to the requirements and restrictions, if any, that are prescribed by Regulations, the health information custodian is permitted or required by an Act or by a treaty, agreement or arrangement made under an Act to collect the information indirectly.

(2) A health information custodian may collect personal health information about a person directly from the person, even if the person is incapable of consenting, if the collection is reasonably necessary for the provision of health care and it is not reasonably possible to obtain consent in a timely manner.

39 Documenting purpose

A health information custodian who collects personal health information, other than for the purpose of providing health care or assisting in providing health care, shall document the purpose for which the custodian collects the information.

40 Collection of genetic information

A health information custodian shall keep genetic test information that relates to a person in a separate record from the rest of the record of personal health information of the person.

DIVISION 3 – USE

41 Permitted use

(1) A health information custodian may only use personal health information about a person –

(a) for the purpose for which the information was collected or created and for all the functions reasonably necessary for carrying out that purpose, but not if the information was collected with the consent of the person or under section 38(1)(b) of this Act and the person expressly instructs otherwise;

(b) for a purpose for which this Act or any other Act permits or requires a person to disclose it to the custodian;

(c) for planning or delivering programs or services that the custodian provides or that the custodian funds in whole or in part, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring or preventing fraud or any unauthorized receipt of services or benefits related to any of them;

(d) for the purpose of risk management, error management or for the purpose of activities to improve or maintain the quality of care or to improve or maintain the quality of any related programs or services of the custodian;

(e) for educating agents to provide health care;

(f) in a manner consistent with Part 2, for the purpose of disposing of the information or modifying the information in order to conceal the identity of the person;

(g) for the purpose of seeking the person's consent, or the consent of the person's substitute decision maker, when the personal health information used by the custodian for this purpose is limited to the name and contact information of the person and the name and contact information of the substitute decision maker, where applicable;

(h) for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;

(i) for the purpose of obtaining payment or processing, monitoring, verifying or reimbursing claims for payment for the provision of health care or related goods and services;

(j) for research conducted by the custodian, subject to subsection (3); or

(k) subject to the requirements and restrictions, if any, that are prescribed by Regulations, if permitted or required by law or by a treaty, agreement or arrangement made under an Act.

(2) If subsection (1) authorizes a health information custodian to use personal health information for a purpose, the custodian may provide the information to an agent of the custodian who may use it for that purpose on behalf of the custodian.

(3) A health information custodian under subsection (1)(j), may use personal health information about a person only if the custodian prepares a research plan and has a research ethics board approve it and for that purpose section 48(2) to (4) of this Act and section 48(6)(a) to (f) of this Act apply to the use as if it were a disclosure.

DIVISION 4 – DISCLOSURE

42 Disclosures related to providing health care

(1) A health information custodian may disclose personal health information about a person –

(a) to a health information custodian described in section 3(1)(a), (b), (c) or (d) of the definition of "health information custodian", if the disclosure is reasonably necessary for the provision of health care and it is not reasonably possible to obtain the person's consent in a timely manner, but not if the person has expressly instructed the custodian not to make the disclosure;

(b) in order for the Minister or another health information custodian, to determine or provide funding or payment to the custodian for the provision of health care; or

(c) for the purpose of contacting a relative, friend or potential substitute decision-maker of the person, if the person is injured, incapacitated or ill and unable to give consent personally.

(2) If a health information custodian discloses personal health information about a person under section 3(1)(a) and if an instruction of the person made under that section prevents the custodian from disclosing all the personal health information that the custodian considers reasonably necessary to disclose for the provision of health care or assisting in the provision of health care to the person, the custodian shall notify the person to whom it makes the disclosure of that fact.

(3) A health information custodian that is a facility that provides health care may disclose to a person the following personal health information relating to a person who is a patient or a resident in the facility if the custodian offers the person the option, at the first reasonable opportunity after admission to the facility, to object to such disclosures and if the person does not do so the –

(a) person is a patient or resident in the facility;

(b) person's general health status described as critical, poor or stable in similar terms; or

(c) location of the person in the facility.

(4) A health information custodian may disclose personal health information about a person who is deceased, or is reasonably suspected to be deceased –

(a) for the purpose of identifying the person;

(b) for the purpose of informing any person whom it is reasonable to inform in the circumstances of –

(i) the person is deceased or reasonably suspected to be deceased; and

(ii) death, where appropriate; or

(c) to the spouse, sibling or child of the person if the recipients of the information reasonably require the information to make decisions about their own health care or their children or sibling's health care.

43 Disclosures for health or other programs

(1) Subject to the requirements and restrictions, if any, that are prescribed by Regulations, a health information custodian may disclose personal health information about a person –

(a) for the purpose of determining or verifying the eligibility of the person to receive health care or related goods, services or benefits provided under any Act and funded in whole or in part by the Government or by any donor agency;

(b) to a person who is prescribed by Regulations and who compiles or maintains a registry of personal health information for purposes of facilitating or improving the provision of health care or that relates to the storage or donation of body parts or bodily substances under the Corneal and Tissue Grafting Act [Cap. 12.02]; or

(c) if –

(i) the disclosure is to another custodian described in section 3(1)(a), (b), (c) or (d) of the definition of "health information custodian";

(ii) the person to whom the information relates is one to whom both the disclosing custodian and recipient custodian provide health care or assist in the provision of health care or have previously provided health care or assisted in the provision of health care; and

(iii) the disclosure is for the purpose of activities to improve or maintain the quality of care provided by the receiving custodian to the person to whom the information relates or persons provided with similar health care.

(2) A health information custodian may disclose personal health information about a person –

(a) to a health officer or an authorised officer appointed under the Public Health Act [Cap. 12.15];

(b) with respect to vaccination, to a vaccinator under the Vaccination Act [Cap. 12.19]; or

(c) to a public health authority that is similar to the persons described in paragraph (a) and that is established under the laws of another jurisdiction, if the disclosure is made for a purpose that is substantially similar to a purpose of the Public Health Act [Cap. 12.15] or the Vaccination Act [Cap. 12.19].

(3) A person who is not a health information custodian is authorized to collect the personal health information that a health information custodian may disclose to the person under subsection (1)(c).

44 Disclosures related to risks

(1) A health information custodian may disclose personal health information about a person if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons.

(2) A health information custodian may disclose personal health information about a person to the Prison Commissioner or Police Commissioner, as the case may be, in which the person is being lawfully detained, to the officer in charge of a mental health facility in accordance with the Mental Health Act [Cap. 12.10] in which the person is being lawfully detained or to a medical emergency officer for the purposes of section 187 of the Public Health Act [Cap. 12.15], for the purposes described in subsection (3).

(3) A health information custodian may disclose personal health information about a person under subsection (2) to assist the Tonga Prisons, Tonga Police or the mental health facility in making a decision concerning –

(a) arrangements for the provision of health care to the person; or

(b) the placement of the person into custody, detention, release, conditional release, discharge or conditional discharge under the Mental Health Act [Cap. 12.10] or under section 187 of the Public Health Act [Cap. 12.15].

45 Disclosures for proceedings

(1) A health information custodian may disclose personal health information about a person –

(a) subject to the requirements and restrictions, if any, that are prescribed by Regulations, for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;

(b) to a proposed guardian of the person under section 8 of the Guardianship Act [Cap. 6.04], for the purpose of having the person appointed as such;

(c) to counsel under section 18 of the Guardianship Act [Cap. 6.04] for the purpose of having the person appointed by the Court to assist the Court or to represent the person in a proceeding under that Act; or

(d) for the purpose of complying with –

(i) a summons, order or similar requirement issued in a proceeding by a person having jurisdiction to compel the production of information; or

(ii) a procedural rule that relates to the production of information in a proceeding.

(2) An agent or former agent who receives personal health information under subsection (1) or under section 41(2) for purposes of a proceeding or contemplated proceeding may disclose the information to the agent's or former agent's professional advisor for the purpose of providing advice or representation to the agent or former agent, if the advisor is under a professional duty of confidentiality.

46 Disclosure to successor

(1) In this section, "potential successor" means a potential successor or a successor that is health information custodian or that will be a health information custodian if it becomes the successor.

(2) A health information custodian may disclose personal health information about a person to a potential successor of the custodian, for the purpose of allowing the potential successor to assess and evaluate the operations of the custodian, if the potential successor first enters into an agreement with the custodian to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purpose of the assessment or evaluation.

(3) A health information custodian may transfer records of personal health information about a person to the custodian's successor if the custodian makes reasonable efforts in the circumstances to give notice to the person before transferring the records or, if that is not reasonably possible, as soon as possible after transferring the records.

(4) Subject to the agreement of the person who is to receive the transfer, a health information custodian may transfer records of personal health information about a person in such circumstances as may be prescribed by Regulations, to a prescribed person whose functions include the collection and preservation of records of historical importance, if the disclosure is made for the purpose of that function.

47 Disclosures related to this or other Acts

(1) A health information custodian may disclose personal health information about a person –

(a) for the purpose of determining, assessing or confirming capacity of the person before the Court;

(b) to a Board in accordance with the Medical, Dental and Allied Health Practitioners Act 2021, the Nurses, Nurse Practitioners and Midwives Act 2021 or the Pharmacy Act [Cap. 12.14] for the purpose of the administration or enforcement of the Act;

(c) subject to the requirements and restrictions, if any, that are prescribed by Regulations, to a person carrying out an inspection, investigation or similar procedure that is authorized by a warrant under this Act or any other Act for the purpose of complying with the warrant or for the purpose of facilitating the inspection, investigation or similar procedure; or

(d) subject to the requirements and restrictions, if any, that are prescribed by Regulations, if permitted or required by law or by a treaty, agreement or arrangement made under an Act.

(2) For the purposes of subsection (1)(d) and subject to the Regulations, if an Act or a Regulation made under any of those Acts specifically provides that information is exempt, under stated circumstances, from a confidentiality or secrecy requirement, that provision shall be deemed to permit the disclosure of the information in the stated circumstances.

48 Disclosure for research

(1) A health information custodian may disclose personal health information about a person to a researcher if the researcher –

(a) submits to the custodian –

(i) an application in writing;

(ii) a research plan that meets the requirements of subsection (2); and

(iii) a copy of the decision of the research ethics board that approves the research plan; and

(b) enters into the agreement required by subsection (5).

(2) A research plan shall be in writing and shall set out –

(a) the affiliation of each person involved in the research;

(b) the nature and objectives of the research and the public or scientific benefit of the research that the researcher anticipates; and

(c) all other matters that may be prescribed by Regulations related to the research.

(3) When deciding whether to approve a research plan that a researcher submits to it, the Research Ethics Board shall consider the matters that it considers relevant, including –

(a) whether the objectives of the research can reasonably be accomplished without using the personal health information that is to be disclosed;

(b) whether, at the time the research is conducted, adequate safeguards will be in place to protect the privacy of the persons whose personal health information is being disclosed and to preserve the confidentiality of the information;

(c) the public interest in conducting the research and the public interest in protecting the privacy of the persons whose personal health information is being disclosed; and

(d) whether obtaining the consent of the persons whose personal health information is being disclosed would be impractical.

(4) After reviewing a research plan that a researcher has submitted to it, the Research Ethics Board shall provide to the researcher a decision in writing, with reasons, setting out whether the board approves the plan, and whether the approval is subject to any conditions, which shall be specified in the decision.

(5) Before a health information custodian discloses personal health information to a researcher under subsection (1), the researcher shall enter into an agreement with the custodian in which the researcher agrees to comply with the conditions and restrictions, if any, that the custodian imposes relating to the use, security, disclosure, return or disposal of the information.

(6) A researcher who receives personal health information about a person from a health information custodian under subsection (1) shall –

(a) comply with the conditions, if any, specified by the Research Ethics Board in respect of the research plan;

(b) use the information only for the purposes set out in the research plan as approved by the Research Ethics Board;

(c) not publish the information in a form that could reasonably enable a person to ascertain the identity of the person;

(d) despite section 53(1), not disclose the information except as required by law and subject to the exceptions and additional requirements, if any, that are prescribed by Regulations;

(e) not make contact or attempt to make contact with the person, directly or indirectly, unless the custodian first obtains the person's consent to being contacted;

(f) notify the custodian immediately in writing if the researcher becomes aware of any breach of this subsection or the agreement described in subsection (5); and

(g) comply with the agreement described in subsection (5).

(7) Despite any other Act that permits a health information custodian to disclose personal health information to a researcher for the purpose of conducting research, this section applies to the disclosure as if it were a disclosure for research under this section unless prescribed by Regulations otherwise.

(8) Subject to subsection (9), a health information custodian may disclose personal health information to a researcher or may use the information to conduct research if –

(a) the research involves the use of personal health information originating wholly or in part outside Tonga;

(b) the research has received the prescribed by Regulations approval from a body outside Tonga that has the function of approving research; and

(c) such requirements as may be prescribed by Regulations are met.

(9) Subsections (1) to (4) and subsection (6)(a) and (b) do not apply to a disclosure or use made under this subsection.

49 Disclosure for planning and management of health service

(1) A health information custodian may disclose to an entity that is prescribed by Regulations, personal health information for the purpose of analysis or compiling statistical information with respect to the management of, evaluation or monitoring of, the allocation of resources to or planning for all or part of the health service, including the delivery of services, if the entity meets the requirements under subsection (3).

(2) Subsection (1) does not apply to –

(a) notes of personal health information about a person that are recorded by a health information custodian and that document the contents of conversations during a private counselling session or a group, joint or family counselling session; or

(b) information that is prescribed by Regulations in circumstances that are prescribed by Regulations.

(3) A health information custodian may disclose personal health information to an entity that is prescribed by Regulations under subsection (1) if the entity has in place practices and procedures to protect the privacy of the persons whose personal health information it receives and to maintain the confidentiality of the information.

(4) An entity that is not a health information custodian is authorized to collect the personal health information that a health information custodian may disclose to the entity under subsection (1).

(5) Subject to the exceptions and additional requirements, if any, that are prescribed by Regulations and despite section 53(1), an entity that receives personal health information under subsection (1) shall not use the information except for the

purposes for which it received the information and shall not disclose the information except as required by law.

50 Health care payments

(1) If requested by a person listed in subsection (2), a health information custodian shall disclose personal health information to the person that made the request for the purpose of determining, providing, monitoring or verifying payment or funding for health care funded wholly or in part by the person, or for goods used for health care funded wholly or in part by the person.

(2) For the purposes of subsection (1), a person means –

(a) the Minister;

(b) the Minister of a Ministry that is prescribed by Regulations; or

(c) a donor agency that is prescribed by Regulations.

(3) A person listed in subsection (2), may disclose information collected under subsection (1) to any person for a purpose set out in that subsection if the disclosure is reasonably necessary for that purpose.

(4) A person listed in subsection (2), who makes a request under subsection (1) shall not access, collect, use or disclose personal health information if other information will serve the purpose of the access, collection, use or disclosure.

(5) A person listed in subsection (2), who makes a request under subsection (1) shall not access, collect, use or disclose more personal health information than is reasonably necessary to meet the purpose of the access, collection, use or disclosure, as the case may be.

51 Disclosure for analysis of health service

(1) Subject to the restrictions, if any, that are prescribed by Regulations, a health information custodian shall, upon the request of the Minister, disclose personal health information to a health data entity that the Minister approves under subsection (3) for analysis with respect to the management of, evaluation or monitoring of, the allocation of resources to or planning for all or part of the health system, including the delivery of services, if the requirements of this section are met.

(2) The Minister may prescribe by Regulations the form and manner in which and the time at which the health information custodian is required to disclose the personal health information under subsection (1).

(3) The Minister may approve a health data entity for the purposes of a disclosure made under this section if –

(a) the corporate objects of the institute include performing data analysis of personal health information, linking the information with other information and de-identifying the information for the Minister; and

(b) the institute has in place practices and procedures to protect the privacy of the persons whose personal health information it receives and to maintain the confidentiality of the information.

(4) If the Minister withdraws the approval of a health data entity, the institute shall –

(a) make no further use or disclosure of any personal health information that a health information custodian has disclosed to it under subsection (1) or any information derived from that personal health information; and

(b) comply with the written directions of the Minister with respect to information described in paragraph (a).

(5) If a health data entity ceases to exist, the persons holding the personal health information that the institute received under subsection (1) and held when it ceased to exist shall comply with the written directions of the Minister with respect to the information.

(6) The Minister may disclose to the health data entity that receives personal health information under subsection (1) other personal health information for the purposes of the analysis and linking that the Minister requires if the disclosure is included in the Minister's proposal.

(7) A health data entity that receives personal health information under subsection (1) or (6) shall –

(a) follow the practices and procedures described under subsection (3)(b);

(b) perform the analysis and linking with other data that the Minister requires;

(c) de-identify the information;

(d) provide the results of the analysis and linking, using only de-identified information, to the Minister or to the persons that the Minister approves;

(e) not disclose the information to the Minister or to the persons that the Minister approves except in a de-identified form; and

(f) subject to paragraphs (d) and (e), not disclose to any persons the information, even in a de-identified form, or any information derived from the information.

(8) Any decision the Minister may make under this section shall be final.

52 Disclosure upon request of Minister

(1) A health data entity to which a health information custodian has disclosed personal health information under section 51, shall, upon the request of the Minister, disclose the information to the Minister or another person approved by the Minister if the Minister is of the opinion that it is in the public interest to request the disclosure and the requirements of this section have been met.

(2) The personal health information under subsection (1) are not –

(a) notes of personal health information about a person that are recorded by a health information custodian and that document the contents of conversations during a private counselling session or a group, joint or family counselling session; or

(b) information that is prescribed by Regulations.

53 Restrictions on recipients

(1) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed by Regulations, a person who is not a health information custodian and to whom a health information custodian discloses personal health information, shall not use or disclose the information for any purpose other than –

(a) the purpose for which the custodian was authorized to disclose the information under this Act; or

(b) the purpose of carrying out a statutory or legal duty.

(2) Subject to the exceptions and additional requirements, if any, that are prescribed by Regulations, a person who is not a health information custodian, and to whom a health information custodian discloses personal health information, shall not use or disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be, unless the use or disclosure is required by law.

(3) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed by Regulations, if a health information custodian discloses information to another health information custodian and the information is identifying information in the custody or under the control of the receiving custodian, the receiving custodian shall not –

(a) use or disclose the information for any purpose other than –

(i) the purpose for which the disclosing custodian was authorized to disclose the information under this Act; or

(ii) the purpose of carrying out a statutory or legal duty; or

(b) use or disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be,

the restrictions set out in this subsection shall apply to a health information custodian that receives the identifying information described in this subsection even if the custodian receives the information before the day this Act comes into force.

54 Disclosure outside Tonga

(1) A health information custodian may disclose personal health information about a person collected in Tonga to a person outside Tonga only if –

(a) the person consents to the disclosure;

(b) this Act permits the disclosure;

(c) the person receiving the information performs functions comparable to the functions performed by a person to whom this Act would permit the custodian to disclose the information in Tonga under section 44(2) of this Act or section 47(1)(b) or (c) of this Act;

(d) the following conditions are met –

(i) the custodian is an entity that is prescribed by Regulations for the purposes of section 49(1) of this Act and is prescribed by Regulations for the purpose of this subsection;

(ii) the disclosure is for the purpose of health planning or health administration;

(iii) the information relates to health care provided in Tonga to a person who is now resident outside of Tonga; and

(iv) the disclosure is made to the government of the place where the person resides;

(e) the disclosure is reasonably necessary for the provision of health care to the person, but not if the person has expressly instructed the custodian not to make the disclosure; or

(f) the disclosure is reasonably necessary for the administration of payments in connection with the provision of health care to the person or for contractual or legal requirements in that connection.

(2) If a health information custodian discloses personal health information about a person under subsection (1)(e) and if an instruction of the person made under that subsection prevents the custodian from disclosing all the personal health information that the custodian considers reasonably necessary to disclose for the provision of health care to the person, the custodian shall notify the person to whom it makes the disclosure of that fact.

55 Sensitive personal health information

(1) In this section "sensitive personal health information" means personal health information that a person has identified to the custodian as information that the person considers to be of a sensitive nature or –

(a) information about a person's genetic test information;

(b) information about a person's infection by or exposure to Human Immune Virus (HIV)or Acquired Immune Deficiency Syndrome (AIDS);

(c) information about a person's infection by or exposure to a sexually transmitted disease;

(d) information about a person's mental disorder;

(e) information about a person's pregnancy; or

(f) information about a person's sexual assault or abuse.

(2) Where a person informs a health information custodian that the custodian has custody or control of personal health information of the person that the person considers to be personal health information of a sensitive nature, the health information custodian shall make a note on the record of personal health information, or link a note to the record, to indicate which part of the record contains sensitive personal health information.

(3) Subject to subsection (4), before disclosing sensitive personal health information about a person a health information custodian shall –

(a) inform the person to whom the information relates, to whom the disclosure is being made and why the custodian considers the disclosure to be necessary;

(b) consider the views, if any, of the person, relating to the proposed disclosure;

(c) make a note on the record of personal health information of the person, or link a note to the record, to indicate that the custodian has complied with this section or why the custodian is of the opinion that this section does not apply; and

(d) make a note on the record of personal health information of the person, or link a note to the record, to indicate why the disclosure of the sensitive personal health information was necessary.

(4) Subsection (3)(a) and (b) do not apply if –

(a) there is, in the opinion of the custodian, an urgent need for the sensitive personal health information to be disclosed and it is not reasonably possible to comply with that subsection;

(b) the disclosure is required by law; or

(c) the person to whom the sensitive personal health information relates has consented to the disclosure.

(5) A health information custodian shall not disclose sensitive personal health information if other personal health information will serve the same purpose.

(6) A health information custodian shall not disclose more sensitive personal health information than is reasonably necessary to meet the purpose of the disclosure.

PART 5 – ACCESS TO RECORDS OF PERSONAL HEALTH INFORMATION AND CORRECTION

DIVISION 1 – ACCESS

56 Application of Part

(1) This Part does not apply to a record that contains –

(a) quality of care information;

(b) personal health information collected or created for the purpose of complying with the requirements of a quality assurance program under the Medical, Dental and Allied Health Practitioners Act 2021, the Nurses, Nurse Practitioners and Midwives Act 2021 or the Pharmacy Act [Cap. 12.14];

(c) raw data from standardized psychological tests or assessments; or

(d) personal health information of the type prescribed by Regulations in the custody or under the control of a class or classes of health information custodians that are prescribed by Regulations.

(2) Despite subsection (1), this Part applies to that part of a record of personal health information that can reasonably be severed from the part of the record that contains the information described in subsection (1).

(3) Subject to any exceptions and additional requirements, if any, that are prescribed by Regulations, this Part applies to a record in the custody or control of a health information custodian respecting all instances where all or part of the personal health information of the person that is accessible by means of the National Health Information System is viewed, handled or otherwise dealt with by the custodian.

57 Person's right of access

(1) Subject to this Part, a person has a right of access to a record of personal health information about the person that is in the custody or under the control of a health information custodian unless –

(a) the record or the information in the record is subject to a legal privilege that restricts disclosure of the record or the information, as the case may be, to the person;

(b) another Act or a court order prohibits disclosure to the person of the record or the information in the record in the circumstances;

(c) the information in the record was collected or created primarily in anticipation of or for use in a proceeding, and the proceeding, together with all appeals or processes resulting from it, have not been concluded;

(d) the following conditions are met –

(i) the information was collected or created in the course of an inspection, investigation or similar procedure authorized by law, or undertaken for the purpose of the detection, monitoring or prevention of a person's receiving or attempting to receive a service or benefit, to which the person is not entitled under an Act or a program operated by the Minister, or a payment for such a service or benefit; and

(ii) the inspection, investigation, or similar procedure, together with all proceedings, appeals or processes resulting from them, have not been concluded; or

(e) granting the access could reasonably be expected to –

(i) result in a risk of serious harm to the treatment or recovery of the person or a risk of serious bodily harm to the person or another person;

(ii) lead to the identification of a person who was required by law to provide information in the record to the custodian; or

(iii) lead to the identification of a person who provided information in the record to the custodian explicitly or implicitly in confidence if the custodian considers it appropriate in the circumstances that the identity of the person be kept confidential.

(2) The right to access a record of personal health information includes the right to access the record in an electronic format that meets the prescribed by Regulations requirements, subject to any restrictions, additional requirements or exceptions that may be prescribed by Regulations.

(3) Despite subsection (1), a person has a right of access to that part of a record of personal health information about the person that can reasonably be severed from the part of the record to which the person does not have a right of access as a result of subsection (1)(a) to (e).

(4) Despite subsection (1), if a record is not a record dedicated primarily to personal health information about the person requesting access, the person has a right of access only to the portion of personal health information about the person in the record that can reasonably be severed from the record for the purpose of providing access.

(5) Before deciding to refuse to grant a person access to a record of personal health information under subsection (1)(e)(i), a health information custodian shall consult with a physician who is registered under the Medical, Dental and Allied Health Practitioners Act 2021.

(6) Nothing in this Act prevents a health information custodian from –

(a) granting a person access to a record of personal health information, to which the person has a right of access, if the person makes an oral request for access or does not make any request for access under section 58; or

(b) with respect to a record of personal health information to which a person has a right of access, communicating with the person's substitute decision-maker who is authorized to consent on behalf of the person to the access, collection, use or disclosure of personal health information about the person.

(7) Nothing in this Part relieves a health information custodian from a legal duty to provide, in a manner that is not inconsistent with this Act, personal health information as expeditiously as is necessary for the provision of health care to the person.

58 Request for access

(1) A person may exercise a right of access to a record of personal health information by making a written request for access to the health information custodian that has custody or control of the information.

(2) The request shall contain sufficient detail to enable the health information custodian to identify and locate the record with reasonable efforts.

(3) If the request does not contain sufficient detail to enable the health information custodian to identify and locate the record with reasonable efforts, the custodian shall offer assistance to the person requesting access in reformulating the request to comply with subsection (2).

59 Response of health information custodian

(1) A health information custodian that receives a request from a person for access to a record of personal health information shall –

(a) make the record available to the person for examination and, at the request of the person, provide a copy of the record to the person and if reasonably practical, an explanation of any term, code or abbreviation used in the record;

(b) give a written notice to the person stating that, after a reasonable search, the custodian has concluded that the record does not exist, cannot be found, or is not a record to which this Part applies, if that is the case;

(c) if the custodian is entitled to refuse the request, in whole or in part, under any provision of this Part other than section 57(c), (d) or (e), give a written notice to the person stating that the custodian is refusing the request, in whole or in part, providing a reason for the refusal and stating that the person is entitled to make a complaint about the refusal to the CEO under Part 8 of this Act; or

(d) subject to subsection (2), if the custodian is entitled to refuse the request, in whole or in part, under section 57(1)(c), (d) or (e), give a written notice to the person stating that the person is entitled to make a complaint about the refusal to the CEO under Part 8, and that the custodian is refusing –

(i) the request, in whole or in part, while citing which of section 57(1)(c), (d) and (e) apply;

(ii) the request, in whole or in part, under one or more of section 57(1)(c), (d) and (e), while not citing which of those provisions apply; or

(iii) to confirm or deny the existence of any record subject to section 57(1)(c), (d) and (e).

(2) A custodian acting under subsection (1)(d) shall not act under subsection (1)(d)(i) where doing so would reasonably be expected in the circumstances known to the person making the decision on behalf of the custodian to reveal to the person, directly or indirectly, information to which the person does not have a right of access.

(3) Subject to subsection (4), the health information custodian shall give the response required by subsection (1)(a), (b), (c) or (d) as soon as possible in the circumstances but no later than 30 days after receiving the request.

(4) Within 30 days after receiving the request for access, the health information custodian may extend the time limit set out in subsection (3) for a further period of time of not more than 30 days if –

(a) meeting the time limit would unreasonably interfere with the operations of the custodian because the information consists of numerous pieces of information or locating the information would necessitate a lengthy search; or

(b) the time required to undertake the consultations necessary to reply to the request within 30 days after receiving it would make it not reasonably practical to reply within that time.

(5) Upon extending the time limit under subsection (4), the health information custodian shall give the person written notice of the extension setting out the length of the extension and the reason for the extension.

(6) Despite subsection (3), the health information custodian shall give the response required by subsection (1)(a), (b), (c) or (d) within the time period that the person specifies if –

(a) the person provides the custodian with evidence satisfactory to the custodian, acting on a reasonable basis, that the person requires access to the requested record of personal health information on an urgent basis within that time period; and

(b) the custodian is reasonably able to give the required response within that time period.

(7) A health information custodian that believes on reasonable grounds that a request for access to a record of personal health information is frivolous or vexatious or is made in bad faith may refuse to grant the person access to the requested record.

(8) If the health information custodian does not respond to the request within the time limit or before the extension, if any, expires, the custodian shall be deemed to have refused the person's request for access.

(9) If the health information custodian refuses or is deemed to have refused the request, in whole or in part –

(a) the person is entitled to make a complaint about the refusal to the CEO under Part 8; and

(b) in the complaint, the burden of proof in respect of the refusal lies on the health information custodian.

(10) A health information custodian shall not make a record of personal health information or a part of it available to a person under this Part or provide a copy of it to a person under subsection (1)(a) without first taking reasonable steps to be satisfied as to the person's identity.

(11) A health information custodian that makes a record of personal health information or a part of it available to a person under this Part or provides a copy of it to a person under subsection (1)(a) may charge the person a prescribed fee by Regulations for that purpose if the custodian first gives the person an estimate of the fee.

(12) The amount of the fee shall not exceed the prescribed amount by Regulations or the amount of reasonable cost recovery, if no amount is prescribed by Regulations.

(13) A health information custodian mentioned in subsection (11) may waive the payment of all or any part of the fee that a person is required to pay under that subsection if, in the custodian's opinion, it is fair and equitable to do so.

DIVISION 2 – CORRECTION

60 Correction

(1) If a health information custodian has granted a person access to a record of the person's personal health information and if the person believes that the record is inaccurate or incomplete for the purposes for which the custodian has accessed, collected, uses or has used the information, the person may request in writing that the custodian correct the record.

(2) As soon as possible in the circumstances but no later than 30 days after receiving a request for a correction under subsection (1), the health information custodian shall, by written notice to the person, grant or refuse the person's request or extend the deadline for replying for a period of not more than 30 days if –

(a) replying to the request within 30 days would unreasonably interfere with the activities of the custodian; or

(b) the time required to undertake the consultations necessary to reply to the request within 30 days would make it not reasonably practical to reply within that time.

(3) A health information custodian that extends the time limit under subsection (2) shall –

(a) give the person written notice of the extension setting out the length of the extension and the reason for the extension; and

(b) grant or refuse the person's request as soon as possible in the circumstances but no later than the expiry of the time limit as extended.

(4) A health information custodian that does not grant a request for a correction under subsection (1) within the time required shall be deemed to have refused the request.

(5) A health information custodian who believes on reasonable grounds that a request for a correction under subsection (1) is frivolous or vexatious or is made in bad faith, may refuse to grant the request and, in that case, shall provide the person with a notice that sets out the reasons for the refusal and that states that the person is entitled to make a complaint about the refusal to the CEO under Part 8.

(6) The person is entitled to make a complaint to the CEO under Part 8 about a refusal made under subsection (5).

(7) The health information custodian shall grant a request for a correction under subsection (1) if the person demonstrates, to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information and gives the custodian the information necessary to enable the custodian to correct the record.

(8) Despite subsection (7), a health information custodian is not required to correct a record of personal health information if –

(a) it consists of a record that was not originally created by the custodian and the custodian does not have sufficient knowledge, expertise and authority to correct the record; or

(b) it consists of a professional opinion or observation that a custodian has made in good faith about the person.

(9) Upon granting a request for a correction under subsection (1), the health information custodian shall –

(a) make the requested correction by –

(i) recording the correct information in the record and –

(A) striking out the incorrect information in a manner that does not obliterate the record; or

(B) if that is not possible, labelling the information as incorrect, severing the incorrect information from the record, storing it separately from the record and maintaining a link in the

record that enables a person to trace the incorrect information; or

(ii) if it is not possible to record the correct information in the record, ensuring that there is a practical system in place to inform a person who accesses the record that the information in the record is incorrect and to direct the person to the correct information;

(b) give notice to the person of what it has done under paragraph (a);

(c) at the request of the person, give written notice of the requested correction, to the extent reasonably possible, to the persons to whom the custodian has disclosed the information with respect to which the person requested the correction of the record, except if the correction cannot reasonably be expected to have an effect on the ongoing provision of health care or other benefits to the person.

(10) A notice of refusal under subsection (4) or (5) must give the reasons for the refusal and inform the person that the person is entitled to –

(a) prepare a concise statement of disagreement that sets out the correction that the health information custodian has refused to make;

(b) require that the health information custodian attach the statement of disagreement as part of the records that it holds of the person's personal health information and disclose the statement of disagreement whenever the custodian discloses information to which the statement relates;

(c) require that the health information custodian make all reasonable efforts to disclose the statement of disagreement to any person who would have been notified under subsection (10)(c) if the custodian had granted the requested correction; and

(d) make a complaint about the refusal to the CEO under Part 8.

(11) If a health information custodian, under subsection (3) or (4), refuses a request for a correction under subsection (1), in whole or in part, or is deemed to have refused the request, the person is entitled to take the actions described in any of subsection (10)(a), (b), (c) and (d).

(12) If the person takes an action described in subsection (10)(b) or (c), the health information custodian shall comply with the requirements described in the applicable subsection.

PART 6 – QUALITY OF CARE

61 Definitions

(1) In this Part –

"disclose" means, with respect to quality-of-care information, to provide or make the information available to a person who is not a member of

the quality of care committee with which the information is associated, and "disclosure" has a corresponding meaning;

"hospital" means a hospital according to the Health Services Act [Cap. 12.06];

"quality of care committee" means a body of one or more persons –

(a) that is established, appointed or approved –

(i) by a hospital; or

(ii) by an entity that provides health care and that is prescribed by Regulations or is in a class of entities that is prescribed by Regulations;

(b) whose purpose is –

(i) to improve the quality of health care provided by the hospital, the entity or health care providers; or

(ii) to educate persons who provide the health care; and

(c) whose functions are to examine and evaluate the provision of health care to persons by the hospital, the entity or health care providers by methods that may include a quality assurance review, error and risk management review, peer review, ethics review, utilization review, outcome review and medical and other professional review;

"witness" means a person, whether or not a party to a proceeding, who in the course of the proceeding –

(a) is examined for discovery, either orally or in writing;

(b) makes an affidavit; or

(c) is competent or compellable to be examined or to produce a document, whether under oath or not.

(2) For the purposes of this Part, information is quality of care information if –

(a) it is collected by or prepared for a quality of care committee for the sole purpose of assisting the committee in carrying on its functions;

(b) it arises out of any activity that a quality of care committee carries on as part of its functions; or

(c) it is information that satisfies the criteria for quality of care information prescribed by the Regulations.

(3) Despite subsection (2), quality of care information does not include the following –

(a) information accessed, collected or used for the purposes of providing health care to a person; or

(b) information prescribed by the Regulations not to be quality of care information.

62 Disclosure to committee

Despite the provisions of this Act, a person may disclose any information to a quality-of-care committee for the purposes of the committee.

63 Non-disclosure of information

(1) No person shall do any of the following, except as permitted by this Part –

(a) disclose information concerning any activity carried on by a quality of care committee as part of its functions; or

(b) disclose quality of care information.

(2) Despite subsection (1), a quality of care committee may disclose quality of care information to one or more persons who manage the affairs of the hospital or entity that established, appointed or approved the committee, other than persons prescribed by the Regulations or in a class prescribed by the Regulations, if the committee considers the disclosure necessary for the purposes of eliminating or reducing a substantial risk of serious bodily harm to persons who receive services from the hospital or entity.

(3) Despite subsection (1) a person may disclose information about a person, including quality of care information, without the person's consent if the disclosure is necessary for the purposes of eliminating or reducing a substantial risk of serious bodily harm to an identifiable person or group of persons.

(4) A person to whom information is disclosed for the purposes set out in subsection (2) or (3) shall not use the information except for the purposes for which the information was disclosed to the person.

(5) A person to whom information is disclosed for the purposes set out in subsection (2) or (3) shall not disclose the information except as permitted under this Part.

64 Non-disclosure in proceeding

(1) Except as permitted by this Part, no person shall ask a witness and no court or other body holding a proceeding, other than a quality of care committee, shall permit or require a witness in the proceeding to –

(a) disclose information concerning any activity carried on by a quality of care committee as part of its functions; or

(b) disclose quality of care information.

(2) Except as permitted by this Part, no quality of care information is admissible in evidence in a proceeding.

65 Immunity

(1) No action or other proceeding for damages may be instituted against a person who in good faith discloses information to a quality of care committee at the request of the committee or for the purposes of assisting the committee in carrying out its functions.

(2) No action or other proceeding for damages and no prosecution for an offence under section 64 may be instituted against –

(a) a member of a committee who, in good faith, discloses quality of care information for a purpose described in section 63(2); or

(b) a person who, in good faith, discloses information for a purpose described in section 63(3).

(3) No action or other proceeding for damages may be instituted against a member of a committee in respect of the failure of the committee to make a disclosure referred to in section 63(2).

PART 7 – NATIONAL HEALTH INFORMATION SYSTEM

66 Interpretation

(1) In this Part –

"advisory committee" means the advisory committee established by the Minister under section 74;

"NHIS" means the National Health Information System that is developed and maintained by the Ministry and operated by an information manager for the purpose of enabling health information custodians to access, collect, use and disclose personal health information by means of the System in accordance with this Part and the Regulations made under this Part; and

"identifying information" has the same meaning as in section 3(1).

(2) Despite anything in section 3, for the purposes of this Part, a health information custodian is considered to be accessing, collecting, using or disclosing personal health information in the following circumstances –

(a) When a health information custodian views, handles or otherwise deals with all or part of a person's personal health information by means of the NHIS and that information was provided to the NHIS by another health information custodian –

(i) the health information custodian is considered to be collecting the personal health information if it is viewing, handling or otherwise dealing with the information for the first time; and

(ii) the health information custodian is considered to be using the personal health information each time it subsequently views, handles or otherwise deals with the information;

(b) whenever a health information custodian views, handles or otherwise deals with all or part of a person's personal health information by means of the NHIS and that information was provided to the NHIS by the custodian, the custodian is considered to be using the personal health information; or

(c) a health information custodian who provides personal health information to the NHIS is considered to be disclosing the information only when another health information custodian collects the information by means of the NHIS.

(3) Despite anything in section 3, when a health information custodian provides personal health information to the NHIS –

(a) the custodian is considered not to be disclosing the information to the NHIS; and

(b) the NHIS is considered not to be collecting the information from the custodian.

67 NHIS

(1) The Ministry has the power and the duty to develop and maintain the NHIS in accordance with this Part and the Regulations made under this Part.

(2) The Ministry and its information manager shall perform the following functions –

(a) manage and integrate personal health information it receives from health information custodians;

(b) ensure the proper functioning of the NHIS by servicing the electronic systems that support the NHIS;

(c) ensure the accuracy and quality of the personal health information that is accessible by means of the NHIS by conducting data quality assurance activities on the personal health information it receives from health information custodians; and

(d) conduct analyses of the personal health information that is accessible by means of the NHIS in order to provide alerts and reminders to health information custodians for their use in the provision of health care to persons.

(3) In addition to carrying out the powers, duties and functions described in this Part and in Part 5, the Ministry shall carry out any prescribed by Regulations powers, duties or functions.

68 Requirements for NHIS

The Ministry shall comply with the following requirements in developing and maintaining the NHIS –

(a) it shall take reasonable steps to limit the personal health information it receives to that which is reasonably necessary for developing and maintaining the NHIS;

(b) it shall not permit its employees or any other person acting on its behalf to view, handle or otherwise deal with the personal health information received from health information custodians, unless the employee or person acting on behalf of the Ministry agrees to comply with the restrictions that apply to the Ministry;

(c) it shall make available to the public and to each health information custodian that provides personal health information to it –

(i) a plain language description of the NHIS, including a general description of the administrative, technical and physical safeguards in place to –

(A) protect against theft, loss and unauthorized access, collection, use or disclosure of the personal health information that is accessible by means of the NHIS;

(B) protect the personal health information that is accessible by means of the NHIS against unauthorized copying, modification or disposal; and

(C) protect the integrity, security and confidentiality of the personal health information that is accessible by means of the NHIS; and

(ii) any directives, guidelines and policies of the Ministry that apply to the personal health information that is accessible by means of the NHIS, to the extent that these do not reveal a trade secret or confidential scientific, technical, commercial or labour relations information;

(d) it shall –

(i) keep an electronic record of all instances where all or part of the personal health information that is accessible by means of the NHIS is viewed, handled or otherwise dealt with, and ensure that the record identifies the person to whom the information relates, the type of information that is viewed, handled or otherwise dealt with, all persons who have viewed, handled or otherwise dealt with the information, and the date, time and location of the viewing, handling, or dealing with; and

(ii) in the event that a health information custodian has requested that the Ministry transmit to the custodian personal health information that is accessible by means of the NHIS, keep an electronic record of all instances where personal health information is transmitted

to the custodian by means of the NHIS, and ensure that the record identifies the person to whom the information relates, the type of information that is transmitted, the custodian requesting the information, the date and time that the information was transmitted, and the location to which the information was transmitted.

(e) it shall audit and monitor the electronic records that it is required to keep under paragraph (d);

(f) it shall, upon the request of the CEO, for the purposes of Part 8, the electronic records kept under paragraph (d);

(g) it shall, upon request of a health information custodian that requires the records to audit and monitor its compliance with this Act, provide to the custodian or an agent acting on the custodian's behalf, the records kept under paragraph (d);

(h) it shall perform an assessment of the NHIS with respect to –

(i) threats, vulnerabilities and risks to the security and integrity of the personal health information; and

(ii) how the NHIS may affect the privacy of the persons to whom the information relates;

(i) it shall notify, at the first reasonable opportunity, each health information custodian that provided personal health information to the Ministry if the personal health information that the health information custodian provided is stolen or lost or if it is accessed, collected, used or disclosed without authority;

(j) it shall –

(i) make available to each health information custodian that provided personal health information to the Ministry a written copy of the results of the assessments carried out under paragraph (h) that relates to the personal health information the custodian provided; and

(ii) make available to the public a summary of the results of the assessments carried out under paragraph (h);

(k) it shall ensure that any third party it retains to assist in providing services for the purpose of developing or maintaining the NHIS agrees to comply with the restrictions and conditions that are necessary to enable the Ministry to comply with all these requirements;

(l) it shall have in place and comply with practices and procedures that are for the purpose of protecting the privacy of the persons whose personal health information it receives and for maintaining the confidentiality of the information;

(m) it shall have in place and comply with practices and procedures that have been approved by the Minister for responding to or facilitating a response to a request made by a person under Part 5 in respect of the person's

record of personal health information that is accessible by means of the NHIS; and

(n) it shall comply with such other requirements as may be prescribed in the Regulations.

69 Minister's directives

(1) The Minister may make directives to the Ministry with respect to the carrying out of its powers, duties and functions under this Part, and the Ministry shall comply with the directives of the Minister.

(2) Before making a directive under subsection (1), the Minister shall –

(a) submit a draft of the directive to the advisory committee for the purpose of reviewing and making recommendations on the draft directive; and

(b) consider the recommendations, if any, made by the advisory committee and amend the directive if the Minister considers it appropriate to do so.

(3) The Minister shall allow the advisory committee a period of at least 30 days for the purposes of review and recommendation under subsection (2), unless the Minister believes that there are urgent circumstances involving a significant risk to privacy or the confidentiality of personal health information, in which case the Minister may abridge the review period for the advisory committee to not less than five business days.

DIVISION 1 – ACCESS, COLLECTION, USE, DISCLOSURE BY CUSTODIANS

70 Restrictions on collection

(1) A health information custodian shall not collect personal health information by means of the NHIS except for the purpose of –

(a) providing or assisting in the provision of health care to the person to whom the information relates; or

(b) eliminating or reducing a significant risk of serious bodily harm to a person or group of persons, where the health information custodian believes on reasonable grounds that the collection is necessary for this purpose.

(2) A health information custodian may access, use and disclose prescribed by Regulations data elements for the purpose of uniquely identifying a person in order to collect personal health information under subsection (1).

(3) A health information custodian that collects personal health information under subsection (1)(a) may use or disclose the information for any purpose for which this Act permits or requires a custodian to use or disclose personal health information.

(4) Despite any other provision in this Act or the Regulations, a health information custodian that collects personal health information under subsection (1)(b) may only use or disclose the information for the purpose for which the information was collected.

(5) If a health information custodian requests that the Ministry transmit personal health information to the custodian by means of the NHIS and the Ministry transmits the information as requested, the custodian shall comply with the obligations referred to in section 14(1) with respect to the transmitted information, regardless of whether the custodian has viewed, handled or otherwise dealt with the information.

(6) Subject to the exceptions and additional requirements, if any, that are prescribed by Regulations, and in addition to any notice that is required to be given in the case of an unauthorized use or disclosure under section 14(2) and (3), if personal health information about a person is collected without authority by means of the NHIS, the health information custodian who is responsible for the unauthorized collection shall notify the person at the first reasonable opportunity of the unauthorized collection, and include in the notice a statement that the person is entitled to make a complaint to the CEO under Part 8.

71 Medication interaction checks

Despite the contents of a personal health information it may be utilized by a system that is maintained by the Ministry and that retrieves, processes or integrates personal health information that is accessible by means of the NHIS to provide health information custodians about potentially harmful medication interactions.

72 Provision to police

(1) Where it is prescribed by Regulations requirements, if any, are met, the Ministry may provide personal health information that is accessible by means of the NHIS to the police in relation to an investigation conducted under the Criminal Offences Act [Cap. 4.04] where there is a suspicious death.

(2) A Chief Medical Officer may collect personal health information by means of the NHIS for purposes related to their duties under the Public Health Act [Cap. 12.15].

(3) Personal health information may be provided or collected in accordance with subsection (1) or (2) despite any provision of sections 70, 71 and 72 of this Act.

73 Provision of information for purposes other than health care

(1) Despite any other provision in this Act or the Regulations, the Minister may direct the disclosure of personal health information that is accessible by means of the NHIS to a person, as if the Minister had custody or control of the information, if –

(a) a person has requested that the Minister disclose the personal health information in accordance with sections 43(1)(b), 43(2), 48 or 49;

(b) the personal health information requested by the person was provided to the Ministry under this Part by more than one health information custodian;

(c) the Minister has –

(i) submitted the request to the advisory committee;

(ii) provided the advisory committee with 30 days to review the request and make recommendations to the Minister; and

(iii) considered the recommendations, if any, made by the advisory committee; and

(d) the Minister has determined that the disclosure of the personal health information would be in accordance with section 43(1)(b), 43(2), 48 or 49 of this Act.

(2) The Minister may shorten the time period in subsection (1)(c)(ii) if –

(a) in the Minister's opinion, the urgency of the situation requires it; and

(b) the request is for the disclosure of personal health information in accordance with section 43(2).

(3) The Ministry shall comply with a direction under this section.

(4) A direction under this section may specify the form, manner and timeframe in which the information that is the subject of the direction is to be disclosed.

(5) The Minister shall not direct the disclosure of personal health information under this section if other information will serve the purpose of the disclosure.

(6) The Minister shall not direct the disclosure of more personal health information than is reasonably necessary to meet the purpose of the disclosure.

74 Advisory committee

(1) The Minister shall establish an advisory committee for the purpose of making recommendations to the Minister concerning –

(a) practices and procedures that the Ministry shall have in place to protect the privacy of the persons whose personal health information it receives and to maintain the confidentiality of the information;

(b) practices and procedures that the Ministry shall have in place for responding or facilitating a response to a request made by a person under Part 5 for a record of personal health information relating to the person that is accessible by means of the NHIS;

(c) the administrative, technical and physical safeguards the Ministry should have in place to protect the privacy of the persons whose personal health

information it receives and to maintain the confidentiality of the information;

(d) the role of the Ministry in assisting a health information custodian to fulfil its obligations to give notice to persons under section 14(2) and section 70(6) in the event that personal health information that is accessible by means of the NHIS is stolen or lost or is accessed, collected, used or disclosed without authority;

(e) the provision of notice in the event that personal health information that is accessible by means of the NHIS is stolen or lost or is accessed, collected, used or disclosed without authority;

(f) practices and procedures that the Ministry shall have in place to address gender issues that might arise with respect to the access, collection, use or disclosure of personal health information;

(g) anything that is referred to in this Part or in the Regulations as capable of being the subject of a recommendation of the advisory committee; and

(h) any other matter referred to the advisory committee by the Minister.

(2) Subject to subsection (5) and to the other provisions of this Part, the Minister shall determine the terms of reference of the advisory committee, including terms of reference with respect to conflicts of interest, the membership of the committee and the organization and governance of the committee.

(3) The Minister shall appoint the members of the advisory committee in accordance with the requirements, if any, prescribed in the Regulations.

(4) The Ministry shall provide administrative support for the advisory committee.

(5) The membership of the advisory committee shall be composed of at least 50 percent women.

75 Protection from liability for health information custodian

A health information custodian who, acting in good faith, provides personal health information to the Ministry by means of the NHIS is not liable for damages resulting from –

(a) any unauthorized viewing or handling of the provided information, or any unauthorized dealing with the provided information, by the Ministry, its employees or any other person acting on its behalf; or

(b) any unauthorized collection of the provided information by another health information custodian.

PART 8 – ADMINISTRATION AND ENFORCEMENT

DIVISION 1 – COMPLAINTS, REVIEWS, AND INSPECTIONS

76 Complaint to CEO

(1) A person who has reasonable grounds to believe that another person has contravened or is about to contravene a provision of this Act or its Regulations may make a complaint to the CEO.

(2) A complaint that a person makes under subsection (1) shall be in writing and shall be filed within –

(a) one year after the subject-matter of the complaint first came to the attention of the complainant or should reasonably have come to the attention of the complainant, whichever is the shorter; or

(b) whatever longer period of time that the CEO permits if the CEO is satisfied that it does not result in any prejudice to any person.

(3) A complaint that a person makes under sections 59(9), 60(6) or 60(11) of this Act shall be in writing and shall be filed within six months from the time at which the health information custodian refuses or is deemed to have refused the person's request mentioned in the applicable subsection.

(4) The health information custodian who is the subject matter of the complaint shall disclose a record of personal health information relating to the person to the CEO for the purpose of the complaint or application, if required by the CEO.

77 Response of CEO

(1) Upon receiving a complaint made under this Act, the CEO may inform the person about whom the complaint is made of the nature of the complaint and –

(a) inquire as to what means, other than the complaint, that the complainant is using or has used to resolve the subject-matter of the complaint; or

(b) require the complainant to try to resolve the issue, within the time period that the CEO specifies, with the person about which the complaint is made.

(2) If the CEO takes an action under subsection (1)(b) but the issue is not resolved within the time period specified, the rights and duties of the parties shall not be prejudiced under this Act.

(3) If the CEO does not take an action described in subsection (1), he may review the subject-matter of a complaint made under this Act if satisfied that there are reasonable grounds to do so.

(4) The CEO may decide not to review a complaint if satisfied that –

(a) the person about which the complaint is made has responded adequately to the complaint;

(b) the complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under this Act;

(c) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date the complaint was made is such that a review under this section would likely result in undue prejudice to any person;

(d) the complainant does not have a sufficient personal interest in the subject-matter of the complaint; or

(e) the complaint is frivolous or vexatious or is made in bad faith.

(5) Upon deciding not to review a complaint, the CEO shall give notice of the decision to the complainant and shall specify in the notice the reason for the decision.

(6) Upon deciding to review the complaint, the CEO shall give notice of the decision to the person about whom the complaint is made.

78 Inspection powers

(1) In conducting a review under section 77 of this Act, the CEO may enter and inspect any premises in accordance with this section if –

(a) the CEO has reasonable grounds to believe that –

(i) the person about whom the complaint was made or the person whose activities are being reviewed is using the premises for a purpose related to the subject-matter of the complaint or the review, as the case may be; and

(ii) the premises contains records or other documents relevant to the subject-matter of the complaint or the review, as the case may be; and

(b) the CEO is conducting the inspection for the purpose of determining whether the person has contravened or is about to contravene a provision of this Act or its Regulations.

(2) In conducting a review under section 77 of this Act, the CEO or authorised officer may –

(a) demand the production of any records or other documents relevant to the subject-matter of the review or copies of extracts from the books, records or other documents;

(b) inquire into all information, records, information practices of a health information custodian and other matters that are relevant to the subject-matter of the review;

(c) demand the production for inspection of anything described in paragraph (b); or

(d) use any data storage, processing or retrieval device or system belonging to the person being investigated in order to produce a record in readable form of any records or other documents relevant to the subject matter of the review.

(3) No person shall obstruct the CEO or authorised officer who is exercising powers under this section or provide the CEO or authorised officer with false or misleading information.

(4) A demand for books, records or documents or copies of extracts from them under subsection (2) shall be in writing and must include a statement of the nature of the things that are required to be produced.

(5) If the CEO or authorised officer makes a demand for anything under subsection (2), the person having custody of the thing shall produce it to the CEO or authorised officer and, at the request of the CEO or authorised officer, shall provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a record in readable form, if the demand is for a document.

(6) If a person produces records and other documents to the CEO or authorised officer, other than those needed for the current health care of any person, the CEO or authorised officer may, on issuing a written receipt, remove them and may review or copy any of them if the CEO or authorised officer is not able to review and copy them on the premises that the CEO or authorised officer has entered.

(7) The CEO or authorised officer shall carry out any reviewing or copying of documents with reasonable dispatch, and shall forthwith after the reviewing or copying return the documents to the person who produced them.

(8) Despite subsections (2) the CEO or authorised officer shall not inspect a record of, require evidence of, or inquire into personal health information without the consent of the person to whom it relates except in the circumstances referred to in subsection (9).

(9) The CEO or authorised officer may inspect a record of, require evidence of, or inquire into personal health information without the consent of the person to whom it relates if –

(a) the CEO or authorised officer first determines that it is reasonably necessary to do so, subject to any conditions or restrictions that the CEO or authorised officer specifies, which shall include a time limitation, in order to carry out the review and that the public interest in carrying out the review justifies dispensing with obtaining the person's consent in the circumstances; and

(b) the CEO or authorised officer provides a statement to the person who has custody or control of the record to be inspected, or the evidence or

information to be inquired into, setting out the CEO or authorised officer's determination under paragraph (a) together with brief written reasons and any restrictions and conditions that the CEO or authorised officer has specified.

(10) The CEO or authorised officer may permit a person to be present during the representations that another person makes to the CEO or authorised officer or to have access to them unless doing so would reveal –

(a) the substance of a record of personal health information, for which a health information custodian claims to be entitled to refuse a request for access made under section 58 of this Act; or

(b) personal health information to which a person is not entitled to request access under section 58 of this Act.

(11) The CEO has the power to delegate his powers under this section to an officer or employee of the Ministry, the officer or employee who exercises the powers shall, upon request, produce the certificate of delegation signed by the CEO.

79 Powers of CEO or authorised officer

(1) After conducting a review under section 77 of this Act, the CEO or authorised officer may –

(a) if the review relates to a complaint into a request by a person under section 58(1) of this Act for access to a record of personal health information, direct the health information custodian about whom the complaint was made to grant the person access to the requested record;

(b) if the review relates to a complaint into a request by a person under section 60(1) of this Act for correction of a record of personal health information, direct the health information custodian about whom a complaint was made to make the requested correction;

(c) direct any person whose activities the CEO or authorised officer reviewed to perform a duty imposed by this Act or the Regulations;

(d) direct any person whose activities the CEO or authorised officer reviewed to cease accessing, collecting, using or disclosing personal health information if the CEO or authorised officer determines that the person is accessing, collecting, using or disclosing the information, as the case may be, or is about to do so in contravention of this Act, the Regulations or an agreement entered into under this Act;

(e) direct any person whose activities the CEO or authorised officer reviewed to return, transfer or dispose of records of personal health information that the CEO or authorised officer determines the person accessed, collected, used or disclosed in contravention of this Act, the Regulations, or an agreement entered into under this Act but only if the return, transfer or disposal of the records is not reasonably expected to adversely affect the provision of health care to a person;

(f) make an order directing any health information custodian whose activities the CEO or authorised officer reviewed to change, cease or not commence an information practice specified by the CEO or authorised officer, if the CEO or authorised officer determines that the information practice contravenes this Act or the Regulations;

(g) direct any health information custodian whose activities the CEO or authorised officer reviewed to implement an information practice specified by the CEO or authorised officer, if the CEO or authorised officer determines that the information practice is reasonably necessary in order to achieve compliance with this Act and the Regulations;

(h) direct any person who is an agent of a health information custodian, whose activities the CEO or authorised officer reviewed and that an order made under any of paragraph (a) to (g) directs to take any action or to refrain from taking any action, to take the action or to refrain from taking the action if the CEO or authorised officer considers that it is necessary to make the order against the agent to ensure that the custodian will comply with the order made against the custodian; or

(i) in accordance with section 80 of this Act, require any person whose activities the CEO or authorised officer reviewed to pay an administrative penalty in the amount as directed by, if the CEO is of the opinion that the person has contravened this Act or the Regulations;

(j) make recommendations on the privacy implications of any matter that is the subject of the review.

(2) A direction under subsection (1) may contain the terms that the CEO considers appropriate.

(3) The CEO shall provide a copy of the directions, including reasons for any directions made, to –

(a) the complainant and the person about whom the complaint was made;

(b) all other persons to whom the order is directed;

(c) the body or bodies that are legally entitled to regulate or review the activities of a health information custodian; and

(d) any other person whom the CEO considers appropriate.

(4) If, after conducting a review under section 77 of this Act, the CEO does not make a direction under subsection (1), the CEO shall give the complainant, if any, and the person whose activities the CEO reviewed a notice that sets out the CEO's reasons for not making an order.

80 Administrative penalties

(1) An order requiring a person to pay an administrative penalty may be issued under section 79(1)(i) of this Act for the purposes of –

(a) encouraging compliance with this Act and the Regulations; or

(b) preventing a person from deriving, directly or indirectly, any economic benefit as a result of a contravention of this Act or the Regulations.

(2) The amount of an administrative penalty for a contravention shall –

(a) reflect the purposes referred to in subsection (1); and

(b) be determined as prescribed in the Regulations.

(3) An order requiring a person to pay an administrative penalty shall –

(a) contain or be accompanied by a description of the contravention; and

(b) set out the amount of the penalty to be paid and specify the time and manner of the payment.

(4) A person who is required to pay an administrative penalty shall pay the penalty to the general revenue of the Kingdom.

81 Appeal of order

(1) A person affected by directions of the CEO made under any of section 79(1)(c) to (i) may appeal the direction to the Minister within 21 days after receiving a copy of the direction.

(2) The Minister shall provide a decision on the appeal made under subsection (1) within 21 days after receiving a copy of the appeal.

(3) A person who is not satisfied by a decision made by the Minister in subsection (2) may appeal the decision to the Supreme Court.

82 Further directions by CEO

(1) After conducting a review under section 77 of this Act and making a direction under section 79(1) of this Act, the CEO may rescind or vary the direction or may make a further direction under that subsection if new facts relating to the subject-matter of the review come to the CEO's attention or if there is a material change in the circumstances relating to the subject-matter of the review.

(2) Upon making further directions under subsection (1), the CEO shall provide a copy of it to the persons described in section 84(3)(a) to (d) of this Act and shall include with the copy a notice setting out –

(a) the CEO's reasons for making the direction; and

(b) if the direction was made under any of section 79(1)(c) to (i) of this Act, a statement that the persons affected by the direction have the right to appeal described in subsection (3).

(3) A person affected by a direction that the CEO rescinds, varies or makes under any of section 79(1)(c) to (i) of this Act may appeal the order to the Magistrates Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order and sections 81 of this Act apply to the appeal.

DIVISION 2 – CHIEF EXECUTIVE OFFICER

83 General powers

In addition to the powers of the CEO set out in section 84 of this Act, the CEO may –

(a) engage in or commission research into matters affecting the carrying out of the purposes of this Act;

(b) conduct public education programs and provide information concerning this Act and the CEO's role and activities;

(c) receive representations from the public concerning the operation of this Act;

(d) on the request of a health information custodian, offer comments on the custodian's actual or proposed information practices; or

(e) in appropriate circumstances, authorize the collection of personal health information about a person in a manner other than directly from the person.

84 Delegation

The CEO may in writing, delegate any of the CEO's powers, duties or functions under this Act, including the power to make directions to an officer or employee of the Ministry.

85 Limitations on personal health information

(1) The CEO and any person acting under the CEO's authority may access, collect, use or retain personal health information in the course of carrying out any functions under this Part solely if no other information will serve the purpose of the access, collection, use or retention of the personal health information and in no other circumstances.

(2) The CEO shall not in the course of carrying out any functions under this Part access, collect, use or retain more personal health information than is reasonably necessary to enable the CEO to perform the CEO's functions relating to the administration of this Act or for a proceeding under it.

(3) The CEO shall not disclose any information that comes to his knowledge in the course of exercising his functions under this Act unless –

(a) the disclosure is required for the purpose of exercising those functions;

(b) the information relates to a health information custodian;

(c) the disclosure is made to a body that is legally entitled to regulate or review the activities of the custodian and the CEO is of the opinion that the disclosure is justified;

(d) the CEO obtained the information under section 78(9) of this Act and the disclosure is required in a prosecution for an offence under section 63 of the Criminal Offences Act [Cap. 4.04] in respect of sworn testimony; or

(e) the disclosure is made to the Attorney General, the information relates to the commission of an offence against an Act and the CEO is of the view that there is evidence of such an offence.

(4) Despite anything in subsection (3), the CEO shall not disclose –

(a) any quality-of-care information that comes to his knowledge in the course of exercising his functions under this Act; or

(b) the identity of a person, other than a complainant under section 76(1) of this Act, who has provided information to the CEO and who has requested the CEO to keep the person's identity confidential.

(5) The CEO in a review under section 77 of this Act and a court, tribunal or other person, including the CEO, in a proceeding mentioned in section 89 of this Act or this section shall take every reasonable precaution, including, when appropriate, receiving representations without notice and conducting hearings that are closed to the public, to avoid the disclosure of any information for which a health information custodian is entitled to refuse a request for access made under section 58 of this Act.

(6) The CEO shall not be required to give evidence in a court or in a proceeding of a judicial nature concerning anything that comes to his knowledge in the exercise of his functions under this Act that he is prohibited from disclosing under subsection (3) or (4).

86 Immunity

No action or other proceeding for damages may be instituted against the CEO for –

(a) anything done, reported or said in good faith and in the exercise or intended exercise of any of their powers or duties under this Act; or

(b) any alleged neglect or default in the exercise in good faith of any of their powers or duties under this Act.

PART 9 – GENERAL

87 Non-retaliation

No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that –

(a) the person, acting in good faith and on the basis of reasonable belief, has disclosed to the CEO that any other person has contravened or is about to contravene a provision of this Act or its Regulations;

(b) the person, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene a provision of this Act or its Regulations;

(c) the person, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of a provision of this Act or its Regulations; or

(d) any person believes that the person will do anything described in sub-paragraphs (a), (b) or (c).

88 Immunity

(1) No action or other proceeding for damages may be instituted against a health information custodian or any other person for -

(a) anything done, reported or said, both in good faith and reasonably in the circumstances, in the exercise or intended exercise of any of their powers or duties under this Act; or

(b) any alleged neglect or default that was reasonable in the circumstances in the exercise in good faith of any of their powers or duties under this Act.

(2) Subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

(3) A person who, on behalf of or in the place of a person, gives or refuses consent to an access, collection, use or disclosure of personal health information about the person, makes a request, gives an instruction or takes a step is not liable for damages for doing so if the person acts reasonably in the circumstances, in good faith and in accordance with this Act and its Regulations.

(4) Unless it is not reasonable to do so in the circumstances, a person is entitled to rely on the accuracy of an assertion made by another person, in connection with collection, use or disclosure of, or access to, the information under this Act, to the effect that the other person –

(a) is a person who is authorized to request access to a record of personal health information under section 58;

(b) is a person who is entitled under section 26 or section 27(1) to consent to the access, collection, use or disclosure of personal health information about another person;

(c) meets the requirement of section 27(2)(b) and (c); or

(d) holds the beliefs described in section 27(5).

89 Offences

(1) A person is guilty of an offence if the person –

(a) wilfully accesses, collects, uses or discloses personal health information in contravention of this Act;

(b) makes a request under this Act, under false pretences, for access to or correction of a record of personal health information;

(c) wilfully contravenes section 13;

(d) in connection with the access, collection, use or disclosure of personal health information or access to a record of personal health information, makes an assertion, knowing that it is untrue, to the effect that the person –

(i) is a person who is entitled to consent to the access, collection, use or disclosure of personal health information about another person;

(ii) meets the requirement of section 27(2)(b) and (c);

(iii) holds the beliefs described in section 27(5); or

(iv) is a person entitled to access to a record of personal health information under section 57;

(e) disposes of a record of personal health information in the custody or under the control of the custodian with an intent to evade a request for access to the record that the custodian has received under section 58(1);

(f) wilfully disposes of a record of personal health information in contravention of section 15;

(g) contravenes section 36(2) or (3) or section 51(7) (a), (e) or (f);

(h) wilfully obstructs the CEO or a person known to be acting under the authority of the CEO in the performance of his functions under this Act;

(i) wilfully makes a false statement to mislead or attempt to mislead the CEO or a person known to be acting under the authority of the CEO in the performance of the CEO's functions under this Act;

(j) wilfully fails to comply with a direction made by the CEO or a person known to be acting under the authority of the CEO under this Act; or

(k) contravenes section 86.

(2) A person who is guilty of an offence under subsection (1) is liable upon conviction –

(a) if the person is a natural person, to a fine of not exceeding $200,000 or to a term of imprisonment of not more than 7 years, or to both; or

(b) if the person is not a natural person, to a fine of not exceeding $1,000,000.

(3) If a corporation commits an offence under this Act, every officer, member, employee or other agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly

refrained from doing so, is a party to and guilty of the offence and is liable, on conviction, to the penalty for the offence, whether or not the corporation has been prosecuted or convicted.

(4) No person is liable to prosecution for an offence against this or any other Act by reason of complying with a requirement of the CEO under this Act.

(5) A prosecution shall not be commenced under subsection (1) without the consent of the Attorney General or by the Attorney General's agent.

(6) In a prosecution for an offence under subsection (1) in relation to an investigation into an offence under this Act, the Court may, at any time, take precautions to avoid the disclosure by the Court or any person of any personal health information about a person, including, where appropriate –

(a) removing the identifying information of any person whose personal health information is referred to in any documents or materials;

(b) receiving representations without notice;

(c) conducting hearings or parts of hearings in private; or

(d) sealing all or part of the court files.

90 Regulations

(1) The Minister with the consent of Cabinet, may make Regulations –

(a) prescribing or specifying anything that this Act describes as being prescribed by Regulations, specified, described, provided for, or authorized under this Act;

(b) exempting persons or classes of persons from the persons described in paragraph (d) of the definition of "health care practitioner" in section 3(1);

(c) specifying persons or classes of persons who shall not be included in the definition of "health information custodian" in subsection 3(1);

(d) specifying that certain types of information shall or shall not be included in the definition of "personal health information" in subsection 3(1);

(e) defining, for the purposes of this Act and its Regulations, any word or expression used in this Act that has not already been expressly defined in this Act;

(f) specifying class or persons required under section 3(1)(h) of the definition of "health information custodian";

(g) specifying requirements with respect to information practices for the purposes of section 9(1);

(h) specifying requirements, or a process for setting requirements, for the purposes of section 9(3);

(i) specifying requirements for the purposes of section 19(1)(c);

(j) specifying requirements that an agreement entered into under this Act or its Regulations must contain;

(k) specifying requirements, restrictions or prohibitions with respect to the access, collection, use or disclosure of any class of personal health information by any person in addition to the requirements, restrictions or prohibitions set out in this Act;

(l) specifying requirements that an express instruction mentioned in section 41(1)(k), or 54(1)(d)(i) shall meet;

(m) specifying circumstances required under section 43(1)(b);

(n) permitting notices, statements or any other things, that under this Act are required to be provided in writing, to be provided in electronic or other form instead, subject to the conditions or restrictions that are specified by the Regulations made under this Act;

(o) requiring health information custodians to provide information to the CEO and specifying the type of information to be provided and the time at which and manner in which it is to be provided;

(p) respecting requirements with which a health information custodian is required to comply when selecting and using electronic means to access, collect, use, modify, disclose, retain or dispose of personal health information, including the process for setting, monitoring and enforcing such requirements;

(q) prescribing administrative penalties; or

(r) any other matters necessary to carry out effectively the purposes of this Act.

(2) The Minister may make Regulations for carrying out the purposes of Part 6 –

(a) prescribing that certain types of committees shall be or shall not be included in the definition of "quality of care committee" in section 67;

(b) prescribing criteria for information that is quality of care information;

(c) prescribing information that is not quality of care information; or

(d) governing procedures to be followed by a quality-of-care committee relating to quality-of-care information.

(3) The Minister with the consent of Cabinet may make Regulations for carrying out the purposes and provisions of Part 7 and without limiting the generality of the foregoing, may make Regulations –

(a) prescribing additional powers, duties and functions of the Ministry;

(b) prescribing additional requirements with which the Ministry shall comply in developing or maintaining the NHIS;

(c) requiring classes of health information custodians or specific health information custodians to provide personal health information to the Ministry under Part 7 and specifying what personal health information they are required to provide;

(d) respecting the provision of services related to the NHIS by the Ministry directly to persons; or

(e) providing for anything that under Part 7 may or shall be provided for or prescribed by the Regulations.

Passed by the Legislative Assembly on this **6th** day of **August** 2025.