



Healthcare Identifiers Act 2010

No. 72, 2010

An Act to provide for healthcare identifiers, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Healthcare Identifiers Act 2010

No. 72, 2010

An Act to provide for healthcare identifiers, and for related purposes

[Assented to 28 June 2010]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Healthcare Identifiers Act 2010*.

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2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Purpose of this Act

- (1) The purpose of this Act is to provide a way of ensuring that an entity that provides, or an individual who receives, healthcare is correctly matched to health information that is created when healthcare is provided.
- (2) This purpose is to be achieved by assigning a unique identifying number to each healthcare provider and healthcare recipient.

4 Act to bind the Crown

- (1) This Act binds the Crown in right of the Commonwealth, of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

Note: The Minister must, in certain circumstances, declare that certain provisions of this Act do not apply to the public bodies of a specified State or Territory: see subsection 37(4).

- (2) This Act does not make the Crown liable to be prosecuted for an offence.

5 Definitions

In this Act:

contracted service provider, of a healthcare provider, means an entity that provides:

- (a) information technology services relating to the communication of health information; or
 - (b) health information management services;
- to the healthcare provider under a contract with the healthcare provider.

data source has the meaning given by subsection 12(2).

date of birth accuracy indicator means a data element that is used to indicate how accurate a recorded date of birth is.

date of death accuracy indicator means a data element that is used to indicate how accurate a recorded date of death is.

Defence Department means the Department that:

- (a) deals with matters arising under section 1 of the *Defence Act 1903*; and
- (b) is administered by the Minister who administers that section.

employee, of an entity, includes:

- (a) an individual who provides services for the entity under a contract for services; or
- (b) an individual whose services are made available to the entity (including services made available free of charge).

entity means:

- (a) a person; or
- (b) a partnership; or
- (c) any other unincorporated association or body; or
- (d) a trust; or
- (e) a part of another entity (under a previous application of this definition).

healthcare means health service within the meaning of subsection 6(1) of the *Privacy Act 1988*.

healthcare identifier has the meaning given by section 9.

healthcare provider means:

- (a) an individual healthcare provider; or
- (b) a healthcare provider organisation.

Healthcare Provider Directory has the meaning given by subsection 31(1).

healthcare provider organisation means an entity, or a part of an entity, that has conducted, conducts, or will conduct, an enterprise that provides healthcare (including healthcare provided free of charge).

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Example: A public hospital, or a corporation that runs a medical centre.

healthcare recipient means an individual who has received, receives, or may receive, healthcare.

health information has the meaning given by subsection 6(1) of the *Privacy Act 1988*.

Human Research Ethics Committee has the meaning given by:

- (a) the National Statement on Ethical Conduct in Human Research issued in March 2007 by the Chief Executive Officer of the National Health and Medical Research Council under the *National Health and Medical Research Council Act 1992*; or
- (b) if that Statement is amended—that Statement as amended.

Note: In 2010, the text of the Statement was accessible through the National Health and Medical Research Council website (www.nhmrc.gov.au).

identified healthcare provider means a healthcare provider who has been assigned a healthcare identifier under section 9.

identifying information has the meaning given by section 7.

individual healthcare provider means an individual who:

- (a) has provided, provides, or is to provide, healthcare; or
- (b) is registered by a registration authority as a member of a particular health profession.

law includes:

- (a) an Act or legislative instrument; or
- (b) an Act or legislative instrument of a State or Territory.

Ministerial Council has the meaning given by:

- (a) the National Partnership Agreement on E-Health made on 7 December 2009 between the Commonwealth, the States, the Australian Capital Territory and the Northern Territory; or
- (b) if that Agreement is amended—that Agreement as amended.

Note: In 2010, the text of the Agreement was accessible through the Council of Australian Governments website (www.coag.gov.au).

National Privacy Principle has the meaning given by the *Privacy Act 1988*.

national registration authority has the meaning given by section 8.

network organisation has the meaning given by subsection 9A(6).

organisation maintenance officer:

- (a) for a seed organisation—has the meaning given by paragraph 9A(3)(c); and
- (b) for a network organisation—has the meaning given by paragraph 9A(6)(b).

professional association means an organisation that:

- (a) is a separate legal entity under a law of the Commonwealth or a State or Territory; and
- (b) has the following characteristics:
 - (i) its members practise the same healthcare profession;
 - (ii) it has enough membership to be considered representative of the healthcare profession practised by its members;
 - (iii) it sets its own admission requirements, including acceptable qualifications;
 - (iv) it sets and publishes standards of practice and ethical conduct;
 - (v) it aims to maintain the standing of the healthcare profession practised by its members;
 - (vi) it has written rules, articles of association, by-laws or codes of conduct for its members;
 - (vii) it has the ability to impose sanctions on members who contravene the association's written rules, articles of association, by-laws or codes of conduct;
 - (viii) it sets requirements to maintain its members' professional skills and knowledge by continuing professional development; and
- (c) has members who:
 - (i) may take part in decisions affecting their profession; and
 - (ii) have the right to vote at meetings of the association; and

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- (iii) have the right to be recognised as being members of the professional association.

public body, of a State or Territory, means:

- (a) the Crown in right of the State or Territory; or
- (b) a State or Territory authority of that State or Territory; or
- (c) the head (however described) of a Department of State of the State or Territory; or
- (d) the Parliament of the State, or the legislature of the Territory (whichever is applicable); or
- (e) a member of the Parliament of the State, or of the legislature of the Territory (whichever is applicable).

registration authority means an entity that is responsible under a law for registering members of a particular health profession.

responsible officer has the meaning given by paragraph 9A(3)(b).

retirement, for a healthcare provider organisation's healthcare identifier, means a state imposed by the service operator on the healthcare identifier so that it may no longer be used by the healthcare provider organisation to identify the healthcare provider organisation.

seed organisation has the meaning given by subsections 9A(3) and (4).

service operator means the Chief Executive Officer of Medicare Australia.

sole practitioner means a person who is both an individual healthcare provider and a healthcare provider organisation.

State or Territory authority has the meaning given by the *Privacy Act 1988*.

under this Act includes under the regulations.

Veterans' Affairs Department means the Department that:

- (a) deals with matters arising under:
 - (i) section 1 of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*; or

- (ii) section 1 of the *Military Rehabilitation and Compensation Act 2004*; or
 - (iii) section 1 of the *Veterans' Entitlements Act 1986*; and
- (b) is administered by the Minister who administers that section.

7 Meaning of *identifying information*

- (1) Each of the following is ***identifying information*** of a healthcare provider who is an individual, if the service operator requires it for the purpose of performing the service operator's functions under this Act in relation to the healthcare provider:
- (a) the name of the healthcare provider;
 - (b) the address of the healthcare provider;
 - (c) the date of birth, and the date of birth accuracy indicator, of the healthcare provider;
 - (d) the sex of the healthcare provider;
 - (e) the type of healthcare provider that the individual is;
 - (f) if the healthcare provider is registered by a registration authority—the registration authority's identifier for the healthcare provider and the status of the registration (such as conditional, suspended or cancelled);
 - (g) other information that is prescribed by the regulations for the purpose of this paragraph.
- (2) Each of the following is ***identifying information*** of a healthcare provider that is not an individual, if the service operator requires it for the purpose of performing the service operator's functions under this Act in relation to the healthcare provider:
- (a) the name of the healthcare provider;
 - (b) the address of the healthcare provider;
 - (c) if applicable, the ABN (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*) of the healthcare provider;
 - (d) if applicable, the ACN (within the meaning of the *Corporations Act 2001*) of the healthcare provider;
 - (e) other information that is prescribed by the regulations for the purpose of this paragraph.

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- (3) Each of the following is ***identifying information*** of a healthcare recipient, if the service operator requires it for the purpose of performing the service operator's functions under this Act in relation to the healthcare recipient:
- (a) if applicable, the Medicare number of the healthcare recipient;
 - (b) if applicable, the Veterans' Affairs Department file number of the healthcare recipient;
 - (c) the name of the healthcare recipient;
 - (d) the address of the healthcare recipient;
 - (e) the date of birth, and the date of birth accuracy indicator, of the healthcare recipient;
 - (f) the sex of the healthcare recipient;
 - (g) for a healthcare recipient who was part of a multiple birth—the order in which the healthcare recipient was born;
Example: The 2nd of twins.
 - (h) if applicable, the date of death, and the date of death accuracy indicator, of the healthcare recipient.

8 Meaning of *national registration authority*

A ***national registration authority*** is a registration authority that is prescribed by the regulations for the purposes of this section.

Part 2—Assigning healthcare identifiers

9 Assigning healthcare identifiers

- (1) The service operator is authorised to assign a number (a *healthcare identifier*) to uniquely identify:
 - (a) a healthcare provider to whom section 9A applies; or
 - (b) a healthcare recipient.
- (2) A national registration authority is authorised to assign a number (a *healthcare identifier*) to uniquely identify a healthcare provider, if:
 - (a) the healthcare provider is an individual who is a member of a particular health profession; and
 - (b) the national registration authority is responsible under a law for registering members of that health profession.
- (3) The types of healthcare identifiers include:
 - (a) an identifier that is assigned to an individual healthcare provider; and
 - (b) an identifier that is assigned to a healthcare provider organisation; and
 - (c) an identifier that is assigned to a healthcare recipient.

Note: A sole practitioner may be assigned:

 - (a) a healthcare identifier of the type mentioned in paragraph (3)(a); and
 - (b) a different healthcare identifier of the type mentioned in paragraph (3)(b).
- (4) In exercising a power under subsection (1), the service operator is not required to consider whether a healthcare provider or healthcare recipient agrees to having a healthcare identifier assigned to the healthcare provider or healthcare recipient.
- (6) A healthcare identifier is an identifier for the purpose of National Privacy Principle 7.

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9A Classes of providers for the purposes of paragraph 9(1)(a)

Individual healthcare providers

- (1) This section applies to an individual healthcare provider who is registered by a registration authority as a member of a health profession.
- (2) This section also applies to an individual healthcare provider who is a member of a professional association that:
 - (a) relates to the healthcare that has been, is, or is to be, provided by the member; and
 - (b) has uniform national membership requirements, whether or not in legislation.

Healthcare provider organisations

- (3) This section also applies to a healthcare provider organisation (a **seed organisation**) that has:
 - (a) an employee who:
 - (i) is an identified healthcare provider; and
 - (ii) provides healthcare as part of his or her duties; and
 - (b) only one employee (the **responsible officer**) to act on behalf of the seed organisation in its dealings with the service operator in relation to the following:
 - (i) nominating to the service operator at least one employee to be an organisation maintenance officer for the seed organisation;
 - (ii) nominating to the service operator any network organisation of the seed organisation for which the nominated organisation maintenance officer is to be responsible;
 - (iii) requesting the assignment or retirement of a healthcare identifier for the seed organisation;
 - (iv) requesting the merger or reconfiguration of a healthcare identifier for the seed organisation if the seed organisation was part of a merger or acquisition; and

Example: A request after merger activity between 2 healthcare provider organisations if one is a seed organisation, or the acquisition of

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one healthcare provider organisation by another if one is a seed organisation.

- (c) an employee (an *organisation maintenance officer*) to act on behalf of the seed organisation in its dealings with the service operator, including:
- (i) nominating to the service operator, if required, at least one additional employee to be an organisation maintenance officer for the seed organisation or any network organisation of the seed organisation; and
 - (ii) nominating to the service operator any network organisation of the seed organisation for which an additional organisation maintenance officer is to be responsible; and
 - (iii) requesting the assignment or retirement of a healthcare identifier for any network organisation of the seed organisation; and
 - (iv) maintaining information that is held by the service operator about the seed organisation, and about any network organisation of the seed organisation for which the organisation maintenance officer is responsible; and
 - (v) for the seed organisation, or for any network organisation of the seed organisation for which the organisation maintenance officer is responsible, that has consented to its details being included in the Healthcare Provider Directory—providing current details to the service operator about the organisation for inclusion in the Directory; and
 - (vi) providing any further information requested by the service operator about the seed organisation, or about any network organisation of the seed organisation for which the organisation maintenance officer is responsible; and
 - (vii) requesting the merger or reconfiguration of a healthcare identifier for any network organisation of the seed organisation, if the network organisation was part of a merger or acquisition.

Note: More than one employee may be an organisation maintenance officer. An employee may be any or all of the following: the

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responsible officer, an organisation maintenance officer and an authorised employee (see section 17).

- (4) A sole practitioner is taken to be a healthcare provider organisation to which subsection (3) applies if he or she provides healthcare and performs the roles of responsible officer and organisation maintenance officer.
- (5) For the purposes of paragraph (3)(b), a delegate of the responsible officer, who is another employee of the seed organisation, is taken to be the responsible officer.
- (6) This section also applies to a healthcare provider organisation (a **network organisation**) that:
- (a) is part of, or subordinate to, a seed organisation that:
 - (i) has been assigned a healthcare identifier that has not been retired; and
 - (ii) does not object to the network organisation being a network organisation of the seed organisation; and
 - (b) has a person (an **organisation maintenance officer**) who complies with subsection (7) to act on behalf of the network organisation in its dealings with the service operator, including:
 - (i) nominating to the service operator, if required, at least one additional employee to be an organisation maintenance officer for any network organisation of the seed organisation; and
 - (ii) nominating to the service operator any network organisation of the seed organisation for which an additional organisation maintenance officer is to be responsible; and
 - (iii) requesting the assignment or retirement of a healthcare identifier for any network organisation of the seed organisation; and
 - (iv) maintaining information that is held by the service operator about any network organisation of the seed organisation for which the organisation maintenance officer is responsible; and
 - (v) for any network organisation that the organisation maintenance officer is responsible for and that has

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consented to its details being included in the Healthcare Provider Directory—providing current details to the service operator about the organisation for inclusion in the Directory; and

- (vi) providing any further information requested by the service operator about any network organisation of the seed organisation for which the organisation maintenance officer is responsible; and
- (vii) requesting the merger or reconfiguration of a healthcare identifier for any network organisation of the seed organisation, if the network organisation is part of a merger or acquisition.

Example: A request after merger activity between the network organisation and another healthcare provider organisation, or the acquisition of one healthcare provider organisation by another if one is the network organisation.

- (7) For the purposes of paragraph (6)(b), the person must be an employee of:
 - (a) the network organisation (the *first network organisation*); or
 - (b) the seed organisation of the first network organisation; or
 - (c) another network organisation that is:
 - (i) linked to the seed organisation of the first network organisation; and
 - (ii) hierarchically superior to the first network organisation.

9B Information that may be requested before assigning healthcare identifiers

- (1) The service operator may request an individual healthcare provider to provide the following information before assigning the healthcare provider a healthcare identifier:
 - (a) identifying information of the healthcare provider;

Note: *Identifying information* is defined in section 7.
 - (b) information that shows that section 9A applies to the healthcare provider.

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- (2) The service operator may request a healthcare provider organisation to provide the following information before assigning the healthcare provider a healthcare identifier:
- (a) identifying information of the healthcare provider;
Note: *Identifying information* is defined in section 7.
 - (b) information that shows that section 9A applies to the healthcare provider;
 - (c) information identifying the healthcare provider's responsible officer and organisation maintenance officer, including the person's name, work address, work email address, work telephone number or work fax number.
- (3) The healthcare provider must give the information in any form requested by the service operator.
- Example: A healthcare provider may be asked for original documentation, or for the information to be given in writing or in a statutory declaration.
- (4) If the service operator is not satisfied by the information given, it does not have to assign a healthcare identifier to the healthcare provider.

9C Review of decision not to assign a healthcare identifier

- (1) This section applies to a decision by the service operator not to assign a healthcare identifier to a healthcare provider under paragraph 9(1)(a).
- Note: This section does not apply to a decision to assign a healthcare identifier to a healthcare recipient under paragraph 9(1)(b), or a decision by a national registration authority not to assign a healthcare identifier to an individual healthcare provider under subsection 9(2).
- (2) The service operator must give written notice of the decision to a person whose interests are affected by the decision, including a statement:
- (a) that the person may apply to the service operator to reconsider the decision; and
 - (b) of the person's rights to seek review under subsection (8) of a reconsidered decision.

- (3) A failure of the service operator to comply with subsection (2) does not affect the validity of the decision.
- (4) A person whose interests are affected by the decision may, by written notice to the service operator within 28 days after receiving notice of the decision, ask the service operator to reconsider the decision.
- (5) A request under subsection (4) must mention the reasons for making the request.
- (6) The service operator must:
 - (a) reconsider the decision within 28 days after receiving the request; and
 - (b) give to the person who requested the reconsideration written notice of the result of the reconsideration and of the grounds for the result.
- (7) The notice must include a statement that the person may apply to the Administrative Appeals Tribunal for review of the reconsideration.
- (8) A person may apply to the Administrative Appeals Tribunal for a review of a decision of the service operator made under subsection (6).

10 Service operator must keep record of healthcare identifiers etc.

The service operator must establish and maintain an accurate record of:

- (a) healthcare identifiers that have been assigned; and
- (b) the information that the service operator has that relates to those healthcare identifiers, including details of requests made to the service operator for the service operator to disclose those healthcare identifiers under Division 2 of Part 3.

Part 3 Use and disclosure of healthcare identifiers and other information

Division 1 Use and disclosure of identifying information for assignment of healthcare identifiers

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Part 3—Use and disclosure of healthcare identifiers and other information

Division 1—Use and disclosure of identifying information for assignment of healthcare identifiers

11 Disclosure by healthcare providers

- (1) An identified healthcare provider is authorised to disclose identifying information of a healthcare recipient to the service operator for the purpose of the service operator assigning a healthcare identifier to the healthcare recipient.
- (2) The service operator is authorised:
 - (a) to collect the information; and
 - (b) to use the information for the purpose of assigning a healthcare identifier to the healthcare recipient.

12 Disclosure by data sources

- (1) A data source is authorised to disclose identifying information of a healthcare provider, or of a healthcare recipient, to the service operator for the purpose of the service operator assigning a healthcare identifier to the healthcare provider or healthcare recipient.
- (2) Each of the following is a *data source*:
 - (a) Medicare Australia;
 - (b) the Veterans' Affairs Department;
 - (c) the Defence Department.
- (3) The service operator is authorised:
 - (a) to collect the information; and
 - (b) to use the information for the purpose of assigning a healthcare identifier to the healthcare provider or healthcare recipient.

13 Disclosure by national registration authority

- (1) A national registration authority is authorised to disclose:
 - (a) a healthcare identifier; or
 - (b) information that the national registration authority has that relates to a healthcare identifier;to the service operator for the purpose of the service operator establishing or maintaining the record mentioned in section 10.
- (2) The service operator is authorised:
 - (a) to collect the healthcare identifier or information; and
 - (b) to use the healthcare identifier or information for the purpose of establishing or maintaining the record mentioned in section 10.

14 Maintaining healthcare identifiers

The regulations may require an identified healthcare provider to provide to the service operator information that:

- (a) relates to the healthcare provider's healthcare identifier; and
- (b) is prescribed by the regulations for the purposes of this section.

15 Service operator's duty of confidentiality

- (1) A person commits an offence if:
 - (a) information was disclosed to the person for the purpose of Part 2 or this Division; and
 - (b) the person:
 - (i) uses the information; or
 - (ii) discloses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: If a body corporate is convicted of an offence against subsection (1), subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 600 penalty units.

- (2) Subsection (1) does not apply if the person uses or discloses the information for:

Part 3 Use and disclosure of healthcare identifiers and other information

Division 1 Use and disclosure of identifying information for assignment of healthcare identifiers

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- (a) the purpose for which the information was disclosed to the person; or
- (b) a purpose that is authorised under another law.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) A person commits an offence if:
 - (a) information was disclosed to the person in contravention of subsection (1); and
 - (b) the person knows that the disclosure of the information to the person contravened that subsection; and
 - (c) the person:
 - (i) uses the information; or
 - (ii) discloses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: If a body corporate is convicted of an offence against subsection (3), subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 600 penalty units.

- (4) Subsection (3) does not apply if the person discloses the information for the purpose of an appropriate authority investigating the contravention mentioned in paragraph (3)(b).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

Division 2—Disclosure of healthcare identifier by service operator

Subdivision A—Request by healthcare provider for healthcare recipient's healthcare identifier

16 Disclosure of healthcare recipient's identifying information by healthcare provider

- (1) An identified healthcare provider is authorised to disclose identifying information of a healthcare recipient to the service operator for the purpose of the service operator disclosing the healthcare recipient's healthcare identifier to the healthcare provider under section 17.
- (2) The service operator is authorised:
 - (a) to collect the information; and
 - (b) to use the information for the purpose of disclosing the healthcare recipient's healthcare identifier to the healthcare provider under section 17.

Subdivision B—Disclosure of healthcare identifier by service operator

17 Disclosure to healthcare provider

- (1) For the purpose of an identified healthcare provider communicating or managing health information, as part of providing healthcare to a healthcare recipient, the service operator is authorised to disclose a healthcare identifier to:
 - (a) an identified healthcare provider (the *collecting provider*); or
 - (b) an employee (the *authorised employee*) of an identified healthcare provider, if that identified healthcare provider has, by notice to the service operator, authorised the employee to act on behalf of that identified healthcare provider under this section; or

Part 3 Use and disclosure of healthcare identifiers and other information

Division 2 Disclosure of healthcare identifier by service operator

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- (c) a contracted service provider (the *authorised service provider*) of an identified healthcare provider, if that identified healthcare provider has, by notice to the service operator, authorised the contracted service provider to act on behalf of that identified healthcare provider under this section.
- (2) The collecting provider, authorised employee or authorised service provider is authorised to collect the healthcare identifier.
- Note 1: Section 24 authorises a healthcare provider to use, or to disclose, a healthcare identifier:
- (a) for the purpose of communicating or managing health information, as part of the provision of healthcare to a healthcare recipient; or
 - (b) for certain other purposes.
- The authorisation extends to certain employees and contracted service providers of the healthcare provider: see section 36.
- Note 2: Section 25 authorises a healthcare provider to adopt the healthcare identifier of a healthcare recipient as the healthcare provider's own identifier of the healthcare recipient. The authorisation extends to certain employees and contracted service providers of the healthcare provider: see section 36.

18 Disclosure to healthcare recipient

The service operator must, if asked to do so by a healthcare recipient or a person who is responsible (within the meaning of subclause 2.5 of National Privacy Principle 2) for a healthcare recipient, disclose to the healthcare recipient or responsible person:

- (a) the healthcare recipient's healthcare identifier (if any); or
- (b) information that:
 - (i) relates to the healthcare recipient or to the healthcare recipient's healthcare identifier; and
 - (ii) is included in the record the service operator maintains under section 10.

19 Disclosure to registration authority

- (1) The service operator is authorised to disclose an identified healthcare provider's healthcare identifier to a registration

authority for the purpose of the registration authority registering the healthcare provider.

- (2) The registration authority is authorised:
 - (a) to collect the healthcare identifier; and
 - (b) to use the healthcare identifier for the purpose of the registration authority:
 - (i) registering the healthcare provider; or
 - (ii) performing any other function of the registration authority under a law.

20 Disclosure for authentication of healthcare provider's identity

- (1) The service operator is authorised to disclose an identified healthcare provider's healthcare identifier to an entity for the purpose of enabling the healthcare provider's identity to be authenticated in electronic transmissions (for example, as part of a public key infrastructure).
- (2) The entity is authorised:
 - (a) to collect the healthcare identifier; and
 - (b) to use the healthcare identifier for the purpose of enabling the healthcare provider's identity to be authenticated in electronic transmissions.

21 Access controls

The regulations may prescribe rules about the disclosure of healthcare identifiers by the service operator, including rules about requests to the service operator to disclose healthcare identifiers.

22 Information about disclosures by service operator

If the service operator discloses a healthcare identifier to an entity, the regulations may require the entity to provide prescribed information to the service operator in relation to that disclosure.

Note: The regulations may provide for the imposition of a penalty for contravention of a regulation: see subsection 39(2).

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Division 3—Use, disclosure and adoption of healthcare identifier by healthcare provider

23 Disclosure to healthcare recipient

A healthcare provider is authorised to disclose a healthcare recipient's healthcare identifier to:

- (a) the healthcare recipient; or
- (b) a person who is responsible (within the meaning of subclause 2.5 of National Privacy Principle 2) for the healthcare recipient.

24 Use and disclosure for other purposes

Use and disclosure for other purposes

- (1) A healthcare provider is authorised to use a healthcare identifier, or to disclose a healthcare identifier to an entity, (including a healthcare identifier disclosed to the healthcare provider for any purpose under a previous application of this section) if:
 - (a) the purpose of the use or disclosure is to communicate or manage health information as part of:
 - (i) the provision of healthcare to a healthcare recipient; or
 - (ii) the management (including the investigation or resolution of complaints), funding, monitoring or evaluation of healthcare; or
 - (iii) the provision of indemnity cover for a healthcare provider; or
 - (iv) the conduct of research that has been approved by a Human Research Ethics Committee; or
 - (b) the healthcare provider reasonably believes that the use or disclosure is necessary to lessen or prevent:
 - (i) a serious threat to an individual's life, health or safety; or
 - (ii) a serious threat to public health or public safety.

- (2) The entity is authorised:
- (a) to collect the healthcare identifier; and
 - (b) to use the healthcare identifier, or to disclose the healthcare identifier to a healthcare provider, for the purpose for which it was disclosed to the entity.
- (3) A healthcare provider to which a healthcare identifier is disclosed under paragraph (2)(b) is authorised to collect the healthcare identifier.

Note 1: Subsection (1) authorises the healthcare provider to use, or to disclose, the healthcare identifier. Section 25 authorises the healthcare provider to adopt the healthcare identifier.

Note 2: An entity may also use, or disclose, a healthcare identifier for a purpose that is authorised under another law: see paragraph 26(2)(b).

Certain purposes excluded

- (4) This section does not authorise the use or disclosure of the healthcare identifier of a healthcare recipient for the purpose of communicating or managing health information as part of:
- (a) underwriting a contract of insurance that covers the healthcare recipient; or
 - (b) determining whether to enter into a contract of insurance that covers the healthcare recipient (whether alone or as a member of a class); or
 - (c) determining whether a contract of insurance covers the healthcare recipient in relation to a particular event; or
 - (d) employing the healthcare recipient.

25 Adoption by healthcare provider

A healthcare provider is authorised to adopt the healthcare identifier of a healthcare recipient (including a healthcare identifier disclosed to the healthcare provider for any purpose under section 24) as the healthcare provider's own identifier of the healthcare recipient.

Note: This Division authorises the collection, use, disclosure and adoption of only healthcare identifiers, and information relating to healthcare identifiers. The collection, use, disclosure or adoption of other

Part 3 Use and disclosure of healthcare identifiers and other information

Division 3 Use, disclosure and adoption of healthcare identifier by healthcare provider

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personal information (e.g. health information), is dealt with in other legislation, including the *Privacy Act 1988*.

Division 4—Unauthorised use and disclosure of healthcare identifiers

26 Unauthorised use and disclosure of healthcare identifiers prohibited

Offence

- (1) A person commits an offence if:
- (a) a healthcare identifier is disclosed to the person; and
 - (b) the person:
 - (i) uses the healthcare identifier; or
 - (ii) discloses the healthcare identifier.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: If a body corporate is convicted of an offence against subsection (1), subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 600 penalty units.

- (2) However, subsection (1) does not apply if:
- (a) the person:
 - (i) is authorised to use, or to disclose, the healthcare identifier for a purpose that is authorised under this Act; and
 - (ii) uses or discloses the healthcare identifier for that purpose; or
 - (b) the person uses or discloses the healthcare identifier for a purpose that is authorised under another law; or
 - (c) the person uses or discloses the healthcare identifier only for the purpose of, or in connection with, the person's personal, family or household affairs (within the meaning of section 16E of the *Privacy Act 1988*).

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Division 5—Protection of healthcare identifiers

27 Protection of healthcare identifiers

An entity must:

- (a) take reasonable steps to protect healthcare identifiers the entity holds from:
 - (i) misuse and loss; and
 - (ii) unauthorised access, modification or disclosure; and
- (b) comply with any requirements prescribed by the regulations for the protection of healthcare identifiers the entity holds.

Note: The regulations may provide for the imposition of a penalty for contravention of a regulation: see subsection 39(2).

Part 4—Interaction with the Privacy Act 1988

28 Interaction with the *Privacy Act 1988*

An authorisation to collect, use or disclose a healthcare identifier or identifying information under this Act is also an authorisation to collect, use or disclose the healthcare identifier or identifying information for the purpose of the *Privacy Act 1988*.

29 Functions of Privacy Commissioner

Breach of this Act is an interference with privacy

- (1) An act or practice that contravenes this Act or the regulations in connection with the healthcare identifier of an individual is taken to be:
 - (a) for the purposes of the *Privacy Act 1988*, an interference with the privacy of the individual; and
 - (b) covered by section 13 of that Act.

Note: The act or practice may be the subject of a complaint under section 36 of that Act.

- (2) For the purpose of applying Part V of that Act (Investigations) in relation to the act or practice, treat a State or Territory authority as if it were an organisation (within the meaning of that Act).

Audits

- (3) For the purpose of paragraph 27(1)(h) of the *Privacy Act 1988* (about audits), a healthcare identifier is taken to be personal information.

30 Annual reports by Privacy Commissioner

- (1) The Privacy Commissioner must, as soon as practicable after the end of each financial year, prepare a report on the Privacy

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Commissioner's compliance and enforcement activities under this Act during the financial year.

- (2) The Privacy Commissioner must give a copy of the report to the Minister, and to the Ministerial Council, no later than on 30 September after the end of the financial year to which the report relates.
- (3) The Minister must table a copy of the report in each House of Parliament within 15 sitting days after the Privacy Commissioner gives a copy of the report to the Minister.

Part 5—Healthcare Provider Directory

31 Healthcare Provider Directory

- (1) The service operator must establish and maintain a record (the *Healthcare Provider Directory*) of the professional and business details of the healthcare providers who have consented to those details being included in the Healthcare Provider Directory.
- (2) The service operator may disclose the professional or business details of a healthcare provider who is listed in the Healthcare Provider Directory to:
 - (a) an identified healthcare provider; or
 - (b) an employee of an identified healthcare provider, if that identified healthcare provider has, by notice to the service operator, authorised the employee to act on behalf of that identified healthcare provider under this section; or
 - (c) a contracted service provider of an identified healthcare provider, if that identified healthcare provider has, by notice to the service operator, authorised the contracted service provider to act on behalf of that identified healthcare provider under this section.

Part 6—Oversight role of Ministerial Council

32 Directions to service operator

- (1) After consulting the Ministerial Council, the Minister may, by legislative instrument, give directions to the service operator about the performance of the service operator's functions under this Act.

Note 1: Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the directions—see section 44 of that Act.

Note 2: Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to the directions—see section 54 of that Act.

- (2) The service operator must comply with a direction given under subsection (1).

33 Consultation with Ministerial Council about regulations

Before the Governor-General makes a regulation for the purpose of this Act, the Minister must consult with the Ministerial Council.

34 Annual reports by service operator

- (1) The service operator must, as soon as practicable after the end of each financial year, prepare a report on the activities, finances and operations of the service operator during the financial year, so far as they relate to this Act and the regulations.
- (2) The service operator must give a copy of the report to:
 - (a) the Minister; and
 - (b) either:
 - (i) the Ministerial Council; or
 - (ii) if the Ministerial Council directs the service operator to give the report to another entity—that other entity;no later than on 30 September after the end of the financial year to which the report relates.

- (3) The Minister must table a copy of the report in each House of Parliament within 15 sitting days after the service operator gives a copy of the report to the Minister.

35 Review of operation of Act

- (1) The Minister must, after consulting the Ministerial Council, appoint an individual:
 - (a) to review the operation of this Act and the regulations; and
 - (b) to prepare a report on the review before 30 June 2013.
- (2) The Minister must:
 - (a) provide a copy of the report to the Ministerial Council; and
 - (b) table a copy of the report in each House of Parliament within 15 sitting days after the report is prepared.

Part 7—Miscellaneous

36 Extent of authorisation

An authorisation under this Act to an entity (the *first entity*) for a particular purpose is an authorisation to:

- (a) an individual who:
 - (i) is an employee of the first entity; and
 - (ii) whose duties involve implementing that purpose; or
- (b) a contracted service provider of the first entity, if:
 - (i) the first entity is a healthcare provider; and
 - (ii) the duties of the contracted service provider under a contract with the healthcare provider involve implementing that purpose by providing information technology services relating to the communication of health information, or health information management services, to the healthcare provider; or
- (c) an individual who:
 - (i) is an employee of a contracted service provider to which paragraph (b) applies; and
 - (ii) whose duties involve implementing that purpose as mentioned in that paragraph.

37 Relationship to State and Territory laws

Relationship to State and Territory laws

- (1) A law of a State or Territory has effect to the extent that the law is capable of operating concurrently with this Act or the regulations.
- (2) However, if:
 - (a) a person's act or omission is both:
 - (i) an offence under this Act; and
 - (ii) an offence under the law of a State or Territory; and
 - (b) that person is convicted of either of those offences;

the person is not liable to be convicted of the other offence.

- (3) Nothing in this Act or the regulations limits, restricts or otherwise affects any right or remedy that a person would have had if this Act had not been enacted.

Declarations that Act does not apply

- (4) A provision of this Act or the regulations does not apply to the public bodies of a State or Territory if a declaration made under subsection (5) is in force in relation to that provision and that State or Territory.
- (5) The Minister must, by legislative instrument, declare that specified provisions of this Act and the regulations do not apply to the public bodies of a specified State or Territory if:
- (a) a Minister of the State or Territory, by written notice, requests the Minister to make the declaration; and
 - (b) the Minister is satisfied that a law in force in the State or Territory contains provisions that have been agreed to by the Ministerial Council.
- (6) The Minister may, by legislative instrument, revoke the declaration if:
- (a) a Minister of the State, by written notice, requests the Minister to do so; or
 - (b) a provision in the State or Territory law, which had been agreed to by the Ministerial Council, is amended without the agreement of the Ministerial Council.
- (7) Neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to a declaration or revocation made under subsection (5) or (6) of this section.

38 Severability—additional effect of Parts 3 and 4

- (1) Without limiting their effect apart from each of the following subsections of this section, Parts 3 and 4 have effect in relation to a collection, use or disclosure of information as provided by that subsection.

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- (2) Parts 3 and 4 also have the effect they would have if their operation in relation to a collection, use or disclosure of information were expressly confined to a collection, use or disclosure taking place in the course of, or in relation to, trade or commerce:
 - (a) between Australia and places outside Australia; or
 - (b) among the States; or
 - (c) within a Territory, between a State and a Territory or between 2 Territories.
- (3) Parts 3 and 4 also have the effect they would have if their operation in relation to a collection, use or disclosure of information were expressly confined to a collection, use or disclosure using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).
- (4) Parts 3 and 4 also have the effect they would have if their operation in relation to a collection, use or disclosure of information were expressly confined to a collection, use or disclosure in relation to census or statistics (within the meaning of paragraph 51(xi) of the Constitution).
- (5) Parts 3 and 4 also have the effect they would have if their operation in relation to a collection, use or disclosure of information were expressly confined to a collection, use or disclosure in relation to aliens (within the meaning of paragraph 51(xix) of the Constitution).
- (6) Parts 3 and 4 also have the effect they would have if their operation in relation to a collection, use or disclosure of information were expressly confined to a collection, use or disclosure by, or to, a trading, foreign or financial corporation (within the meaning of paragraph 51(xx) of the Constitution).
- (7) Parts 3 and 4 also have the effect they would have if their operation in relation to a collection, use or disclosure of information were expressly confined to a collection, use or disclosure in relation to the provision of:
 - (a) sickness or hospital benefits; or
 - (b) medical or dental services (but not so as to authorise any form of civil conscription);

(within the meaning of paragraph 51(xxiiiA) of the Constitution).

- (8) Parts 3 and 4 also have the effect they would have if their operation in relation to a collection, use or disclosure of information were expressly confined to a collection, use or disclosure:
- (a) in relation to which the Commonwealth is under an obligation under an international agreement, including, the International Covenant on Civil and Political Rights, and in particular Article 17 of the Covenant; or
- Note: The text of the Covenant is set out in Australian Treaty Series 1980 No. 23 ([1980] ATS 23). In 2010, a text of a Covenant in the Australian Treaties Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).
- (b) that is of international concern, including the international concern reflected by the Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data, recommended by the Council of the Organisation for Economic Co-operation and Development on 23 September 1980.
- Note: In 2010, the text of the Guidelines was accessible through the Organisation for Economic Co-operation and Development website (www.oecd.org).
- (9) Parts 3 and 4 also have the effect they would have if their operation in relation to a collection, use or disclosure of information were expressly confined to a collection, use or disclosure by, or to, the Commonwealth or a Commonwealth authority.
- (10) Parts 3 and 4 also have the effect they would have if their operation in relation to a collection, use or disclosure of information were expressly confined to a collection, use or disclosure taking place in a Territory.

39 Regulations

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted to be prescribed by this Act; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Part 7 Miscellaneous

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Note: Before the Governor-General makes a regulation for the purpose of this Act, the Minister must consult with the Ministerial Council: see section 33.

- (2) Without limiting subsection (1), the regulations may provide for the imposition of a penalty of not more than 50 penalty units for contravention of a regulation.

*[Minister's second reading speech made in—
House of Representatives on 10 February 2010
Senate on 15 March 2010]*