



# **National Occupational Respiratory Disease Registry Act 2023**

**No. 95, 2023**

**An Act to establish the National Occupational  
Respiratory Disease Registry, and for related  
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# **National Occupational Respiratory Disease Registry Act 2023**

**No. 95, 2023**

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**An Act to establish the National Occupational  
Respiratory Disease Registry, and for related  
purposes**

*[Assented to 22 November 2023]*

The Parliament of Australia enacts:

## Part 1—Preliminary

### Division 1—Preliminary

#### 1 Short title

This Act is the *National Occupational Respiratory Disease Registry Act 2023*.

#### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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| <b>Commencement information</b> |   |                     |
|---------------------------------|---|---------------------|
| <b>Column 1</b>                 | <b>Column 2</b>   | <b>Column 3</b>     |
| <b>Provisions</b>               | <b>Commencement</b>   | <b>Date/Details</b> |
| 1. The whole of this Act        | A single day to be fixed by Proclamation.<br>However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. |                     |

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

#### 3 Object of this Act

The object of this Act is to establish a National Occupational Respiratory Disease Registry that will record the incidence of occupational respiratory diseases in Australia and assist in

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preventing further worker exposure to respiratory disease-causing agents.

#### **4 Simplified outline of this Act**

The Commonwealth is to establish the National Occupational Respiratory Disease Registry (section 11).

The National Registry is to include certain information in relation to individuals who have been diagnosed with, or are being treated for, an occupational respiratory disease (Part 2).

The purposes of the National Registry (section 13) relate to:

- (a) providing access to information about occupational respiratory diseases; and
- (b) supporting the identification of industries, occupations, job tasks and workplaces where there is a risk of exposure to respiratory disease-causing agents; and
- (c) occupational respiratory disease matters more broadly.

There are protections for sensitive information (Part 3).

The Commonwealth Chief Medical Officer must publish an annual report including certain statistical information in relation to information included in the National Registry, and may publish or make available other reports in relation to information included in the National Registry (section 26).

Fees may be charged in relation to the disclosure of protected information in certain circumstances (section 31).

Certain matters are to be prescribed by rules made by the Minister, or determinations made by the Commonwealth Chief Medical Officer. The rules and determinations are disallowable legislative instruments (sections 12, 31 and 33).

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**5 Act binds the Crown**

This Act binds the Crown in each of its capacities. However, it does not make the Crown liable to be prosecuted for an offence.

Note: See subsection 28(4) in relation to civil penalties.

**6 Act extends to external Territories**

This Act extends to every external Territory.

**7 Concurrent operation of State and Territory laws**

- (1) This Act does not exclude or limit the operation of a law of a State or Territory relating to the use, reporting or other disclosure of information concerning occupational respiratory diseases, to the extent that the law of the State or Territory is capable of operating concurrently with this Act.
- (2) Without limiting subsection (1), this Act does not exclude or limit the concurrent operation of a law of a State or Territory to the extent that:
  - (a) the law makes an act or omission:
    - (i) an offence; or
    - (ii) subject to a civil penalty; and
  - (b) that (or any similar) act or omission is also:
    - (i) an offence against a provision of this Act; or
    - (ii) subject to a civil penalty under this Act.
- (3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following in relation to the offence or civil penalty:
  - (a) provides for a penalty that differs from the penalty provided by this Act;
  - (b) provides for fault elements that differ from the fault elements applicable to the offence or civil penalty provision created by this Act;
  - (c) provides for defences or exceptions that differ from the defences or exceptions applicable to the offence or civil penalty provision created by this Act.



## **Division 2—Interpretation**

### **8 Definitions**

In this Act:

***additional notification information*** has the meaning given by subsection 12(3).

***approved form*** means a form approved under section 29.

***Australia***, when used in a geographical sense, includes every external Territory.

***civil penalty provision*** has the same meaning as in the Regulatory Powers Act.

***commercial-in-confidence*** has the meaning given by section 9.

***Commonwealth authority*** means a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*.

***contracted service provider*** means a person who is engaged under an agreement in force under section 30.

***enforcement body*** means any of the following:

- (a) the Australian Federal Police;
- (b) the National Anti-Corruption Commissioner (within the meaning of the *National Anti-Corruption Commission Act 2022*);
- (c) the Australian Crime Commission;
- (d) the Office of the Director of Public Prosecutions.

***enforcement related activity*** has the same meaning as in the *Privacy Act 1988*.

***entity*** means any of the following:

- (a) a person;
- (b) a partnership;

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

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

**minimum notification information** has the meaning given by subsection 12(2).

**National Registry** means the National Occupational Respiratory Disease Registry established under section 11.

**non-prescribed occupational respiratory disease** means an occupational respiratory disease that is not a prescribed occupational respiratory disease.

**occupational respiratory disease** means a medical condition associated with an individual's respiratory system that is likely to have been caused or exacerbated, in whole or in part, by the individual's work or workplace.

**personal information** has the same meaning as in the *Privacy Act 1988*.

**personal representative**, of an individual, means:

- (a) a parent or guardian of the individual, if the individual is incapable of managing the individual's health affairs; or
- (b) a trustee of an estate of the individual, if the individual is under a legal disability; or
- (c) a person who holds an enduring power of attorney granted by the individual.

**prescribed medical practitioner** means a medical practitioner of a kind prescribed by the rules.

**prescribed occupational respiratory disease** means an occupational respiratory disease prescribed by the rules.

***protected information*** means personal information, workplace identifying information or information that is commercial-in-confidence, to the extent that the information is:

- (a) included in the National Registry or obtained under, or in accordance with, this Act; or
- (b) derived from a record of information that was included in the National Registry or was obtained under, or in accordance with, this Act; or
- (c) derived from a disclosure or use of information that was included in the National Registry or was obtained under, or in accordance with, this Act.

***purposes of the National Registry*** means the purposes set out in section 13.

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

***Regulatory Powers Act*** means the *Regulatory Powers (Standard Provisions) Act 2014*.

***relevant State or Territory authority*** means a State or Territory authority that:

- (a) has functions in relation to, or that is responsible for or deals with, occupational health and safety in the State or Territory; or
- (b) has functions in relation to, or that is responsible for or deals with, health in the State or Territory; or
- (c) is prescribed by the rules.

***research:***

- (a) means research relating to occupational respiratory diseases; and
- (b) includes research relating to the causes, incidence, prevalence, nature, extent and trends of occupational respiratory diseases.

***respiratory disease-causing agents*** means agents such as dusts, gases, fumes, vapours, mists, fungi and fibres that can cause or contribute to an occupational respiratory disease.

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**rules** means rules made under subsection 33(1).

**Secretary** means the Secretary of the Department.

**State or Territory authority** has the same meaning as in the *Privacy Act 1988*.

**State or Territory Health Minister** means the State or Territory Minister who is responsible, or principally responsible, for matters relating to health in the State or Territory.

**workplace identifying information:**

- (a) means information about an identified, or reasonably identifiable, workplace; and
- (b) includes information that identifies, or could be used to identify, an employer or business.

## 9 Meaning of *commercial-in-confidence*

Information is *commercial-in-confidence* if a person demonstrates to the Minister that:

- (a) release of the information would cause competitive detriment to the person; and
- (b) the information is not in the public domain; and
- (c) the information is not required to be disclosed under a law of the Commonwealth, or of a State or Territory; and
- (d) the information is not readily discoverable.

## **Part 2—National Occupational Respiratory Disease Registry**

### **Division 1—Simplified outline of this Part**

#### **10 Simplified outline of this Part**

The Commonwealth is to establish the National Occupational Respiratory Disease Registry (section 11).

The National Registry is to include certain information relating to individuals who have been diagnosed with, or are being treated for, an occupational respiratory disease (section 12).

The purposes of the National Registry (section 13) relate to:

- (a) providing access to information about occupational respiratory diseases; and
- (b) supporting the identification of industries, occupations, job tasks and workplaces where there is a risk of exposure to respiratory disease-causing agents; and
- (c) occupational respiratory disease matters more broadly.

A prescribed medical practitioner who has diagnosed an individual with an occupational respiratory disease may be authorised or required to notify the Commonwealth Chief Medical Officer of certain information in relation to the individual for inclusion in the National Registry. A prescribed medical practitioner who is treating an individual for an occupational respiratory disease may also notify the Commonwealth Chief Medical Officer of certain information in relation to the individual for inclusion in the National Registry (Division 3).

The Commonwealth Chief Medical Officer may vary information included in the National Registry (Division 4).

## Division 2—Establishment, contents and purposes

### 11 Establishment of the National Registry

- (1) The Commonwealth must establish and keep a registry to be called the National Occupational Respiratory Disease Registry.
- (2) The National Registry may be kept by electronic means.
- (3) Parts of the National Registry may be kept separate from each other, and be called different names.
- (4) The National Registry is not a legislative instrument.

### 12 Contents of the National Registry

- (1) The National Registry may include the following information in relation to individuals who have been diagnosed with, or are being treated for, an occupational respiratory disease:
  - (a) minimum notification information;
  - (b) additional notification information;
  - (c) any other information that is relevant to the purposes of the National Registry and is determined by the Commonwealth Chief Medical Officer under subsection (4) for the purposes of this paragraph.
- (2) **Minimum notification information** in relation to an individual who has been diagnosed with, or is being treated for, an occupational respiratory disease is information that is relevant to the purposes of the National Registry and is determined by the Commonwealth Chief Medical Officer under subsection (4) for the purposes of this subsection.
- (3) **Additional notification information** in relation to an individual who has been diagnosed with, or is being treated for, an occupational respiratory disease is information (other than minimum notification information) that is relevant to the purposes of the National Registry and is determined by the Commonwealth

Chief Medical Officer under subsection (4) for the purposes of this subsection.

- (4) The Commonwealth Chief Medical Officer may, by legislative instrument, determine the following:
- (a) information for the purposes of paragraph (1)(c);
  - (b) information for the purposes of subsection (2);
  - (c) information for the purposes of subsection (3).

### **13 Purposes of the National Registry**

- (1) The purposes of the National Registry are to facilitate the following:
- (a) collecting, storing, analysing and publishing by electronic means information relating to the diagnosis and progression of occupational respiratory diseases in Australia;
  - (b) collecting, analysing and publishing statistics in relation to occupational respiratory diseases in Australia;
  - (c) providing statistics in relation to occupational respiratory diseases in Australia to States and Territories and to prescribed medical practitioners;
  - (d) for the benefit of the nation:
    - (i) monitoring the incidence of occupational respiratory diseases in Australia; and
    - (ii) taking preventative action;
  - (e) any activities that are incidental to the above purposes.
- (2) The purposes of the National Registry also include to facilitate the following:
- (a) supporting the identification of industries, occupations, job tasks and workplaces where there is a risk of exposure to respiratory disease-causing agents:
    - (i) to enable the application of timely and targeted interventions and prevention activities to reduce further worker exposure and disease; and
    - (ii) to assist with compliance and enforcement activities in relation to occupational health and safety matters;

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- (b) providing prescribed medical practitioners with access to information included in the National Registry in relation to an individual who has been diagnosed with an occupational respiratory disease for the purpose of providing healthcare to the individual in relation to the disease;
- (c) monitoring the quality and effectiveness of policy and regulatory arrangements in relation to occupational respiratory diseases to inform and enhance policy development, programs and decision-making relating to the prevention of occupational respiratory diseases;
- (d) planning, delivering and promoting healthcare and associated services in relation to occupational respiratory diseases;
- (e) identifying individuals for inclusion in clinical trials or observational studies in relation to occupational respiratory diseases;
- (f) research (as defined in section 8);
- (g) any activities that are incidental to the above purposes.

*Constitutional basis—subsection (2)*

- (3) Subparagraph (2)(a)(i) and paragraphs (2)(b) to (g) rely on the legislative power that the Parliament has under the Constitution to give effect to Australia's obligations under the following:
  - (a) paragraph 1 of Article 2 and subparagraphs (b), (c) and (d) of paragraph 2 of Article 12 of the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966;
  - (b) Articles 4 and 8 and subparagraph (c) of Article 11 of the International Labour Organization Convention No. 155 concerning Occupational Safety and Health and the Working Environment done at Geneva on 22 June 1981;
  - (c) the Protocol of 2002 to the Occupational Safety and Health Convention 1981 done at Geneva on 20 June 2002.

Note 1: The International Covenant on Economic, Social and Cultural Rights is in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Note 2: The International Labour Organization Convention No. 155 concerning Occupational Safety and Health and the Working



Environment is in Australian Treaty Series 2005 No. 11 ([2005] ATS 11) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Note 3: The Protocol of 2002 to the Occupational Safety and Health Convention 1981 is in Australian Treaty Series 2012 No. 26 ([2012] ATS 26) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- (4) Subparagraph (2)(a)(ii) relies on the legislative power that the Parliament has under the Constitution to give effect to Australia's obligations under paragraph 1 of Article 2 and subparagraphs (b) and (c) of paragraph 2 of Article 12 of the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966.
- (5) Paragraph (2)(b) also relies on the legislative power that the Parliament has under the Constitution with respect to the provision of medical services.
- (6) Paragraphs (2)(c), (d) and (f) also rely on the legislative power that the Parliament has under the Constitution with respect to:
  - (a) the executive power of the Commonwealth; or
  - (b) matters incidental to the execution of any of the legislative powers of the Parliament.

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**Division 3—Notifying information for the National Registry**

**14 Notifying information about prescribed occupational respiratory diseases—diagnosing prescribed medical practitioner**

*Minimum notification information must be notified*

(1) If:

(a) a prescribed medical practitioner diagnoses an individual with an occupational respiratory disease at or after the commencement of this Act; and

(b) at the time the diagnosis is made, the occupational respiratory disease is a prescribed occupational respiratory disease;

the prescribed medical practitioner must notify the Commonwealth Chief Medical Officer, in an approved form and by the time, or within the period, prescribed by the rules, of the minimum notification information in relation to the individual.

Note 1: For *minimum notification information*, see subsection 12(2).

Note 2: The prescribed medical practitioner may, with the individual's consent, also notify the Commonwealth Chief Medical Officer, in an approved form, of additional information in relation to the individual (see subsection (5)).

(2) Subsection (1) applies whether or not the individual consents to the notification of the information under that subsection.

*Civil penalty provision*

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 30 penalty units.

*Continuing contraventions*

(4) Subsection 93(2) of the Regulatory Powers Act does not apply in relation to a contravention of subsection (1) of this section.

*Additional information may be notified*

- (5) A prescribed medical practitioner who notifies minimum notification information in relation to an individual under subsection (1) may, with the individual's consent, also notify the Commonwealth Chief Medical Officer, in an approved form, of some or all of the following:
- (a) the additional notification information in relation to the individual;
  - (b) other information (if any) in relation to the individual determined under subsection 12(4) for the purposes of paragraph 12(1)(c).

Note: For *additional notification information*, see subsection 12(3).

**15 Notifying information about prescribed occupational respiratory diseases—treating prescribed medical practitioner**

*Minimum notification information may be notified*

- (1) If:
- (a) a prescribed medical practitioner has diagnosed an individual with a prescribed occupational respiratory disease before the commencement of this Act; and
  - (b) the minimum notification information in relation to the individual is not included in the National Registry;
- a prescribed medical practitioner who is treating the individual for the disease may, with the individual's consent, notify the Commonwealth Chief Medical Officer, in an approved form, of the minimum notification information in relation to the individual.

Note 1: For *minimum notification information*, see subsection 12(2).

Note 2: The prescribed medical practitioner may, with the individual's consent, also notify the Commonwealth Chief Medical Officer, in an approved form, of additional information in relation to the individual (see subsection (3)).

Note 3: The prescribed medical practitioner who diagnosed the individual with the prescribed occupational respiratory disease and the prescribed medical practitioner who is treating the individual for the disease may be the same person.

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(2) If:

- (a) a prescribed medical practitioner diagnoses an individual with a prescribed occupational respiratory disease at or after the commencement of this Act; and
- (b) the minimum notification information in relation to the individual is not included in the National Registry;

a prescribed medical practitioner who is treating the individual for the disease may, without obtaining the individual's consent, notify the Commonwealth Chief Medical Officer, in an approved form, of the minimum notification information in relation to the individual.

Note 1: For *minimum notification information*, see subsection 12(2).

Note 2: The prescribed medical practitioner may, with the individual's consent, also notify the Commonwealth Chief Medical Officer, in an approved form, of additional information in relation to the individual (see subsection (3)).

Note 3: The prescribed medical practitioner who diagnosed the individual with the prescribed occupational respiratory disease and the prescribed medical practitioner who is treating the individual for the disease may be the same person.

*Additional information may be notified*

(3) A prescribed medical practitioner who notifies minimum notification information in relation to an individual under subsection (1) or (2) may, with the individual's consent, notify the Commonwealth Chief Medical Officer, in an approved form, of some or all of the following:

- (a) the additional notification information in relation to the individual;
- (b) other information (if any) in relation to the individual determined under subsection 12(4) for the purposes of paragraph 12(1)(c).

Note: For *additional notification information*, see subsection 12(3).

*Information included in the National Registry may be corrected or updated*

(4) If information in relation to an individual who has been diagnosed with a prescribed occupational respiratory disease is included in

the National Registry under section 14 or this section, a prescribed medical practitioner who is treating the individual for the disease may, subject to subsection (5), correct or update the information by notifying the Commonwealth Chief Medical Officer in an approved form.

- (5) A prescribed medical practitioner may correct or update information in relation to an individual under subsection (4) to make minor or technical changes (including to correct a minor error) without obtaining the individual's consent. For any other changes, the prescribed medical practitioner must obtain the consent of the individual.

## **16 Notifying information about non-prescribed occupational respiratory diseases—diagnosing prescribed medical practitioner**

*Minimum notification information may be notified*

- (1) Subject to subsection (2), a prescribed medical practitioner who diagnoses an individual with a non-prescribed occupational respiratory disease at or after the commencement of this Act may, with the individual's consent, notify the Commonwealth Chief Medical Officer, in an approved form, of the minimum notification information in relation to the individual.

Note 1: For *minimum notification information*, see subsection 12(2).

Note 2: The prescribed medical practitioner may, with the individual's consent, also notify the Commonwealth Chief Medical Officer, in an approved form, of additional information in relation to the individual (see subsection (3)).

- (2) If:
- (a) a prescribed medical practitioner diagnoses an individual with a non-prescribed occupational respiratory disease at or after the commencement of this Act; and
  - (b) for the purpose of complying with a requirement under a law of a State or Territory, the medical practitioner is required to notify the Commonwealth Chief Medical Officer, in an approved form, of the diagnosis of that disease in relation to the individual;

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the medical practitioner may, without obtaining the individual's consent, notify the Commonwealth Chief Medical Officer, in an approved form, of the minimum notification information in relation to the individual.

Note 1: For *minimum notification information*, see subsection 12(2).

Note 2: The prescribed medical practitioner may, with the individual's consent, also notify the Commonwealth Chief Medical Officer, in an approved form, of additional information in relation to the individual (see subsection (3)).

*Additional information may be notified*

- (3) A prescribed medical practitioner who notifies minimum notification information in relation to an individual under subsection (1) or (2) may, with the individual's consent, also notify the Commonwealth Chief Medical Officer, in an approved form, of some or all of the following:
- (a) the additional notification information in relation to the individual;
  - (b) other information (if any) in relation to the individual determined under subsection 12(4) for the purposes of paragraph 12(1)(c).

Note: For *additional notification information*, see subsection 12(3).

**17 Notifying information about non-prescribed occupational respiratory diseases—treating prescribed medical practitioner**

*Minimum notification information may be notified*

- (1) If:
- (a) a prescribed medical practitioner diagnoses an individual with a non-prescribed occupational respiratory disease (whether the diagnosis was made before, or is made at or after, the commencement of this Act); and
  - (b) the minimum notification information in relation to the individual is not included in the National Registry;
- a prescribed medical practitioner who is treating the individual for the disease may, with the individual's consent, notify the

Commonwealth Chief Medical Officer, in an approved form, of the minimum notification information in relation to the individual.

Note 1: For *minimum notification information*, see subsection 12(2).

Note 2: The prescribed medical practitioner may, with the individual's consent, also notify the Commonwealth Chief Medical Officer, in an approved form, of additional information in relation to the individual (see subsection (2)).

Note 3: The prescribed medical practitioner who diagnosed the individual with the non-prescribed occupational respiratory disease and the prescribed medical practitioner who is treating the individual for the disease may be the same person.

*Additional information may be notified*

- (2) A prescribed medical practitioner who notifies minimum notification information in relation to an individual under subsection (1) may, with the individual's consent, notify the Commonwealth Chief Medical Officer, in an approved form, of some or all of the following:
- (a) the additional notification information in relation to the individual;
  - (b) other information (if any) in relation to the individual determined under subsection 12(4) for the purposes of paragraph 12(1)(c).

Note: For *additional notification information*, see subsection 12(3).

*Information included in the National Registry may be corrected or updated*

- (3) If information in relation to an individual who has been diagnosed with a non-prescribed occupational respiratory disease is included in the National Registry under section 16 or this section, a prescribed medical practitioner who is treating the individual for the disease may, subject to subsection (4), correct or update the information by notifying the Commonwealth Chief Medical Officer in an approved form.
- (4) A prescribed medical practitioner may correct or update information in relation to an individual under subsection (3) to make minor or technical changes (including to correct a minor

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error) without obtaining the individual's consent. For any other changes, the prescribed medical practitioner must obtain the consent of the individual.

**18 Commonwealth Chief Medical Officer or contracted service provider may request individual to provide additional notification information**

- (1) If a prescribed medical practitioner has notified the Commonwealth Chief Medical Officer of the minimum notification information in relation to an individual under section 14, 15, 16 or 17, the Commonwealth Chief Medical Officer, or a contracted service provider, may request, in writing, the individual to give the Commonwealth Chief Medical Officer, or the contracted service provider, additional notification information in relation to the individual as specified in the request.

Note: For *additional notification information*, see subsection 12(3).

- (2) A request under subsection (1) may:
  - (a) be made by electronic communication; and
  - (b) ask the individual to give the specified information by electronic communication.
- (3) An individual who receives a request under subsection (1) is not obliged to comply with the request.



## **Division 4—Variation of information in the National Registry**

### **19 Variation of information included in the National Registry**

*Commonwealth Chief Medical Officer must correct personal information on request by individual*

- (1) An individual may request the Commonwealth Chief Medical Officer, in writing, to correct personal information in relation to the individual that is included in the National Registry.
- (2) If the Commonwealth Chief Medical Officer receives a request under subsection (1) to correct personal information in relation to an individual, the Commonwealth Chief Medical Officer must correct the information to ensure that, having regard to the purpose for which the information is included in the National Registry, the information is accurate, up-to-date, complete, relevant and not misleading.

*Commonwealth Chief Medical Officer may correct minor errors etc.*

- (3) The Commonwealth Chief Medical Officer may, on the Commonwealth Chief Medical Officer's own initiative, vary information included in the National Registry:
  - (a) to correct a minor or technical error; or
  - (b) to ensure that correct and consistent terminology is used.

## **Part 3—Dealing with information in the National Registry**

### **20 Simplified outline of this Part**

Information may be collected for inclusion in the National Registry (subsection 21(1)).

Personal information, workplace identifying information and information that is commercial-in-confidence that is included in the National Registry, or is derived from information included in the National Registry, is protected information.

Recording, disclosure and use of protected information is authorised in specific circumstances, including for the purposes of the National Registry, by prescribed medical practitioners and for research (sections 21 and 22).

It is an offence for a person to make a record of, disclose or otherwise use protected information, without authorisation (section 23).

There are exceptions to the offence (sections 24 and 25).

The Commonwealth Chief Medical Officer must publish an annual report including certain statistical information in relation to information included in the National Registry, and may publish or make available other reports in relation to information included in the National Registry (section 26).

### **21 Authorised dealings with information—general**

*Including information etc. in the National Registry*

- (1) A person may collect, make a record of, disclose or otherwise use:
  - (a) personal information; or

- (b) workplace identifying information; or
  - (c) information that is commercial-in-confidence;
- if the person does so for the purposes of including information in the National Registry.

Note 1: This subsection is an authorisation for the purposes of other laws, including the Australian Privacy Principles.

Note 2: Certain information in relation to an individual may be collected and recorded in the National Registry under Part 2 only with the individual's consent.

*Authorised collection, disclosure or other use of information in the National Registry*

- (2) A person may collect, make a record of, disclose or otherwise use protected information included in the National Registry, if:
  - (a) the person does so for the purposes of the National Registry and is:
    - (i) an officer or employee of the Commonwealth or a Commonwealth authority; or
    - (ii) engaged by the Commonwealth, or a Commonwealth authority, to perform work relating to the purposes of the National Registry; or
    - (iii) an officer or employee of a person referred to in subparagraph (ii), or engaged by a person referred to in subparagraph (ii) to perform work relating to the purposes of the National Registry; or
  - (b) all of the following apply:
    - (i) the person is a prescribed medical practitioner;
    - (ii) the information is about a diagnosis, or the progression, of an occupational respiratory disease in relation to an individual;
    - (iii) the collection, recording, disclosure or use is for the purposes of providing healthcare to the individual in relation to the occupational respiratory disease; or
  - (c) all of the following apply:
    - (i) the person is a prescribed medical practitioner;

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- (ii) the person has diagnosed an individual with an occupational respiratory disease, or is treating an individual for an occupational respiratory disease;
- (iii) the collection, recording, disclosure or use is for the purpose of checking whether information in relation to the individual is included in the National Registry; or
- (d) the person does so for the purposes of performing the person's functions or duties, or exercising the person's powers, under this Act; or
- (e) the person is required or authorised to do so by or under a law of the Commonwealth, or of a State or Territory; or
- (f) all of the following apply:
  - (i) the person is the Commonwealth Chief Medical Officer;
  - (ii) the collection, recording, disclosure or use is for the purposes of disclosing information to an enforcement body;
  - (iii) the person reasonably believes that the information is reasonably necessary for, or directly related to, one or more enforcement related activities being conducted by, or on behalf of, the enforcement body; or
- (g) the information is disclosed to the person under this section, and the collection, recording, disclosure or use is for the purpose for which the information was disclosed to the person; or
- (h) the person does so for the purposes of court or tribunal proceedings, or in accordance with an order of a court or tribunal; or
- (i) the person does so for the purposes of a coronial inquiry, or in accordance with an order of a coroner.

Note: This subsection is an authorisation for the purposes of other laws, including the Australian Privacy Principles.

*Restrictions on collection, recording, disclosure or use of certain protected information for the purposes of research*

- (3) However, the following information in relation to an individual must not be disclosed to a person under subsection (2) for the purposes of research:

- (a) information that identifies, or could be used to identify, the most recent workplace, or the main workplace, where the individual was exposed to a respiratory disease-causing agent;
- (b) information that identifies, or could be used to identify, the prescribed medical practitioner who notified information in relation to the individual under Part 2;
- (c) any other kind of information that is prescribed by the rules.

Note: For *research*, see section 8.

- (4) Collection, recording, disclosure or use of personal information for the purposes of research of a kind to which guidelines approved under section 95 or 95A of the *Privacy Act 1988* relate is authorised under paragraph (2)(a) or (g) of this section only if:
  - (a) the collection, recording, use or disclosure is in accordance with the guidelines; and
  - (b) in the case of disclosure—the disclosure is not prohibited by subsection (3) of this section.

## **22 Authorised dealings with information—Commonwealth authorities and State or Territory authorities**

### *Commonwealth authorities*

- (1) The Commonwealth Chief Medical Officer, or a contracted service provider, may disclose any minimum notification information in relation to an individual that is included in the National Registry and is protected information:
  - (a) to a Commonwealth authority prescribed by the rules; and
  - (b) for purposes connected with the performance of functions, or the exercise of powers, of the Commonwealth authority.

Note 1: For *Commonwealth authority*, see section 8.

Note 2: This subsection is an authorisation for the purposes of other laws, including the Australian Privacy Principles.

- (2) A Commonwealth authority to which protected information is disclosed under subsection (1) may collect, make a record of, disclose or otherwise use that information for any of the purposes

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for which the information was disclosed to the Commonwealth authority.

Note: This subsection is an authorisation for the purposes of other laws, including the Australian Privacy Principles.

### *State or Territory authorities*

- (3) The Commonwealth Chief Medical Officer, or a contracted service provider, may disclose to a relevant State or Territory authority, for a purpose referred to in paragraph 13(2)(a), (c), (d) or (f), any minimum notification information in relation to an individual that is included in the National Registry and is protected information if the individual:
- (a) resides in the State or Territory; or
  - (b) was exposed to a respiratory disease-causing agent in the State or Territory; or
  - (c) was diagnosed with an occupational respiratory disease in the State or Territory.

Note 1: For *relevant State or Territory authority*, see section 8.

Note 2: This subsection is an authorisation for the purposes of other laws, including the Australian Privacy Principles.

- (4) A relevant State or Territory authority to which protected information is disclosed under subsection (3) may collect, make a record of, disclose or otherwise use that information for a purpose referred to in paragraph 13(2)(a), (c), (d) or (f).

Note: This subsection is an authorisation for the purposes of other laws, including the Australian Privacy Principles.

## **23 Offence relating to protected information**

A person commits an offence if:

- (a) the person makes a record of, discloses or otherwise uses information; and
- (b) the information is protected information; and
- (c) the making of the record, disclosure or use, is not authorised by a provision of this Part.

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

**24 Exceptions relating to the person to whom the protected information relates**

- (1) Section 23 does not apply to a person if:
- (a) the person discloses protected information to the person to whom the information relates; or
  - (b) the person is the person to whom the protected information relates; or
  - (c) the making of the record, disclosure or use of the protected information is in accordance with the express or implied consent of the person to whom the information relates.

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

- (2) Subsection (1) applies as if a reference in that subsection to the person to whom the protected information relates included a reference to the person's personal representative.

Note: For *personal representative*, see section 8.

**25 Exception for disclosure to person who provided the information**

Section 23 does not apply to a person if:

- (a) the person obtains protected information from another person; and
- (b) the person discloses that information to the other person.

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

**26 Reports including statistical and other information relating to information included in the National Registry**

- (1) The Commonwealth Chief Medical Officer must, as soon as practicable after 30 June in each year, publish a report including the following information:
- (a) the number of notifications of each prescribed occupational respiratory disease made under Division 3 of Part 2 during the period of 12 months ending on that 30 June;

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- (b) the number of notifications of each non-prescribed occupational respiratory disease made under Division 3 of Part 2 during the period of 12 months ending on that 30 June;
- (c) aggregate information and statistics about the occupation, main job task, industry and State of residence of diagnosed individuals at the time they were exposed to respiratory disease-causing agents.

Note: See subsection (6) in relation to the first report published under this subsection.

- (2) The Commonwealth Chief Medical Officer may at any time, for the purposes of the National Registry:
  - (a) prepare statistical reports at a national level relating to information that is:
    - (i) included in the National Registry; and
    - (ii) of a kind prescribed by the rules; and
  - (b) make the reports available to relevant State or Territory authorities and prescribed medical practitioners.
- (3) The Commonwealth Chief Medical Officer may at any time, for the purposes of the National Registry, publish reports relating to information that is:
  - (a) included in the National Registry; and
  - (b) of a kind prescribed by the rules.The reports may include statistical and other information.
- (4) If protected information is to be published or otherwise made available under this section, the Commonwealth Chief Medical Officer must, before publishing the information or making it available, take such steps as are reasonable in the circumstances to ensure that the information is de-identified.
- (5) For the purposes of subsection (4), information is *de-identified* if the information is no longer about:
  - (a) an identifiable individual or an individual who is reasonably identifiable; or
  - (b) an identified workplace, employer or business or a workplace, employer or business that is reasonably identifiable.



- (6) If this Act commences on a day other than 1 July in a year, subsection (1) has effect in relation to the first report required to be published under that subsection as if each reference to the period of 12 months ending on that 30 June were a reference to the period starting on the day this Act commences and ending on that 30 June.

## Part 4—Other matters

### 27 Simplified outline of this Part

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| <p>This Part deals with other matters, such as civil penalties, approved forms, agreements, fees, delegations and rules.</p> |
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### 28 Civil penalty provisions

#### *Enforceable civil penalty provisions*

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

#### *Authorised applicant*

- (2) For the purposes of Part 4 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the civil penalty provisions of this Act:
  - (a) the Secretary;
  - (b) an SES employee, or an acting SES employee, in the Department.

#### *Relevant court*

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
  - (a) the Federal Court of Australia;
  - (b) the Federal Circuit and Family Court of Australia (Division 2);
  - (c) a court of a State or Territory that has jurisdiction in relation to the matter.

*Liability of Crown*

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the Crown liable to a pecuniary penalty.

**29 Approved forms**

The Commonwealth Chief Medical Officer may, in writing, approve a form for the purposes of a provision of this Act.

**30 Agreements**

The Commonwealth Chief Medical Officer may, on behalf of the Commonwealth, engage a person under a written agreement to perform services for, or on behalf of, the Commonwealth in connection with functions of the Commonwealth or the Commonwealth Chief Medical Officer under this Act.

**31 Fees**

- (1) The Secretary may, on behalf of the Commonwealth, charge a fee in relation to the disclosure of protected information to a person (other than a Commonwealth authority) under section 21 or 22 if the disclosure is made in response to a specific request by the person.
- (2) The amount of the fee that may be charged under subsection (1) is the amount:
- (a) determined by the Commonwealth Chief Medical Officer by legislative instrument; or
  - (b) worked out in accordance with a method determined by the Commonwealth Chief Medical Officer by legislative instrument.
- (3) A legislative instrument under paragraph (2)(a) or (b) may determine different amounts, or different methods for working out amounts (as the case may be), having regard to the form or manner in which protected information is disclosed.

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- (4) A fee that is due and payable to the Commonwealth under subsection (1) may be recovered as a debt that is due to the Commonwealth by action in:
  - (a) the Federal Court of Australia; or
  - (b) the Federal Circuit and Family Court of Australia (Division 2); or
  - (c) a court of a State or Territory that has jurisdiction in relation to the matter.
- (5) A fee charged under subsection (1) must not be such as to amount to taxation.

### 32 Delegation

#### *Minister's functions and powers*

- (1) The Minister may, in writing, delegate the Minister's functions or powers under section 9 (commercial-in-confidence information) to:
  - (a) the Commonwealth Chief Medical Officer; or
  - (b) an SES employee, or an acting SES employee, in the Department.

#### *Secretary's functions and powers*

- (2) The Secretary may, in writing, delegate the Secretary's functions or powers under subsection 31(1) (charging fees) to the Commonwealth Chief Medical Officer.

#### *Commonwealth Chief Medical Officer's functions and powers*

- (3) The Commonwealth Chief Medical Officer may, in writing, delegate the Commonwealth Chief Medical Officer's functions or powers under this Act (other than subsection 12(4) or 31(2)) to an SES employee, or an acting SES employee, in the Department.

#### *Delegate must comply with directions of delegator*

- (4) In performing a function, or exercising a power, under a delegation, the delegate must comply with any directions of the person who delegated the function or power.

**33 Rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
    - (a) required or permitted by this Act to be prescribed by the rules; or
    - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
  - (2) Before making rules for the purposes of the definition of *prescribed occupational respiratory disease* in section 8, the Minister must:
    - (a) consult the Commonwealth Chief Medical Officer; and
    - (b) consult the relevant State or Territory authorities of each State or Territory through the State or Territory Health Minister; and
    - (c) have regard to the submissions (if any) made by the Commonwealth Chief Medical Officer or a State or Territory Health Minister because of that consultation.
- Note: For *relevant State or Territory authority*, see section 8.
- (3) To avoid doubt, the rules may not do the following:
    - (a) create an offence or civil penalty;
    - (b) provide powers of:
      - (i) arrest or detention; or
      - (ii) entry, search or seizure;
    - (c) impose a tax;
    - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
    - (e) directly amend the text of this Act.

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[Minister's second reading speech made in—  
House of Representatives on 21 June 2023  
Senate on 11 September 2023]

(85/23)

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