

## **EXPLANATORY STATEMENT**

### **Issued by Authority of the Minister for Health**

#### *Healthcare Identifiers Act 2010*

#### *Healthcare Identifiers Amendment (Healthcare Identifiers of Healthcare Providers) Regulation 2017*

The *Healthcare Identifiers Act 2010* (the Act) implements a national system, the Healthcare Identifiers Service (HI Service), for assigning unique identifiers to healthcare recipients, individual healthcare providers and healthcare provider organisations for the purpose of ensuring that health information is correctly matched to an individual or entity. The Act sets out clear purposes for which healthcare identifiers may be collected, used, disclosed or adopted.

Subsection 39(1) of the Act provides that the Governor-General may make regulations prescribing matters which are required or permitted by the Act, or matter which are necessary or convenient in order to carry out or give effect to the Act.

Subsections 25D(1) and (2) of the Act provide that these regulations may authorise the collection, use, disclosure or adoption of a healthcare provider identifier if it is for the health-related reasons prescribed by subsection 25D(3).

The *Healthcare Identifiers Amendment (Healthcare Identifiers of Healthcare Providers) Regulations 2017* (the Regulations) amend the *Healthcare Identifiers Regulations 2010* (the Healthcare Identifiers Regulations).

The purpose of the Regulations is to correct an unintentional omission in the Act. In 2015 amendments were made to the Act to, among other things, simplify the privacy framework to improve the way that permissions to collect, use and disclose information were presented. As a result of these amendments a provision previously included in the Act was unintentionally removed from the Act.

That provision enabled healthcare providers to use, or disclose to an entity, their own or another healthcare provider's healthcare identifier for the purpose of communicating or managing health information as part of:

- the provision of healthcare to a healthcare recipient;
- the management (including the investigation or resolution of complaints), funding, monitoring or evaluation of healthcare;
- the provision of indemnity cover for a healthcare provider; or
- the conduct of research that has been approved by a Human Rights Ethics Committee.

It also enabled the entity to collect, use and disclose the healthcare identifier for the purpose/s for which it was disclosed to that entity.

The Regulations restore, in part, that provision. The provision cannot be restored in full due to the restrictions on the regulation-making power. No immediate need for the remaining authorisations has been identified at this time. As such, the authorisations are intended to be reinstated in their entirety through amendments to the Act at a later date.

Section 33 of the Healthcare Identifiers Act requires that the Minister consult the Ministerial Council before regulations are made. Accordingly, the Council of Australian Governments

Health Council was consulted on the Regulations during July 2017 and it supported the making of the Regulations.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after it is registered on the Federal Register of Legislation.

**Details of the *Healthcare Identifiers Amendment (Healthcare Identifiers of Healthcare Providers) Regulations 2017***

**Section 1 – Name of Regulations**

This section provides that the title of the Regulations is the *Healthcare Identifiers Amendment (Healthcare Identifiers of Healthcare Providers) Regulations 2017*.

**Section 2 – Commencement**

This section provides that the Regulations take effect the day after it is registered on the Federal Register of Legislation. This enables the amendment to take effect at the earliest opportunity.

**Section 3 – Authority**

This section provides that the Regulations are made under the *Healthcare Identifiers Act 2010* (Healthcare Identifiers Act).

**Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to the Regulations has effect according to its terms.

**Schedule 1—Amendments**

The items in the Schedule amend the *Healthcare Identifiers Regulations 2010* (Healthcare Identifiers Regulations) as set out below.

**Item 1**

Item 1 inserts new regulation 11 to authorise healthcare providers to use, and disclose to another entity, a healthcare provider identifier (known as an HPI-I) for several purposes other than healthcare. Further, any entity to which a healthcare identifier has been disclosed can collect, use and disclose that identifier for the same purposes for which it was received.

This new regulation reflects the reality that a healthcare identifier can be used for a range of reasons associated with clinical, administrative and business activities regularly undertaken to support the delivery of healthcare – for example, the funding or evaluation of healthcare.

The regulation replicates, in part, items 5 and 6 of subsection 14(1) of the Act in relation to the healthcare identifier of individuals. Specifically, in respect of healthcare provider identifiers, subregulation 11(2) is the near equivalent power of item 5 of subsection 14(1) of the Act, and subregulation 11(2) is the equivalent power to item 6 of subsection 14(1) of the Act.

This new regulation does not replicate the entirety of item 5 of subsection 14(1) of the Act. Specifically, it does not replicate paragraphs (c) and (d) of item 5 which provide authority for the purposes of the provision of indemnity cover for a healthcare provider, and the conduct of research that has been approved by a Human Rights Ethics Committee.

These provisions could not be included in new regulation 11 because they are beyond the regulation-making power set out in section 25D of the Act. An amendment to the Act is required to fully restore the provision.

## **Item 2**

Item 2 inserts Part 2 into the end of the Healthcare Identifiers Regulations to describe how the amendments made by the Regulations operate and have effect.

Clause 5 defines a term used in new Part 2, being ***amending regulation*** (which means the *Healthcare Identifiers Amendment (Healthcare Identifiers of Healthcare Providers) Regulations 2017*).

Clause 6 provides that regulation 11 (item 1 refers) applies on and after the date the amendments take effect. It applies regardless of when the subject information is collected. This means that when these amendments commence (the day after registration on the Federal Register of Legislation) a healthcare provider may exercise their authority to disclose a healthcare provider identifier to another entity for a purpose set out in new regulation 11 even if the identifier was collected before the Regulations commenced.

## **Statement of Compatibility with Human Rights**

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

### ***Healthcare Identifiers Amendment (Healthcare Identifiers of Healthcare Providers) Regulations 2017***

This Disallowable 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 Disallowable Legislative Instrument**

This Disallowable Legislative Instrument amends the *Healthcare Identifiers Regulations 2010*. It makes amendments that relate to authorising healthcare providers to use, or disclose to an entity, a healthcare provider's healthcare identifier for the purpose of:

- communicating or managing health information; or
  - management, funding, monitoring or evaluation of healthcare,
- and authorising entities to use and disclose healthcare provider's healthcare identifiers for the purpose for which they collected it.

These amendments will reinstate, in part, authorisations that were inadvertently removed in a 2015 amendment to the *Healthcare Identifiers Act 2010*.

#### **Human rights implications**

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Minister for Health, the Hon Greg Hunt**