

Data Availability and Transparency Regulations 2022

made under the

Data Availability and Transparency Act 2022

**Compilation No. 2**

**Compilation date:** 1 July 2023

**Includes amendments up to:** F2023L00814

**Registered:** 1 July 2023

**About this compilation**

**This compilation**

This is a compilation of the *Data Availability and Transparency Regulations 2022* that shows the text of the law as amended and in force on 1 July 2023 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

**Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

**Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

**Self‑repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

1 Name 1

3 Authority 1

4 Definitions 1

5 Prescribed provisions 1

6 Order or direction etc. under prescribed provision 3

7 Barred data custodians: entities acting in a capacity under *My Health Records Act 2012* 4

8 Circumstances in which sharing is barred: *Commonwealth Electoral Act 1918* 4

9 Circumstances in which sharing is barred: *Director of Public Prosecutions Act 1983* 4

10 Circumstances in which sharing is barred: *Health Insurance Act 1973* 5

11 Circumstances in which sharing is barred: *Migration Act 1958* 5

12 Circumstances in which sharing is barred: *Privacy Act 1988* 5

13 Circumstances in which sharing is barred: *Royal Commissions Act 1902* 5

Endnotes 6

Endnote 1—About the endnotes 6

Endnote 2—Abbreviation key 7

Endnote 3—Legislation history 8

Endnote 4—Amendment history 9

1 Name

This instrument is the *Data Availability and Transparency Regulations 2022*.

3 Authority

This instrument is made under the *Data Availability and Transparency Act 2022*.

4 Definitions

In this instrument:

***Act*** means the *Data Availability and Transparency Act 2022*.

***System Operator*** has the same meaning as in the *My Health Records Act 2012*.

5 Prescribed provisions

For the purposes of subparagraph 17(4)(a)(i) of the Act, the provisions of Acts and legislative instruments specified in the following table are prescribed.

Note: Sharing that is prohibited by a prescribed provision is barred under the data sharing scheme.

| Prescribed provisions | |
| --- | --- |
| Act or legislative instrument | Prescribed provisions |
| *Anti‑Money Laundering and Counter‑Terrorism Financing Act 2006* | section 122 |
| *Australian Crime Commission Act 2002* | section 25A |
| *Australian Federal Police Act 1979* | subsection 40ZA(2)  subsection 60A(2) |
| *Australian Federal Police Regulations 2018* | section 17  section 28 |
| *Australian Prudential Regulation Authority Act 1998* | section 56 |
| *Australian Security Intelligence Organisation Act 1979* | subsection 8A(5)  section 81  section 92 |
| *Aviation Transport Security Act 2004* | section 74 |
| *Building and Construction Industry (Improving Productivity) Act 2016* | section 106, as that section continues to apply in accordance with item 330 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* |
| *Child Support (Assessment) Act 1989* | section 150  section 150AA |
| *Child Support (Registration and Collection) Act 1988* | section 16  section 16AA |
| *Crimes Act 1914* | section 15JQ  section 15JR  section 15LB  section 15LC  paragraph 85ZS(1)(d)  paragraph 85ZU(b)  paragraph 85ZW(b) |
| *Criminal Code* | section 104.22  section 105.45  section 122.1  section 122.2  section 122.3  section 122.4A |
| *Defence Act 1903* | section 73A |
| *Defence Force Discipline Act 1982* | section 58 |
| *Defence (Inquiry) Regulations 2018* | section 36  section 37 |
| *Defence Regulation 2016* | section 37 |
| *Health Insurance Act 1973* | section 106ZR |
| *Inspector‑General of the Australian Defence Force Regulation 2016* | subsection 21(3) |
| *Intelligence Services Act 2001* | section 41 |
| *Law Enforcement Integrity Commissioner Act 2006* (as that Act continues to apply under the *National Anti‑Corruption Commission (Consequential and Transitional Provisions) Act 2022*) | section 77B  subsection 90(6)  section 92 |
| *National Anti‑Corruption Commission Act 2022* | section 98  section 101  section 228  section 233  section 234 |
| *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* | section 99  section 104 |
| *National Security Information (Criminal and Civil Proceedings) Act 2004* | paragraph 29(5)(e)  subsection 38PE(3)  subsection 38PF(2)  section 40  section 41  section 45  section 46  section 46A  section 46B  section 46D  section 46F  section 46G  section 46H |
| *Proceeds of Crime Act 2002* | section 217  clause 16 of Schedule 1 |
| *Public Interest Disclosure Act 2013* | section 65 |
| *Public Service Act 1999* | subsection 72A(2)  subsection 72B(2) |
| *Reserve Bank Act 1959* | section 79A |
| *Surveillance Devices Act 2004* | section 45 |
| *Telecommunications Act 1997* | subsection 315H(3)  subsection 317ZF(1) |
| *Telecommunications (Interception and Access) Act 1979* | section 63  section 108  section 133  section 181A  section 181B  section 182  section 182A |
| *Witness Protection Act 1994* | subsection 16(3)  section 22  section 22A  section 22B  section 28  section 28A |

6 Order or direction etc. under prescribed provision

For the purposes of subparagraph 17(4)(a)(ii) of the Act, the provisions of Acts and legislative instruments specified in the following table are prescribed.

Note: Sharing that is prohibited by an order, direction, certificate or other instrument made by an officer of the Commonwealth under a prescribed provision is barred under the data sharing scheme.

| Prescribed provisions | |
| --- | --- |
| Act or legislative instrument | Prescribed provisions |
| *Foreign Proceedings (Excess of Jurisdiction) Act 1984* | subsection 7(1)  subsection 13(1)  subsection 14(2)  subsection 14(3) |
| *National Security Information (Criminal and Civil Proceedings) Act 2004* | subsection 26(2)  subsection 26(3) |

7 Barred data custodians: entities acting in a capacity under *My Health Records Act 2012*

For the purposes of paragraph 17(4)(b) of the Act, the following are prescribed as entities that must not share data in the capacity of data custodian:

(a) the System Operator, while acting in its capacity as System Operator;

(b) the data custodian within the meaning of the *My Health Records Act 2012*, while acting in its capacity as data custodian within the meaning of that Act;

(c) the Chief Executive Medicare, while acting in his or her capacity as a registered repository operator under section 38 of, or clause 10 of Schedule 1 to, the *My Health Records Act 2012*;

(d) any other entity that is a participant in the My Health Records system within the meaning of the *My Health Records Act 2012*, while acting in its capacity as participant in the My Health Records system within the meaning of that Act.

8 Circumstances in which sharing is barred: *Commonwealth Electoral Act 1918*

For the purposes of paragraph 17(4)(c) of the Act, sharing is barred if the data was collected for the purposes of:

(a) the *Commonwealth Electoral Act 1918*; or

(b) the *Referendum (Machinery Provisions) Act 1984*.

9 Circumstances in which sharing is barred: *Director of Public Prosecutions Act 1983*

For the purposes of paragraph 17(4)(c) of the Act, sharing is barred if:

(a) the data is the contents of, or an extract from, an instrument given or furnished to the Director of Public Prosecutions under subsection 8(1) of the *Director of Public Prosecutions Act 1983*; and

(b) the relevant time for the purposes of section 8 of that Act has not occurred in relation to the instrument.

10 Circumstances in which sharing is barred: *Health Insurance Act 1973*

For the purposes of paragraph 17(4)(c) of the Act, sharing is barred if the data is held by the Director of Professional Services Review for the purposes of Part VAA (the Professional Services Review Scheme) of the *Health Insurance Act 1973*.

11 Circumstances in which sharing is barred: *Migration Act 1958*

For the purposes of paragraph 17(4)(c) of the Act, sharing is barred if:

(a) the data is health information (within the meaning of the *Privacy Act 1988*) about a person, including a deceased person; and

(b) the data is included in a record held by, or on behalf of, the Department administered by the Minister administering the *Australian Border Force Act 2015*; and

(c) the record was created at a time when the person was a detainee within the meaning of the *Migration Act 1958*.

12 Circumstances in which sharing is barred: *Privacy Act 1988*

For the purposes of paragraph 17(4)(c) of the Act, sharing is barred if the data is COVID app data within the meaning of the *Privacy Act 1988*.

13 Circumstances in which sharing is barred: *Royal Commissions Act 1902*

For the purposes of paragraph 17(4)(c) of the Act, sharing is barred if the data:

(a) was produced by, or given to or obtained by, a Royal Commission within the meaning of the *Royal Commissions Act 1902* (whether or not the data is still required for the purposes of the Royal Commission); and

(b) has not been made publicly available in accordance with that Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

**Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) |
| C[x] = Compilation No. x | /sub‑subparagraph(s) |
| Ch = Chapter(s) | pres = present |
| def = definition(s) | prev = previous |
| Dict = Dictionary | (prev…) = previously |
| disallowed = disallowed by Parliament | Pt = Part(s) |
| Div = Division(s) | r = regulation(s)/rule(s) |
| ed = editorial change | reloc = relocated |
| exp = expires/expired or ceases/ceased to have | renum = renumbered |
| effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = *Legislation Act 2003* | Sch = Schedule(s) |
| LIA = *Legislative Instruments Act 2003* | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given | SLI = Select Legislative Instrument |
| effect | SR = Statutory Rules |
| (md not incorp) = misdescribed amendment | Sub‑Ch = Sub‑Chapter(s) |
| cannot be given effect | SubPt = Subpart(s) |
| mod = modified/modification | underlining = whole or part not |
| No. = Number(s) | commenced or to be commenced |

Endnote 3—Legislation history

| Name | Registration | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Data Availability and Transparency Regulations 2022 | 13 Apr 2022 (F2022L00601) | 14 Apr 2022 (s 2(1) item 1) |  |
| Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023 | 30 May 2023 (F2023L00625) | Sch 1 (item 42): 31 May 2023 (s 2(1) item 6) | — |
| National Anti‑Corruption Commission (Consequential Amendments) Regulations 2023 | 20 June 2023 (F2023L00814) | Sch 1 (items 1, 2): 1 July 2023 (s 2(1) item 1) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| s 2 | rep LA s 48D |
| s 5 | am F2023L00625; F2023L00814 |