



Data Availability and Transparency Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 10 April 2022

David Hurley
Governor-General

By His Excellency's Command

Stuart Robert
Minister for Employment, Workforce, Skills, Small and Family Business

Contents

1	Name.....	1
2	Commencement	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 <i>My Health Records Act 2012</i>	4
8	Circumstances in which sharing is barred: <i>Commonwealth Electoral Act 1918</i>	4
9	Circumstances in which sharing is barred: <i>Director of Public Prosecutions Act 1983</i>	4
10	Circumstances in which sharing is barred: <i>Health Insurance Act 1973</i>	4
11	Circumstances in which sharing is barred: <i>Migration Act 1958</i>	5
12	Circumstances in which sharing is barred: <i>Privacy Act 1988</i>	5
13	Circumstances in which sharing is barred: <i>Royal Commissions Act 1902</i>	5

1 Name

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

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	14 April 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

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
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	section 122
<i>Australian Crime Commission Act 2002</i>	section 25A
<i>Australian Federal Police Act 1979</i>	subsection 40ZA(2) subsection 60A(2)
<i>Australian Federal Police Regulations 2018</i>	section 17

Section 5

Prescribed provisions	
Act or legislative instrument	Prescribed provisions
	section 28
<i>Australian Prudential Regulation Authority Act 1998</i>	section 56
<i>Australian Security Intelligence Organisation Act 1979</i>	subsection 8A(5) section 81 section 92
<i>Aviation Transport Security Act 2004</i>	section 74
<i>Building and Construction Industry (Improving Productivity) Act 2016</i>	section 106
<i>Child Support (Assessment) Act 1989</i>	section 150 section 150AA
<i>Child Support (Registration and Collection) Act 1988</i>	section 16 section 16AA
<i>Crimes Act 1914</i>	section 15JQ section 15JR section 15LB section 15LC paragraph 85ZS(1)(d) paragraph 85ZU(b) paragraph 85ZW(b)
<i>Criminal Code</i>	section 104.22 section 105.45 section 122.1 section 122.2 section 122.3 section 122.4A
<i>Defence Act 1903</i>	section 73A
<i>Defence Force Discipline Act 1982</i>	section 58
<i>Defence (Inquiry) Regulations 2018</i>	section 36 section 37
<i>Defence Regulation 2016</i>	section 37
<i>Health Insurance Act 1973</i>	section 106ZR
<i>Inspector-General of the Australian Defence Force Regulation 2016</i>	subsection 21(3)
<i>Intelligence Services Act 2001</i>	section 41
<i>Law Enforcement Integrity Commissioner Act 2006</i>	section 77B subsection 90(6) section 92
<i>National Redress Scheme for Institutional Child Sexual Abuse Act 2018</i>	section 99 section 104
<i>National Security Information (Criminal and Civil Proceedings) Act 2004</i>	paragraph 29(5)(e) subsection 38PE(3) subsection 38PF(2)

Prescribed provisions	
Act or legislative instrument	Prescribed provisions
	section 40
	section 41
	section 45
	section 46
	section 46A
	section 46B
	section 46D
	section 46F
	section 46G
	section 46H
<i>Proceeds of Crime Act 2002</i>	section 217
	clause 16 of Schedule 1
<i>Public Interest Disclosure Act 2013</i>	section 65
<i>Public Service Act 1999</i>	subsection 72A(2)
	subsection 72B(2)
<i>Reserve Bank Act 1959</i>	section 79A
<i>Surveillance Devices Act 2004</i>	section 45
<i>Telecommunications Act 1997</i>	subsection 315H(3)
	subsection 317ZF(1)
<i>Telecommunications (Interception and Access) Act 1979</i>	section 63
	section 108
	section 133
	section 181A
	section 181B
	section 182
	section 182A
<i>Witness Protection Act 1994</i>	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.

Section 7

Prescribed provisions

Act or legislative instrument	Prescribed provisions
<i>Foreign Proceedings (Excess of Jurisdiction) Act 1984</i>	subsection 7(1)
	subsection 13(1)
	subsection 14(2)
	subsection 14(3)
<i>National Security Information (Criminal and Civil Proceedings) Act 2004</i>	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.