

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

My Health Records Act 2012

My Health Records Amendment (Veterans' Affairs Treatment Benefits) Regulations 2019

The *My Health Records Act 2012* (the My Health Records Act) provides for the establishment and operation of the My Health Record system (formerly referred to as the personally controlled electronic health record system). The My Health Record system (the system) allows healthcare recipients and their healthcare providers to access their key health information online, where and when they need it. A My Health Record is an electronic summary of a healthcare recipient's health records.

Subsection 112(1) of the My Health Records Act provides that the Governor-General may make regulations prescribing matters that are required or permitted by the My Health Records Act, or matters that are necessary or convenient in order to carry out or give effect to the My Health Records Act.

The Table at subclause 8(1) of Schedule 1 of the of the My Health Records Act establishes the entities that are permitted to collect, use and disclose healthcare identifiers, identifying information and information identifying authorised representatives and nominated representatives for the purposes of an opt-out My Health Record system. Item 9 of the table identifies the Veterans' Affairs Department and permits it to disclose, use and collect prescribed identifying information for inclusion in a healthcare recipients My Health Record.

The *Treatment Benefits (Special Access) Act 2019* (Special Access Act) provides for medical treatment, through a Department of Veterans' Affairs treatment card (gold card), of members of Australian Civilian Surgical and Medical Teams that provided medical aid, training and treatment to local Vietnamese people during the Vietnam War. The Act received Royal Assent on 5 April 2019, commenced the following day and will apply in relation to treatment provided, travel expenses incurred and payment of pharmaceutical supplement on and after 1 July 2019.

The *My Health Records Amendment (Veterans' Affairs Treatment Benefits) Regulations 2019* (the Amendment Regulation) amends the *My Health Records Regulation 2012* (the MHR Regulations) to prescribe that information that relates to the provision of healthcare to a healthcare recipient provided under the *Treatment Benefits (Special Access) Act 2019* be included in a My Health Record.

The Amendment Regulation also amends the titles of Acts prescribed under subsection 4.1.1(2) of the MHR Regulations to reflect changes to their names. The Amendment Regulation also corrects previous typographical errors to ensure the clarity of paragraph 4.1.1(2) of the MHR Regulations.

Details of the proposed Amendment Regulation are set out in the [Attachment](#).

Subsection 112(3) of the My Health Records Act requires that the Minister consult the Ministerial Council before regulations are made. The Australian Health Ministers' Advisory Council agreed to the amendment to prescribe the Special Access Act in the MHR Regulations on 31 May 2019. The Australian Digital Health Agency Jurisdictional Advisory Committee agreed to the minor technical amendments to recognise changes in name to laws prescribed

under subsection 4.1.1(2) of the MHR Regulations on 7 May 2018. Subsequently, the Ministerial Council was consulted in June 2019 and no objections were raised.

The My Health Records Act does not specify any other conditions that need to be met before the power to make regulations may be exercised.

The Amendment Regulation commence on the day after registration on the Federal Register of Legislative Instruments.

The Amending Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the *My Health Records Amendment (Veterans' Affairs Treatment Benefits) Regulations 2019*

Section 1 – Name

Section 1 provides for the Amendment Regulation to be referred to as the *My Health Records Amendment (Veterans' Affairs Treatment Benefits) Regulations 2019*.

Section 2 – Commencement

Section 2 provides that the Amendment Regulation commences the day after registration on the Federal Register of Legislative Instruments.

Section 3 – Authority

Section 3 provides that the Amendment Regulation is made under section 112(1) the *My Health Records Act 2012*.

Section 4 – Schedules

Section 4 provides that that each instrument that is specified in a Schedule to this Amendment Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Amendment Regulation has effect according to its terms.

Schedule 1 – Amendments to the *My Health Records Regulation 2012*

The items in the Schedule amend the *My Health Records Regulation 2012* as set out below.

Item 1 Subsection 4.1.1(2)

Omit “benefits provided”, substitute “benefits,”.

Item 2 – Paragraph 4.1.1(2)(a)

After “*Tests*”, insert “*and British Commonwealth Occupational Force*”.

Item 3 – Paragraph 4.1.1(2)(c)

After “*Compensation*”, insert “*(Defence-related Claims)*”.

Item 4 – After paragraph 4.1.1(2)(c)

Insert:

(ca) the *Treatment Benefits (Special Access) Act 2019*.

Statement of Compatibility with Human Rights

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

My Health Records Amendment (Veterans' Affairs Treatment Benefits) Regulations 2019

This Amending 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 Amending Instrument

The *My Health Records Amendment (Veterans' Affairs Treatment Benefits) Regulations 2019* (the Amendment Regulation) makes amendments to the *My Health Records Regulation 2012* to prescribe that information that relates to the provision of healthcare to a healthcare recipient under the *Treatment Benefits (Special Access) Act 2019* be included in a My Health Record.

The Amendment Regulation also amends the titles of Acts prescribed under subsection 4.1.1(2) of the MHR Regulations to reflect changes to their names. The Amendment Regulation also corrects previous typographical errors to ensure the clarity of paragraph 4.1.1(2) of the MHR Regulations.

Human rights implications

The Amendment Regulation engages Articles 9 and 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the rights to health and social security.

The Right to Health

The right to the enjoyment of the highest attainable standard of physical and mental health is contained in Article 12(1) of the ICESCR. The UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not a right for each individual to be healthy, but is a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Committee reports that the *'highest attainable standard of health'* takes into account the country's available resources. This right may be understood as a right of access to a variety of public health and health care facilities, goods, services, programs, and conditions necessary for the realisation of the highest attainable standard of health.

The My Health Record system empowers individuals to manage their own health information. The system supports individuals to exercise their rights to control how their information is collected, used and disclosed. The My Health Record system proposes the right to health by facilitating the sharing of information between healthcare providers and placing the individual at the centre of their healthcare. Including healthcare information created under the *Treatment Benefits (Special Access) Act 2019* will enable eligible Australians to better manage their healthcare information and assist healthcare providers.

Right to protection of privacy and reputation

Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR) prohibits the unlawful or arbitrary interference with a person's privacy and unlawful attacks on a person's reputation. This right is also reflected in Article 22 of the *Convention on the Rights of Persons with Disabilities* (CPRD) and Article 16 of the *Convention on the Rights of the Child* (CRC).

The right to privacy includes respect for informational privacy including the right to respect the storing, use and sharing of private information and right to control the dissemination of private information. The Amendment Regulation engages the right to privacy by prescribing Department of Veterans' Affairs

For the My Health Record system to operate effectively and ensure the correct healthcare recipient is registered and matched with the correct health information, identifying information must be prescribed and collection, use and disclosure by the Veterans' Affairs Department must be authorised. While the Amendment Regulation would authorise the collection, use and disclosure of some additional personal information about healthcare recipients, any effect on privacy is a proportionate, necessary and reasonable way of achieving the policy objective of improved health outcomes for all Australians. The Amendment Regulation will align with the treatment of other Veterans' Affairs Acts currently prescribed at 4.1.1(2) of the Regulations.

Safeguards, strengthened in 2018, are in place under the *My Health Records Act 2012*, such as access controls and criminal and civil penalties for misuse of identifying information and health information.

Conclusion

The Amendment Regulation is compatible with human rights because any limitation of the right to privacy is proportionate, necessary and reasonable to achieving improved healthcare for all Australians.

The Hon Greg Hunt MP

Minister for Health