

EXPLANATORY STATEMENT

Issued by the authority of the Governor General

Human Services (Centrelink) Act 1997

Human Services (Centrelink) Regulations 2021

Purpose

The *Human Services (Centrelink) Regulations 2021* (the Regulations) replace the *Human Services (Centrelink) Regulations 2011* (the 2011 Regulations), which sunset on 1 October 2021. The Regulations ensure operational continuity in relation to protected names and protected symbols used by Services Australia and the functions of the Chief Executive Centrelink.

Background

The *Human Services (Centrelink) Act 1997* (the Act) was enacted, in part, to abolish Centrelink and the position of Chief Executive Officer (CEO) of Centrelink, to establish the statutory office of the Chief Executive Centrelink and to provide for the functions of Centrelink and its former CEO to be integrated into the Department of Human Services (now Services Australia).

Section 41 of the Act provides that the Governor-General may make regulations, prescribing matters required or permitted by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is to prescribe the functions of the Chief Executive Centrelink and to prescribe protected names and protected symbols used by Services Australia.

The Regulations replace and improve the 2011 Regulations, which would otherwise sunset on 1 October 2021, by including minor changes to provisions, simplifying language and restructuring provisions for ease of navigation. The key changes to the content in the Regulations are:

- the inclusion of a different definition of ‘Commonwealth body’ (because the previous definition relied on legislation that is no longer in force) and a new definition of ‘de-identified’;
- the inclusion of new provisions, which provide that the Chief Executive Centrelink is permitted to operate online services and provide online assistance in relation to providing a service, benefit, program or facility to a person affected by an emergency (to reflect the shift to online services over the past decade);
- the inclusion of provisions that clarify that the use or disclosure of information under sections 9 and 10 is authorised by law for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6; and
- the inclusion of the Progress Symbol as a protected symbol, as this is now the logo for Services Australia.

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 will commence on the day after the Regulations are registered.

Consultation

The Department of Social Services undertook consultation with Services Australia and with the Attorney-General's Department in relation to the Regulations. Consultation outside the Australian Government was considered unnecessary as the Regulations are of a minor machinery nature and do not substantially alter existing arrangements.

Regulation Impact Statement (RIS)

The Regulations do not require a Regulatory Impact Statement.

Explanation of the provisions

Part 1 – Preliminary

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Human Services (Centrelink) Regulations 2021*.

Section 2 - Commencement

This section provides for the Regulations to commence on the day after the Regulations are registered.

Section 3 - Authority

This section provides that the Regulations are made under the *Human Services (Centrelink) Act 1997*.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument. Accordingly, the Regulations repeal the 2011 Regulations.

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, and any other item in a Schedule to the Regulations has effect according to its terms.

Section 5 – Definitions

This section defines terms used in the Regulations. Many of the terms have the same meaning as when they were used in the 2011 Regulations. However, a different definition of ‘Commonwealth body’ is required (because the previous definition relied on legislation that is no longer in force) as well as a new definition of ‘de-identified’.

In the Regulations:

Act means the *Human Services (Centrelink) Act 1997*.

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

de-identified means that personal information is **de-identified** if the information is no longer about an identifiable individual or an individual who is reasonably identifiable. This is the same definition as in subsection 6(1) the *Privacy Act 1988*.

emergency means an emergency or disaster that occurs in Australia, or that affects one or more Australian citizens or permanent residents, and includes:

- (a) an emergency or disaster that has been the subject of a declaration under section 80J or 80K of the *Privacy Act 1988*; and
- (b) any circumstances in relation to which the Australian Government has decided that a program of special assistance involving the provision of a service, benefit, program or facility is to be implemented.

Examples of an emergency would include a natural disaster or a terrorist act.

person affected by an emergency has the meaning given by section 6.

personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not. This is the same definition as in subsection 6(1) of the *Privacy Act 1988*.

State or Territory body means a State or Territory Minister, a Department of a State or Territory, or a body (whether incorporated or not) established for a public purpose under a law of a State or Territory.

The defined term 'emergency' is primarily used in section 9, which relates to the Chief Executive Centrelink's function of providing emergency services. The definition of 'emergency' is intentionally wide, so that the Chief Executive Centrelink and departmental employees can quickly respond to any situation in which the Government considers that urgent assistance needs to be provided to people adversely affected by that situation. The definition mirrors that in section 5 of the *Human Services (Medicare) Regulations 2017*.

Section 6 – Person affected by an emergency

This section provides an inclusive definition of the phrase ‘person affected by an emergency’. The definition mirrors that in section 6 of the *Human Services (Medicare) Regulations 2017*. While ‘person affected by an emergency’ would usually have its ordinary – and broad – meaning, the definition makes it clear that a person affected by an emergency includes:

- a person who is indirectly affected by the emergency – such as a person who has not suffered any personal injury or property loss as a result of a natural disaster, but whose business is adversely affected because customers have been affected by the disaster, or travel to or from the disaster area is restricted;
- an individual (that is, a natural person) who has a family member directly or indirectly affected by the emergency; and
- an unincorporated organisation (which is not normally regarded as a ‘person’) directly or indirectly affected by the emergency.

Part 2 – Prescribed functions of the Chief Executive Centrelink

Section 7 – Prescribed functions

Section 7 provides that Part 2 of the Regulations prescribes functions of the Chief Executive Centrelink for the purposes of paragraph 8(1)(ba) of the Act.

Section 8 – Delegated functions

Section 8 provides that it is a prescribed function of the Chief Executive Centrelink to perform functions delegated to the Chief Executive Centrelink under a Commonwealth, State or Territory law. Note that ‘function’ in this section includes ‘power’ – see the definition of ‘function’ in section 3 of the Act, and the operation of paragraph 13(1)(b) of the *Legislation Act 2003*.

This section is intended to put beyond doubt the Chief Executive Centrelink’s legal capacity to exercise powers and functions delegated to him or her under Commonwealth, State or Territory laws.

The Chief Executive Centrelink currently exercises few, if any, powers as delegate under State or Territory laws. However, Commonwealth-State cooperation in the delivery of human and related services is increasing. Sections 13 and 14 of the Act recognise that the Chief Executive Centrelink may be given functions and powers under State or Territory laws, and that the Commonwealth agrees to this conferral of functions and powers. Consequently, section 8 also provides that it is a function of the Chief Executive Centrelink to exercise powers delegated to him or her under State or Territory laws, provided that this is permitted under sections 13 and 14 of the Act.

Section 12 of the Act permits the Chief Executive Centrelink to sub-delegate functions and powers, which have been delegated to him or her, to departmental officers.

Section 9 – Provision of emergency services

Section 9 provides that it is a prescribed function of the Chief Executive Centrelink to:

- provide a service, benefit, program or facility to a person affected by an emergency; and
- participate in disaster policy and planning activities, including activities undertaken by disaster policy and planning committees.

Subsection 9(2) makes it clear that the Chief Executive Centrelink is able to perform these emergency-related functions for or under an arrangement with a State or Territory body (as defined in section 5).

Subsection 9(3) makes it clear that the 'provision of emergency services' function includes a number of activities, for example:

- establishing and maintaining a register of persons affected by an emergency;
- receiving, processing, investigating, deciding and paying claims for assistance;
- operating a telephone enquiry line;
- operating an online enquiry service;
- providing call centre assistance;
- providing online assistance;
- making arrangements for health assessments and other assistance in relation to health care;
- referring a person to other relevant organisations;
- working with, and providing information to, other government and non-government bodies in relation to the provision of assistance;
- providing information to a State or Territory body about a person affected by an emergency that will assist the State or Territory body to provide a payment, benefit or other assistance to the person;
- undertaking action (including starting legal proceedings) to recover payments that should not have been made;
- disclosing statistical information (including de-identified information from a register of persons affected by an emergency) about assistance provided;
- undertaking compliance, audit, review, investigation, enforcement and recovery services ancillary to the emergency service.

Paragraphs 9(3)(d) and (f) (operating an online enquiry service and providing online assistance) are new provisions that were not included in the 2011 Regulations. They provide that the Chief Executive Centrelink is permitted to operate online services in relation to providing a service, benefit, program or facility to a person affected by an emergency. This change has also been included in the *Human Services (Medicare) Regulations 2017*, and reflects the shift to online services over the past decade.

Subsection 9(4) provides that use or disclosure of information under section 9 is authorised by law for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6.

Subsection 9(5) provides that if the Chief Executive Centrelink provides an emergency service to a person, or the person makes a request for an emergency service, the Chief Executive Centrelink may:

- collect information about the person or the person's family, including personal information; and
- maintain records about the emergency service or the request.

The purpose of section 9 is two-fold. Firstly, it makes clear that the Chief Executive Centrelink can assist or cooperate with State and Territory bodies in responding to emergencies.

Secondly, the section is intended to ensure that, in responding to emergencies, the Chief Executive Centrelink can collect, use and disclose personal information, including where prior consent to that collection, use or disclosure cannot reasonably be obtained from a person. The disclosure of personal information under section 9 is considered reasonable, necessary and proportionate to achieving a legitimate public policy objective because the handling of information under this section would only occur in an emergency, where it is necessary for the Commonwealth to quickly respond to provide necessary assistance, and the circumstances of the emergency may mean that prior consent is not able to be obtained. Disclosed information would remain protected by the *Privacy Act 1988* and the Australian Privacy Principles.

A data minimisation approach would be taken, meaning that only the least amount of personal information that is needed would be collected, disclosed or used under the Regulations. Although the Chief Executive Centrelink is able to collect personal information about a person and their family under paragraph 9(5)(a), care would be taken to ensure that information collected about a family member would only be shared to the extent it was necessary to enable appropriate assistance or aid to be provided to them in an emergency situation. For example, this might include providing minimal information about a person and their family to an organisation or charity.

Section 10 – Function of providing specified services

Section 10 provides that it is a function of the Chief Executive Centrelink to provide specified services to a Commonwealth body, a State or Territory body, a local government body or a non-government organisation.

The specified services are set out in the table subsection 10(1), and they are:

- a service, benefit, program or facility that is intended to facilitate, promote or ensure the efficient and effective delivery of government services to, or relating to, an inmate of a correctional facility;
- Centrepay (a service of deducting an amount from a benefit payable to an individual and paying the amount directly to another person, with the individual's consent or as otherwise authorised or permitted by a law of the

Commonwealth, and consistently with arrangements between the department and the other person); and

- Centrelink confirmation e-service (a service of giving information about an individual to another person, with the individual's consent, and consistently with arrangements between the department and the other person).

Section 10 is intended to serve the dual purposes of ensuring that the Chief Executive Centrelink can provide the specified services to non-Commonwealth bodies, and ensure that in providing those services, personal information may be collected, used and disclosed for purposes relating to those services. In most cases, this collection, use and disclosure is with the consent of the individual concerned.

Subsection 10(2) provides that the prescribed function includes the following:

- making the Chief Executive Centrelink or departmental employees available to perform functions in relation to the provision of a specified service;
- determining a person's eligibility for a specified service, or entitlement to receive or have access to a specified service;
- making payments in relation to the provision of a specified service;
- disclosing information in relation to the provision of a specified service (including personal information about individuals receiving the service);
- undertaking education, compliance, investigation and enforcement activities in relation to the provision of a specified service;
- taking part in teams and taskforces in relation to the provision or future provision of a specified service;
- recovering overpayments and other amounts due to the Commonwealth in relation to the provision of a specified service; and
- conducting litigation or proceedings in relation to the provision of a specified service.

Subsection 10(3) makes clear that the functions include functions delegated to the Chief Executive Centrelink or departmental employees under any law, including a law of a State or Territory.

Subsection 10(4) provides that use or disclosure of information under section 10 is authorised by law for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6. This is a new provision that is intended to clarify the operation of section 10.

The disclosure of personal information under section 10 is considered reasonable, necessary and proportionate to achieving a legitimate public policy objective where it is required in order to perform a specified service set out in subsection 10(1). Disclosure of personal information would always occur with the consent of the individual concerned where it relates to the Centrelink confirmation e-service, and often where it relates to Centrepay.

For Centrepay, information would only be disclosed without direct consent where it is necessary to ensure the payment can be received and appropriately credited on behalf of the individual.

Where personal information is disclosed for the purposes of providing government services to an inmate of a correctional facility all reasonable steps to obtain the individual's consent will be taken. However, it is appropriate to disclose personal information for a service, benefit, program or facility that is intended to facilitate, promote or ensure the efficient and effective delivery of government services to that individual notwithstanding whether their consent is obtained.

A data minimisation approach would be taken for disclosure of information under this section, so that only the least amount of personal information that is needed would be collected, disclosed or used under this section. Disclosed information would remain protected by the *Privacy Act 1988* and the Australian Privacy Principles.

Part 3 – Protected names and symbols

Section 11 – Protected names

Section 11 prescribes, for the purposes of the definition of **protected name** in subsection 38(4) of the Act, the names 'Centrelink' and 'myGov'.

Section 12 – Protected symbols

Section 12 prescribes, for the purposes of the definition of **protected symbol** in subsection 38(4) of the Act, certain designs. The designs are the Centrelink logo, the Unity Star, the First myGov Folder Design, the Second myGov Folder Design and the Progress Symbol. The inclusion of the Progress Symbol is new in the Regulations and is considered necessary because it is the symbol for Services Australia.

Subsection 38(1) of the Act provides that a person must not, without the Secretary's written consent:

- use a protected name or protected symbol in relation to a business, trade, profession or occupation;
- use a protected name or protected symbol, as the name or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship, aircraft or other craft;
- apply a protected name or protected symbol, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let for hire;
- use a protected name or protected symbol in relation to goods or services, or the promotion, by any means, of the supply or use of goods or services.

This includes a prohibition on the use of a name so closely resembling a protected name as to be likely to be mistaken for it, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Part 4 – Transitional, savings and application provisions

The provisions in Part 4 are new in the Regulations and are intended to cover situations that could be affected by the repeal and remaking of the Regulations.

Section 13 – Definitions

Section 13 provides the following definitions for the purpose of Part 4 of the Regulations:

commencement day means the day on which Part 4 commences

old regulations means the *Human Services (Centrelink) Regulations 2011* as in force immediately before the commencement day

Section 14 – Things done by, or in relation to, the Chief Executive Centrelink

Section 14 provides that if, before commencement of the Regulations, a thing was done by, or in relation to, the Chief Executive Centrelink under the old regulations, then the thing is taken, on and after that day, to have been done by, or in relation to, the Chief Executive Centrelink under the Regulations.

Section 15 – Things started but not finished by the Chief Executive Centrelink

Section 15 provides that if, before commencement of the Regulations, the Chief Executive Centrelink started doing a thing under the old regulations and had not finished doing that thing by commencement of the Regulations, then the Chief Executive Centrelink may finish doing the thing under the Regulations.

Schedule 1 – Repeals

This Schedule provides that the whole of the *Human Services (Centrelink) Regulations 2011* is repealed.

Statement of Compatibility with Human Rights

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

Human Services (Centrelink) Regulations 2021

The Regulations are 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 legislative instrument

The Regulations replace and improve the *Human Services (Centrelink) Regulations 2011*, which sunset on 1 October 2021. The purpose of the Regulations is to prescribe the functions of the Chief Executive Centrelink and to prescribe protected names and protected symbols used by Services Australia.

The Regulations ensure operational continuity in relation to the functions of the Chief Executive Centrelink, including the provision of emergency services (section 9) and specified services (section 10). The specified services are:

- Centrelink confirmation e-service;
- Centrepay; and
- the delivery of government services to, or relating to, an inmate of a correctional facility.

The Regulations include the Progress Symbol as a protected symbol, as this is now the logo for Services Australia.

The Regulations also make minor changes and updates to definitions and provisions, simplify language and restructure provisions for ease of navigation.

Human rights implications

This legislative instrument engages the right to privacy in Article 17 of the *International Covenant on Civil and Political Rights*.

The Regulations include new provisions that clarify that the use or disclosure of personal information for the provision of emergency services (section 9) and specified services (section 10) is authorised by law for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6 in the *Privacy Act 1988*. Such use or disclosure would be authorised and not “unlawful”. The collection of personal information under sections 9 and 10, and subsequent handling of that information, would also be subject to the Australian Privacy Principles in the *Privacy Act 1988*. A breach of an Australian Privacy Principle is an interference with the privacy of an individual and can lead to regulatory action and penalties.

Further, the collection, use and disclosure of personal information under sections 9 and 10 of the Regulations would not be an arbitrary interference with the right to privacy, as it would be for the legitimate public policy objective of providing emergency services and specified government services to individuals. The limitation

on the right to privacy is proportionate as the collection, use and disclosure of personal information would only be triggered for providing the relevant services.

For example, the collection, use and disclosure of personal information under section 9 would only occur in an emergency, where it is necessary for the Commonwealth to quickly respond to provide necessary assistance, and the circumstances of the emergency may mean that prior consent is not able to be obtained.

In addition, the disclosure of personal information would always occur with the consent of the individual concerned where it relates to the Centrelink confirmation e-service, and often where it relates to Centrepay. For Centrepay, information would only be disclosed without direct consent where it is necessary to ensure the payment can be received and appropriately credited on behalf of the individual. Where personal information is disclosed for the purposes of providing government services to an inmate of a correctional facility, all reasonable steps to obtain the individual's consent will be taken. However, it is appropriate to disclose personal information for a service, benefit, program or facility that is intended to facilitate, promote or ensure the efficient and effective delivery of government services to that individual, notwithstanding whether their consent is obtained.

Under both sections 9 and 10, a data minimisation approach would be taken, meaning that only the least amount of personal information that is needed would be collected, used or disclosed. Care would be taken to ensure that information collected about an individual would only be shared to the extent it was necessary to provide relevant services. For example, this might include providing minimal information about an individual and their family to an organisation or charity, to enable appropriate assistance or aid to be provided to them in an emergency situation.

Conclusion

The Regulations are compatible with human rights because to the extent that they limit the right to privacy, those limitations are reasonable, necessary and proportionate.

Senator the Hon Linda Reynolds CSC, Minister for Government Services