

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 129**

#### *Personally Controlled Electronic Health Records Act 2012*

#### *Personally Controlled Electronic Health Records Regulation 2012*

Subsection 112(1) of the *Personally Controlled Electronic Health Records Act 2012* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides for the establishment and operation of the national personally controlled electronic health record (PCEHR) system, on a voluntary basis, to provide access to health information relating to consumers' healthcare.

A key foundation of the PCEHR system is the Healthcare Identifiers Service (HI Service), established by the *Healthcare Identifiers Act 2010* (HI Act). Under the HI Act, the HI Service Operator assigns consumers, healthcare providers and healthcare provider organisations with unique identifiers for the purpose of healthcare.

The purpose of the regulation is to support the effective operation of the PCEHR system by ensuring that HI Service Operator can carry out its expanded functions and share critical information with the PCEHR System Operator, and by providing additional detail in respect of a critical definition, the operation of the advisory committees and the interaction of state and territory laws.

Subsection 9(2) of the Act defines certain types of information about a healthcare provider and healthcare provider organisation as 'identifying information' to enable the HI Service Operator to perform its functions under the HI Act. With the implementation of the PCEHR system, the functions of the HI Service Operator have been expanded, so the regulation ensures that additional information on a healthcare provider and healthcare provider organisation, such as contact details about key officers within the organisation, is defined as identifying information and thus can be disclosed by the HI Service Operator to the PCEHR System Operator for PCEHR system purposes.

Sections 23 and 37 of the Act provide for regulations to be made in respect of the Jurisdictional Advisory Committee and the Independent Advisory Council, respectively. The regulation ensures that these advisory bodies to the PCEHR System Operator operate in a manner that is of the most value to the PCEHR System Operator.

The definition of 'nominated healthcare provider' in section 5 of the Act provides for regulations to be made to prescribe a class of Aboriginal and/or Torres Strait Islander health practitioner that are eligible to be nominated healthcare providers. The regulation supports participation in the PCEHR system by Aboriginal and Torres Strait Islander peoples by ensuring that Aboriginal and/or Torres Strait Islander health practitioners who have the requisite level of clinical training will be able to create and manage a consumer's shared health summary, which will contain key health information about a consumer.

Paragraph 41(3)(a) of the Act provides for regulations to be made to prescribe particular laws of a state or territory that will apply to a registered consumer's consent to healthcare provider organisations uploading health information records to the consumer's PCEHR. The regulation is critical in ensuring that certain health information laws in the states and territories will not be overridden by the Act and will continue to apply to the disclosure of certain health information, such as in connection with Human Immunodeficiency Virus infection (HIV), thereby ensuring that particular health information is managed consistently within a state or territory.

On 21 March the *PCEHR System: Proposals for Regulations and Rules* was released for public consultation. The paper outlined the main provisions proposed to be included in the regulations, and outlined the reasons behind those proposals and how they would operate. The proposals were the result of consultation with a working group of representatives from Commonwealth, state and territory health departments, public consultation processes on several papers and ongoing workshops and targeted meetings.

The proposals were subsequently revised to address feedback and submissions.

Consultation has also been undertaken with the Departments of Human Services and Veterans' Affairs and the National E-Health Transition Authority.

Subsection 112(3) of the Act specifies that the Minister must consult the Ministerial Council before the Governor-General makes regulations. On 27 April 2012 the Minister for Health consulted the Standing Council on Health and no amendment to the regulation was necessary.

Detail of the regulation is set out in the [Attachment](#).

The regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The regulation commences on the day after registration on the Federal Register of Legislative Instruments.

**ATTACHMENT****Details of the Personally Controlled Electronic Health Records Regulation 2012****PART 1—PRELIMINARY****Section 1.1 – Name of regulation**

This section provides that the title of the regulation is *Personally Controlled Electronic Health Records Regulation 2012*.

**Section 1.2 – Commencement**

This section provides for the regulation to commence on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 1.3 – Definitions**

This section defines particular terms that are used in the regulation. An example of these terms is described below.

The ‘Remuneration Tribunal Determination’ means the *Remuneration Tribunal Determination 2011/09—Remuneration and Allowances for Holders of Part-Time Public Office*, as amended from time to time. At the time of writing, the Remuneration Tribunal Determination in force was that which was consolidated on 1 June 2012 and incorporates amending determinations up to and including 2012/08. The Remuneration Tribunal Determination prescribes the daily fees for specified and non-specified officer-holders and conditions of payment and official travel.

This definition is important to the operation of regulations 2.1.2 and 2.2.2 which deal with the remuneration of members of the Jurisdictional Advisory Committee and Independent Advisory Council.

The note to this section assists readers by making clear that other terms used in this regulation are as defined by the Act.

**Section 1.4 – Nominated healthcare provider**

Section 5 of the Act defines a ‘nominated healthcare provider’ as a provider who has been assigned a healthcare identifier (under the *Healthcare Identifiers Act 2010* (HI Act)), has an agreement with a consumer for this purpose, and is registered by a registration authority as a:

- medical practitioner;
- registered nurse; or
- Aboriginal health practitioner, Torres Strait Islander health practitioner or Aboriginal and Torres Strait Islander health practitioner of a class prescribed by the regulations.

The role of a nominated healthcare provider will be to create and update a consumer's shared health summary for inclusion in a consumer's PCEHR. The shared health summary, one of a range of clinical documents in a PCEHR, is a 'point in time' clinical document that provides a clinically reviewed summary of a consumer's healthcare status, drawing information from the healthcare provider organisation's records as well as other records, such as event summaries uploaded by other healthcare providers. The shared health summary provides information about a consumer's allergies and adverse reactions, medicines, medical history and immunisations. Healthcare providers who are not nominated healthcare providers will not be authorised to author or upload a shared health summary.

Section 1.4 prescribes that the class of Aboriginal and/or Torres Strait Islander health practitioners eligible to be a consumer's nominated healthcare provider for the purposes of the PCEHR system is those with a Certificate IV in Aboriginal and/or Torres Strait Islander Primary Health Care (Practice).

A Certificate IV in the Primary Health Care (Practice) field ensures the healthcare provider has the requisite level of clinical training necessary to manage a consumer's shared health summary.

#### Section 1.5 – Identifying information—healthcare provider

Under subsection 9(1) of the Act, certain information about healthcare providers is defined as 'identifying information'. Paragraph 9(1)(h) provides that regulations may prescribe other information for the purposes of this definition. Accordingly, section 1.5 prescribes additional information that would be within the meaning of identifying information. This additional information enables the Healthcare Identifiers Service Operator (HI Service Operator) to share critical information with the PCEHR System Operator for PCEHR system purposes.

The information prescribed as identifying information is the status of the healthcare provider organisation's healthcare identifier that has been assigned to the organisation under the HI Act. This enables the HI Service Operator to carry out its functions that will be expanded as a result of the PCEHR system.

#### Section 1.6 – Identifying information—healthcare provider organisation

Under subsection 9(2) of the Act, certain information about healthcare provider organisations is defined as 'identifying information'. Paragraph 9(2)(f) provides that regulations may prescribe other information for the purposes of this definition. Accordingly, section 1.6 prescribes additional information that is within the meaning of identifying information. This additional information enables the Healthcare Identifiers Service Operator (HI Service Operator) to share critical information with the PCEHR System Operator for PCEHR system purposes.

The following information is prescribed as identifying information:

- the status of the healthcare provider organisation's healthcare identifier that has been assigned to the organisation under the HI Act;

- to the extent it is not already covered by paragraph 9(2)(a) of the Act (that is, the name of the healthcare provider), the trading name of the healthcare provider organisation;
- the healthcare provider organisation's service type (e.g. hospital or general practice);
- the names, personal and contact details and identifying numbers of the healthcare provider organisation's Responsible Officer (the officer with day-to-day contact with the HI Service Operator to manage the healthcare identifiers of the organisation) and Organisation Maintenance Officer(s) (a delegate of the Responsible Officer);
- the identifying number assigned to the healthcare provider organisation's Responsible Officer and Organisation Maintenance Officer(s) by the HI Service Operator;
- evidence of identity (EOI) details in relation to the healthcare provider organisation's Responsible Officer and Organisation Maintenance Officer(s). EOI checks will be performed by the HI Service Operator or Australian Health Practitioner Regulation Agency (AHPRA), depending on whether the Responsible Officer or Organisation Maintenance Officer is a healthcare provider registered by AHPRA (e.g. medical practitioners). EOI details may include whether a Responsible Officer or Organisation Maintenance Officer has undertaken an EOI process and, if so, whether the process was successful, the name of the organisation performing the EOI check or when the EOI was performed;
- the network address and technical requirements of the healthcare provider organisation that enable secure electronic messages to be sent to the organisation; and
- where a healthcare provider organisation ('the first provider') is part of a network hierarchy (that is, the first provider is a 'seed organisation' with subordinate network organisations, or is itself a 'network organisation', as defined in subsections 9A(3) and 9A(6) of the HI Act), the other healthcare provider organisations that are linked to the first provider, and whether the first provider is a seed organisation or network organisation.

Provision of this information will enable the HI Service Operator to perform its functions under a number of provisions in the HI Act, including:

- assigning healthcare identifiers to healthcare provider organisations;
- publishing professional and business details of a healthcare provider organisation to the healthcare provider directory; and
- enabling the PCEHR System Operator to create and maintain a database of healthcare provider organisations registered to participate in the PCEHR system for the purposes of section 56 of the PCEHR Act.

Paragraphs 1.6(a) to (k) prescribe the information described above as identifying information in order to enable the HI Service Operator to carry out its functions that will be expanded as a result of the PCEHR system.

## **PART 2—THE SYSTEM OPERATOR, ADVISORY BODIES AND OTHER MATTERS**

### **Division 2.1—Jurisdictional Advisory Committee**

The health system and healthcare outcomes rely on up-to-date information being available when patients move to, from and within the primary and acute care sectors. The involvement of states and territories is therefore crucial.

The Jurisdictional Advisory Committee (the Committee), established by section 18 of the Act, ensures the crucial involvement of the states and territories in the operation and implementation of the PCEHR system.

The Committee comprises a member representing the Commonwealth (appointed by the Minister for Health) and a member representing each state and territory (appointed by the head of each state and territory health department).

The Act provides that meetings of the Committee will be chaired by the state and territory members on a rotating basis and that substitute members may be nominated by the respective Minister or health department head if a Committee member is unable to attend a meeting.

Paragraph 23(c) of the Act provides that, subject to certain limits, the regulations may provide for the operation and procedures of the Committee, including by allowing the Committee to determine its own procedure on any matter.

The arrangements set out in sections 2.1.1 to 2.1.13 are consistent with arrangements for similar advisory committees.

#### Section 2.1.1 – Application of Division 2.1

Section 2.1.1 makes clear that Division 2.1 is made for the purposes of the Jurisdictional Advisory Committee. Other than as set out in Division 2.1 of this regulation, or as prescribed in the Act, the Committee can determine its own procedures.

#### Section 2.1.2 – Remuneration of members

Section 2.1.2 provides for members of the Committee to be remunerated for their role on the Committee, subject to whether they are already remunerated by the Commonwealth or a state or territory.

Subsection 2.1.2(2) provides that a member is not eligible to be remunerated under the regulation if the person works for the Commonwealth or a state or territory and is therefore already remunerated. If, however, a member is employed by the Commonwealth or a state or territory on a part-time basis, and is required to undertake work on the Committee on a day when they are not remunerated by the Commonwealth or a state or territory, then the member is eligible for remuneration under the regulation.

Under subsection 2.1.2(1), members eligible to be remunerated are treated as if they were subject to Schedule B of the Remuneration Tribunal Determination 2011/09, which prescribes daily fees for professional committees in the Health and Ageing portfolio. This means that Committee members will be paid a daily fee of \$661 per meeting or \$873 for any meeting at which the member has served as the Chair.

This level of remuneration is commensurate with that earned by members of similar advisory committees with similar responsibilities and functions.

### Section 2.1.3 – Allowances for members

Section 2.1.3 provides for members to receive a travel allowance. Members are treated as if they were subject to *Remuneration Tribunal Determination 2004/03: Official Travel by Office Holders* (the Travel Determination), made by the Remuneration Tribunal, which prescribes the amount and conditions of travel allowance for part-time office-holders. Committee members will be paid the tier 1 rate of travel allowance for each overnight absence while travelling on official business within Australia.

Table A1.A of the Travel Determination sets out a table of the tier 1 travel allowances that will apply depending of the city or region for the overnight stay. For example, an overnight stay in Perth attracts a tier 2 allowance of \$434. The travel allowance covers accommodation, meals and incidentals.

Where the member claims or receives travel allowance or reimbursement of travel expenses under any other source or entitlement for the same travel, they are not eligible for travel allowance or expenses outlined in this regulation.

### Section 2.1.4 – Leave of absence for members

Section 2.1.4 authorises the Minister for Health to grant the Commonwealth member leave of absence from the Committee upon request by a member, and determine the applicable terms and conditions of that leave. It also authorises the head of the relevant state or territory health department to grant the member representing that state or territory leave of absence and determine the applicable terms and conditions.

### Section 2.1.5 – Disclosure of interests by members

Section 2.1.5 prescribes the requirements for members to disclose their interests. Members are required to promptly disclose to the Committee direct or indirect material personal interests in a matter that is being considered or will be considered by the Committee. Members cannot be present during the Committee's consideration of that matter or participate in the Committee's decision regarding that matter (unless the Committee chooses otherwise), and any disclosure is required to be recorded in the minutes of that meeting.

### Section 2.1.6 – Procedures generally

Section 2.1.6 provides for the Committee to act with as little formality and as quickly as proper consideration of the relevant issues and the legislation allows. This takes

steps to ensure that the work of the Committee is effective, efficient and timely, and its focus and processes are not adversely affected by unnecessary complicated processes and procedure.

#### Section 2.1.7 – Meetings

Subsections 2.1.7(1) and (2) specify the frequency of Committee meetings. The Committee is required to meet at least four times each year. With consent of the members, additional meetings may be held.

Subsection 2.1.7(3) permits the Committee to meet using any technology that allows all members to reasonably participate, subject to agreement by all members. This ensures that the Committee can meet other than in person to conduct its business, such as by teleconference or videoconference, so long as that manner does not impede participation by the members.

#### Section 2.1.8 – Quorum and voting

Subsection 2.1.8(1) specifies that at least six state and territory representatives, and the Commonwealth representative, must participate in a meeting to constitute a quorum. A meeting consisting of fewer members, or a different combination of members, is not a Committee meeting for the purposes of the Act and its decisions will not be recognised as Committee decisions.

Section 21 of the Act permits the substitution of members, thereby mitigating the risk that meetings are cancelled due to a lack of a quorum.

Subsection 2.1.8(2) provides that a decision is made by the Committee by a majority of members present and voting, and subsection 2.1.8(3) makes clear that the Chair has a casting vote in the case of equal votes. Only those members present may vote.

#### Section 2.1.9 – Record of meetings

Section 2.1.9 requires the Committee to keep a record of all meetings and resolutions, in writing.

Further, the section requires the Committee to provide responses to any request by the System Operator or advice provided of the Committee's own initiative (i.e. not in response to a request), in writing, to the System Operator, the Minister for Health and the head of each state and territory health department.

This ensures that the System Operator has a proper record of any advice provided by the Committee, and also ensures that the heads of each state and territory health department are kept apprised of the Committee's business and advice.

#### Section 2.1.10 – Out of session consideration

Section 2.1.10 enables the Committee to deal with matters outside a convened meeting. For example, if a matter arises on which the PCEHR System Operator requires urgent advice, and the Committee's next scheduled meeting is not soon



enough, the Committee could still deal with the matter in any manner it considers appropriate, such as by email or teleconference.

Where decisions need to be made and voting is required, the meeting can only be held in person, by teleconference or videoconference. However, where voting is not required, the meeting can be held in any manner agreed by members.

#### Section 2.1.11 – Obtaining information

Section 2.1.11 authorises the Committee to obtain information that it requires in any appropriate manner as determined by the System Operator. For example, the System Operator may request advice on a particular jurisdictional privacy matter and may specify that the Committee only obtain information on that matter that has been endorsed by all health ministers or a relevant subcommittee.

#### Section 2.1.12 – Subcommittees

Section 2.1.12 authorises the Committee to establish subcommittees. At the suggestion of the System Operator or on its own initiative the Committee can form a subcommittee of members to provide advice to the Committee and the System Operator on a particular issue. Subject to the Committee's workload and priorities, it could be more appropriate and efficient for a subset of members to work on particular projects and deliver their recommendations or findings to the Committee.

#### Section 2.1.13 – Other procedures

Section 2.1.13 makes clear that, other than as set out in the regulations, or as prescribed by the Act, the Committee can determine its own procedures.

### **Division 2.2—Independent Advisory Council**

The involvement of healthcare providers, consumers and other health sector stakeholders is crucial to the success of the PCEHR system, particularly in ensuring clinically safe operations, expert advice on technical, security and privacy issues and expert advice on the consumer experience of, and consumer needs in, managing their own healthcare.

The Independent Advisory Council (the Council), established by section 24 of the Act, ensures the involvement of key stakeholders that reflect a broad range of experience and the provision of key expertise in the operation of the PCEHR system. Stakeholders include consumers, healthcare providers and information technology service providers.

The Council comprises up to 12 members, including the Chair and Deputy Chair, with experience or knowledge in a range of healthcare areas.

Section 37 of the Act provides that the regulations may provide for the operation and procedures of the Council, including by allowing the Council to determine its own procedure on any matter.

The arrangements set out in sections 2.2.1 to 2.2.11 are consistent with arrangements for similar advisory committees.

#### Section 2.2.1 – Application of Division 2.2

Section 2.2.1 makes clear that Division 2.2 is made for the purposes of the Independent Advisory Council. Other than as set out in Division 2.2, or as prescribed in the Act, the Council can determine its own procedures.

#### Section 2.2.2 – Remuneration of members

Section 2.2.2 provides for members to be remunerated for their role on the Council. Members will be treated as if they were subject to Schedule B of the Remuneration Tribunal Determination 2011/09, which prescribes daily fees for office-holders for professional committees in the Health and Ageing portfolio. This means that Council members will be paid a daily fee of \$661 per meeting and the Chair will be paid a daily fee of \$873.

This level of remuneration is commensurate with that earned by members of similar advisory committees with similar responsibilities and functions.

#### Section 2.2.3 – Allowances for members

Section 2.2.3 provides for members to receive a travel allowance.

Members will be treated as if they were subject to the Travel Determination, which prescribes the amount and conditions of travel allowance for part-time office-holders. Council members will be paid the tier 1 for each overnight absence while travelling on official business within Australia.

Table A1.A of the Travel Determination sets out a table of the tier 1 travel allowances that will apply depending of the city or region for the overnight stay. For example, an overnight stay in Perth attracts a tier 1 allowance of \$434. Travel allowance covers accommodation, meals and incidentals.

Where the member claims or receives travel allowance or reimbursement of travel expenses under any other source or entitlement for the same travel, they are not eligible for travel allowance or expenses outlined in this regulation.

#### Section 2.2.4 – Procedures generally

Section 2.2.4 provides for the Council to act with as little formality and as quickly as proper consideration of the relevant issues and the legislation allows. This will take steps to ensure that the work of the Council is effective, efficient and timely, and its focus and processes are not adversely affected by unnecessary complicated processes and procedure.

### Section 2.2.5 – Meetings

Subsections 2.2.5(1) and (2) specify the frequency of Council meetings. The Council is required to meet at least four times each year. With consent of the members, additional meetings may be held.

Subsection 2.2.5(3) permits the Council to meet using any technology that allows all members to reasonably participate, subject to agreement by all members. This ensures that the Council can meet other than in person to conduct its business, such as by teleconference or videoconference, so long as that manner does not impede participation by the members.

### Section 2.2.6 – Quorum and voting

Subsection 2.2.6(1) specifies that at least six members must participate in a meeting to constitute a quorum.

Section 28 of the Act provides for acting appointments, thereby mitigating the risk that meetings are cancelled due to a lack of a quorum.

Subsection 2.2.6(2) provides that a decision is made by the Council by a majority of votes, and subsection 2.2.6(3) makes clear that the Chair has a vote that counts and has a casting vote in the case of equal votes. Only those members present may vote.

### Section 2.2.7 – Record of meetings

Section 2.2.7 requires the Council to keep a record of all meetings and resolutions, in writing.

Further, the section requires the Council to provide responses to any request by the System Operator or advice provided of the Council's own initiative (i.e. not in response to a request), in writing, to the System Operator, the Minister for Health and the head of each state and territory health department.

This ensures that the System Operator has a proper record of any advice provided by the Council, and also ensures that the heads of each state and territory health department are kept apprised of the Committee's business and advice.

### Section 2.2.8 – Out of session consideration

Section 2.2.8 enables the Council to deal with matters outside a convened meeting. For example, if a matter arises on which the PCEHR System Operator requires urgent advice, and the Council's next scheduled meeting is not soon enough, the Council could still deal with the matter in any manner it considers appropriate, such as by email or teleconference.

Where decisions need to be made and voting is required, the meeting can only be held in person, by teleconference or videoconference. However, where voting is not required, the meeting can be held in any manner agreed by members.

### Section 2.2.9 – Obtaining information

Section 2.2.9 authorises the Council to obtain information that it requires in any appropriate manner. This manner depends on whether the System Operator has given any directions to the Council about obtaining information. For example, the System Operator may request advice on a particular privacy matter and may specify that the Council only obtain information on that matter that has been endorsed by particular privacy bodies.

### Section 2.2.10 – Subcouncils

Section 2.1.10 authorises the Council to establish subcouncils. At the suggestion of the System Operator or of its own initiative the Council can form a subcouncil of members to provide advice to the Council and the System Operator on a particular issue. Subject to the Council's workload and priorities, it could be more appropriate and efficient for a subset of members to work on particular projects and deliver their recommendations or findings to the Council.

### Section 2.2.11 – Other procedures

Section 2.2.11 makes clear that, other than as set out in the regulation, or as prescribed by the Act, the Council can determine its own procedures.

## **PART 3—REGISTRATION**

### Section 3.1 – Registration of a consumer by the System Operator

This section provides for the preservation of certain state and territory laws for the purpose of uploading information to the PCEHR system. Certain state and territory laws relate to the disclosure of a person's identity or confidential information in connection with certain notifiable diseases. Those laws will normally be overridden by the Act because they are inconsistent with the purpose of the Act, in accordance with section 109 of the Constitution. However, this section will ensure those laws continue to apply and the state and territory requirements in relation to the disclosure and uploading of certain health information, such as in connection with HIV, will be unaffected by the Act.

The laws that are preserved are described below:

- *Public Health Act 1991* (NSW) – sections 17 and 42J
- *Public Health Act 2010* (NSW) – sections 56 and 92
- *Public Health Act 2005* (Qld) – sections 55, 77-79, 105-107, 175-177, 220-222, 238-240 and 266-268
- *Public Health Act 1997* (ACT) – sections 110 and 111

These laws generally prohibit the disclosure of identifying information in relation to consumers who have been tested for Acquired Immune Deficiency Syndrome, HIV or cervical cancer, or confidential information associated with notifiable conditions, contagious conditions, environmental health events, perinatal history, cancer history

or pap smear history. This information can only be disclosed under specific circumstances, for example, with the written consent of the consumer to whom the information relates or to a person involved in the provision of care to that consumer (if that information is necessary for that purpose).

These state and territory laws have been identified through extensive consultation with representatives of state and territory health departments.

The effect of preserving the laws described above is that healthcare providers cannot upload a record to a consumer's PCEHR unless they meet the requirements in the prescribed laws applicable in their state or territory. The standing consent of a consumer for a healthcare provider to upload a record to their PCEHR, granted under subsection 41(3) of the Act as part of the registration process, does not override the requirements of these laws.

**STATEMENT OF COMPATIBILITY FOR A BILL OR LEGISLATIVE  
INSTRUMENT THAT RAISES HUMAN RIGHTS ISSUES**

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Personally Controlled Electronic Health Records Regulation 2012**

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

**Overview of the Regulations**

The Regulation will provide the detail necessary to support the operation of the personally controlled electronic health record (PCEHR) system, as established by the *Personally Controlled Electronic Health Records Act 2012* (the Act).

The Regulation will:

- ensure that the Healthcare Identifiers Service Operator can carry out its functions and share critical information with the PCEHR System Operator;
- assist in the interpretation of a *nominated healthcare provider* as defined by the Act;
- specify administrative and operational arrangements for the newly established advisory committees for the PCEHR system – the Jurisdictional Advisory Committee and Independent Advisory Council; and
- prescribe those state and territory laws that will be preserved by the Act and will not be overridden by a consumer’s standing consent to the uploading of their health information to their PCEHR – this relates to laws that prohibit the disclosure and uploading of certain notifiable diseases information.

**Human rights implications**

The Regulation engages the following human rights:

*Right to equality and non-discrimination*

Article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination guarantees that special measures can be taken by governments to ensure the development and protection of certain racial groups or individuals in order to achieve the full and equal enjoyment of human rights and fundamental freedoms, provided those measures do not result in separate rights for different racial groups and are discontinued after the objectives of the measures have been achieved.

The Regulation, together with the Act, ensures that all members of the Australian community, including Aboriginal and Torres Strait Islander communities that may not have access to medical practitioners, will not be disadvantaged in terms of the nature of information contained in their PCEHR, if should they choose to have one. Specifically, they will be able to nominate an Aboriginal and/or Torres Strait Islander health practitioner as a nominated healthcare provider who will be able to create and update a shared health summary for their PCEHR which contains key health information about the consumer’s allergies and adverse reactions, medicines, medical history and immunisations.

*Right to Protection of privacy and reputation*

Article 17 of the International Covenant on Civil and Political Rights guarantees protection from unlawful interference with a person's privacy and from unlawful attacks on a person's honour and reputation.

The Act provides that if a consumer chooses to register for a PCEHR, they will give standing consent to the uploading of their health information to their PCEHR by healthcare providers. However, the Act recognises that certain state and territory laws prohibit the disclosure of a person's identity or confidential information in relation to certain notifiable diseases, except where specific consent is granted by the person to whom the information relates. Such laws would normally be overridden by the Act because they are inconsistent with the purpose of the Act, however the Act provides that certain laws may be preserved. Accordingly, the Regulation prescribes state and territory laws, as identified by those jurisdictions, in relation to the disclosure and uploading of certain health information, such as in connection with HIV, that will be unaffected by the Act.

**Conclusion**

The Regulation is compatible with human rights because it advances the protection of human rights.

**Minister for Health, the Hon Tanya Plibersek MP**