



Australian Government

National Health and Medical Research Council

Statement of Compatibility with Human Rights

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

Guidelines under section 95 of the Privacy Act 1988, 2014,

This Legislative Instrument 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 Bill/Legislative Instrument

Guidelines Under Section 95 of the Privacy Act 1988 was recently updated to accord with the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* which amended the federal *Privacy Act 1988* (Privacy Act), effective 12 March 2014. The Guidelines were revised in November 2014 to address minor formatting and content errors. These Guidelines provide a framework in which medical research involving personal information obtained by Commonwealth agencies should be conducted in a manner that ensures that such information is protected against unauthorised collection or disclosure.

Human rights implications

The Preamble to the Privacy Act makes clear that the legislation was intended to implement, at least in part, Australia's obligations relating to privacy under the *International Covenant on Civil and Political Rights* (ICCPR). Specifically, article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. However, the right to privacy is not absolute and there may be circumstances in which the guarantees in article 17 can be outweighed by other considerations, such as the protection of the right to health and the conduct medical research.

With respect to the right to health, article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) provides that:

1. *The State Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

Article 12(2) of the ICESCR outlines the steps to be taken to achieve the full realisation of this right, including those necessary for:

- (c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases.*



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Medical research, and the compilation or analysis of statistics, are important for providing information to help the community make decisions that impact on the health of individuals and the community.

These activities should be carried out in a way that minimises intrusion on people's privacy. However, it may be necessary for personal information to be collected, used or disclosed without consent from an individual in order for the research, the compilation or analysis of statistics, or the management of a health service to proceed. The *Guidelines Under Section 95 of the Privacy Act 1988* provide a framework in which medical research involving personal information obtained by Commonwealth agencies should be conducted, to ensure that such information is protected against unauthorised collection or disclosure.

Having considered the competing rights to privacy and health, the Australian Privacy Commissioner approved the issue of these Guidelines by the Chief Executive Officer of the National Health and Medical Research Council, as required under Section 95 of the Privacy Act.

Conclusion

This Legislative Instrument is compatible with human rights because the right to privacy is not an absolute right. In some circumstances, it must be weighed against the equally justified rights of others and against matters that benefit society as a whole. To the extent that the Legislative Instrument may limit human rights, those limitations are reasonable and proportionate.

Professor Warwick Anderson AM, Chief Executive Officer, National Health and Medical Research Council

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