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Healthcare Identifiers Bill 2010

No. , 2010

(Health and Ageing)

**A Bill for an Act to provide for healthcare
identifiers, and for related purposes**

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1 **A Bill for an Act to provide for healthcare**
2 **identifiers, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Act may be cited as the *Healthcare Identifiers Act 2010*.

8 **2 Commencement**

9 This Act commences on the day after this Act receives the Royal
10 Assent.

Section 3

1 **3 Purpose of this Act**

- 2 (1) The purpose of this Act is to provide a way of ensuring that an
3 entity that provides, or an individual who receives, healthcare is
4 correctly matched to health information that is created when
5 healthcare is provided.
- 6 (2) This purpose is to be achieved by assigning a unique identifying
7 number to each healthcare provider and healthcare recipient.

8 **4 Act to bind the Crown**

- 9 (1) This Act binds the Crown in right of the Commonwealth, of the
10 States, of the Australian Capital Territory, of the Northern
11 Territory and of Norfolk Island.

12 Note: The Minister must, in certain circumstances, declare that certain
13 provisions of this Act do not apply to the public bodies of a specified
14 State or Territory: see subsection 37(4).

- 15 (2) This Act does not make the Crown liable to be prosecuted for an
16 offence.

17 **5 Definitions**

18 In this Act:

19 *data source* has the meaning given by subsection 12(2).

20 *date of birth accuracy indicator* means a data element that is used
21 to indicate how accurate a recorded date of birth is.

22 *date of death accuracy indicator* means a data element that is used
23 to indicate how accurate a recorded date of death is.

24 *employee*, of an entity, includes:

- 25 (a) an individual who provides services for the entity under a
26 contract for services; or
27 (b) an individual whose services are made available to the entity
28 (including services made available free of charge).

29 *entity* means:

- 30 (a) a person; or

- 1 (b) a partnership; or
2 (c) any other unincorporated association or body; or
3 (d) a trust; or
4 (e) a part of another entity (under a previous application of this
5 definition).

6 **healthcare** means health service within the meaning of subsection
7 6(1) of the *Privacy Act 1988*.

8 **healthcare identifier** has the meaning given by section 9.

9 **healthcare provider** means:

- 10 (a) an individual who:
11 (i) has provided, provides, or is to provide, healthcare; or
12 (ii) is registered by a registration authority as a member of a
13 particular health profession; or
14 (b) an entity, or a part of an entity, that has conducted, conducts,
15 or will conduct, an enterprise that provides healthcare
16 (including healthcare provided free of charge).

17 Example: A public hospital, or a corporation that runs a medical centre.

18 **healthcare recipient** means an individual who has received,
19 receives, or may receive, healthcare.

20 **health information** has the meaning given by subsection 6(1) of
21 the *Privacy Act 1988*.

22 **Human Research Ethics Committee** has the meaning given by:

- 23 (a) the National Statement on Ethical Conduct in Human
24 Research issued in March 2007 by the Chief Executive
25 Officer of the National Health and Medical Research Council
26 under the *National Health and Medical Research Council Act*
27 *1992*; or
28 (b) if that Statement is amended—that Statement as amended.

29 Note: In 2010, the text of the Statement was accessible through the National
30 Health and Medical Research Council website (www.nhmrc.gov.au).

31 **identified healthcare provider** means a healthcare provider who
32 has been assigned a healthcare identifier under section 9.

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1 ***identifying information*** has the meaning given by section 7.

2 ***law*** includes:

- 3 (a) an Act or legislative instrument; or
4 (b) an Act or legislative instrument of a State or Territory.

5 ***Ministerial Council*** has the meaning given by:

- 6 (a) the National Partnership Agreement on E-Health made on
7 7 December 2009 between the Commonwealth, the States,
8 the Australian Capital Territory and the Northern Territory;
9 or
10 (b) if that Agreement is amended—that Agreement as amended.

11 Note: In 2010, the text of the Agreement was accessible through the Council
12 of Australian Governments website (www.coag.gov.au).

13 ***National Privacy Principle*** has the meaning given by the *Privacy*
14 *Act 1988*.

15 ***national registration authority*** has the meaning given by section 8.

16 ***public body***, of a State or Territory, means:

- 17 (a) the Crown in right of the State or Territory; or
18 (b) a State or Territory authority of that State or Territory; or
19 (c) the head (however described) of a Department of State of the
20 State or Territory; or
21 (d) the Parliament of the State, or the legislature of the Territory
22 (whichever is applicable); or
23 (e) a member of the Parliament of the State, or of the legislature
24 of the Territory (whichever is applicable).

25 ***registration authority*** means an entity that is responsible under a
26 law for registering members of a particular health profession.

27 ***service operator*** has the meaning given by section 6.

28 ***State or Territory authority*** has the meaning given by the *Privacy*
29 *Act 1988*.

30 ***Veterans' Affairs Department*** means the Department that:

- 31 (a) deals with matters arising under:

- 1 (i) section 1 of the *Australian Participants in British*
2 *Nuclear Tests (Treatment) Act 2006*; or
3 (ii) section 1 of the *Military Rehabilitation and*
4 *Compensation Act 2004*; or
5 (iii) section 1 of the *Veterans' Entitlements Act 1986*; and
6 (b) is administered by the Minister who administers that section.

7 6 Meaning of *service operator*

- 8 (1) The Chief Executive Officer of Medicare Australia is the *service*
9 *operator*.
10 (2) However, if the regulations prescribe another person for the
11 purpose of this subsection, that person is the *service operator*
12 instead.

13 7 Meaning of *identifying information*

- 14 (1) Each of the following is *identifying information* of a healthcare
15 provider who is an individual, if the service operator requires it for
16 the purpose of performing the service operator's functions under
17 this Act in relation to the healthcare provider:
18 (a) the name of the healthcare provider;
19 (b) the address of the healthcare provider;
20 (c) the date of birth, and the date of birth accuracy indicator, of
21 the healthcare provider;
22 (d) the sex of the healthcare provider;
23 (e) the type of healthcare provider that the individual is;
24 (f) if the healthcare provider is registered by a registration
25 authority—the registration authority's identifier for the
26 healthcare provider and the status of the registration (such as
27 conditional, suspended or cancelled);
28 (g) other information that is prescribed by the regulations for the
29 purpose of this paragraph.
30 (2) Each of the following is *identifying information* of a healthcare
31 provider that is not an individual, if the service operator requires it
32 for the purpose of performing the service operator's functions
33 under this Act in relation to the healthcare provider:
-

Section 8

- 1 (a) the name of the healthcare provider;
2 (b) the address of the healthcare provider;
3 (c) if applicable, the ABN (within the meaning of the *A New Tax*
4 *System (Australian Business Number) Act 1999*) of the
5 healthcare provider;
6 (d) if applicable, the ACN (within the meaning of the
7 *Corporations Act 2001*) of the healthcare provider;
8 (e) other information that is prescribed by the regulations for the
9 purpose of this paragraph.
- 10 (3) Each of the following is ***identifying information*** of a healthcare
11 recipient, if the service operator requires it for the purpose of
12 performing the service operator's functions under this Act in
13 relation to the healthcare recipient:
14 (a) if applicable, the Medicare number of the healthcare
15 recipient;
16 (b) if applicable, the Veterans' Affairs Department file number
17 of the healthcare recipient;
18 (c) the name of the healthcare recipient;
19 (d) the address of the healthcare recipient;
20 (e) the date of birth, and the date of birth accuracy indicator, of
21 the healthcare recipient;
22 (f) the sex of the healthcare recipient;
23 (g) for a healthcare recipient who was part of a multiple birth—
24 the order in which the healthcare recipient was born;
25 Example: The 2nd of twins.
26 (h) if applicable, the date of death, and the date of death accuracy
27 indicator, of the healthcare recipient.

28 **8 Meaning of *national registration authority***

29 A ***national registration authority*** is a registration authority that is
30 prescribed by the regulations for the purposes of this section.
31

Part 2—Assigning healthcare identifiers**9 Assigning healthcare identifiers**

(1) The service operator is authorised to assign a number (a *healthcare identifier*) to uniquely identify:

- (a) a healthcare provider included in a class prescribed by the regulations for the purpose of this paragraph; or
- (b) a healthcare recipient.

(2) A national registration authority is authorised to assign a number (a *healthcare identifier*) to uniquely identify a healthcare provider, if:

- (a) the healthcare provider is an individual who is a member of a particular health profession; and
- (b) the national registration authority is responsible under a law for registering members of that health profession.

(3) The types of healthcare identifiers include:

- (a) an identifier that is assigned to a healthcare provider who is an individual who:
 - (i) has provided, provides, or is to provide, healthcare; or
 - (ii) is registered by a registration authority as a member of a particular health profession; and
- (b) an identifier that is assigned to a healthcare provider who has conducted, conducts, or will conduct, an enterprise that provides healthcare (including healthcare provided free of charge); and
- (c) an identifier that is assigned to a healthcare recipient.

Note: A healthcare provider who is an individual and who is covered by both paragraphs of the definition of *healthcare provider* in section 5 (for example, a sole practitioner) may be assigned:

- (a) a healthcare identifier of the type mentioned in paragraph (3)(a); and
- (b) a different healthcare identifier of the type mentioned in paragraph (3)(b).

(4) In exercising a power under subsection (1), the service operator is not required to consider whether a healthcare provider or

Section 10

- 1 healthcare recipient agrees to having a healthcare identifier
2 assigned to the healthcare provider or healthcare recipient.
- 3 (5) The regulations may prescribe requirements for assigning a
4 healthcare identifier to a healthcare provider or to a healthcare
5 recipient, including providing for review of decisions made under
6 this section.
- 7 (6) A healthcare identifier is an identifier for the purpose of National
8 Privacy Principle 7.

9 **10 Service operator must keep record of healthcare identifiers etc.**

- 10 The service operator must establish and maintain an accurate
11 record of:
- 12 (a) healthcare identifiers that have been assigned; and
13 (b) the information that the service operator has that relates to
14 those healthcare identifiers, including details of requests
15 made to the service operator for the service operator to
16 disclose those healthcare identifiers under Division 2 of
17 Part 3.
18

1 **Part 3—Use and disclosure of healthcare identifiers**
2 **and other information**

3 **Division 1—Use and disclosure of identifying information**
4 **for assignment of healthcare identifiers**

5 **11 Disclosure by healthcare providers**

- 6 (1) An identified healthcare provider is authorised to disclose
7 identifying information of a healthcare recipient to the service
8 operator for the purpose of the service operator assigning a
9 healthcare identifier to the healthcare recipient.
- 10 (2) The service operator is authorised:
11 (a) to collect the information; and
12 (b) to use the information for the purpose of assigning a
13 healthcare identifier to the healthcare recipient.

14 **12 Disclosure by data sources**

- 15 (1) A data source is authorised to disclose identifying information of a
16 healthcare provider, or of a healthcare recipient, to the service
17 operator for the purpose of the service operator assigning a
18 healthcare identifier to the healthcare provider or healthcare
19 recipient.
- 20 (2) Each of the following is a *data source*:
21 (a) Medicare Australia;
22 (b) the Veterans' Affairs Department;
23 (c) any entity prescribed by the regulations for the purpose of
24 this paragraph.
- 25 (3) The service operator is authorised:
26 (a) to collect the information; and
27 (b) to use the information for the purpose of assigning a
28 healthcare identifier to the healthcare provider or healthcare
29 recipient.

Part 3 Use and disclosure of healthcare identifiers and other information

Division 1 Use and disclosure of identifying information for assignment of healthcare identifiers

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1 **13 Disclosure by national registration authority**

- 2 (1) A national registration authority is authorised to disclose:
- 3 (a) a healthcare identifier; or
- 4 (b) information that the national registration authority has that
- 5 relates to a healthcare identifier;
- 6 to the service operator for the purpose of the service operator
- 7 establishing or maintaining the record mentioned in section 10.
- 8 (2) The service operator is authorised:
- 9 (a) to collect the healthcare identifier or information; and
- 10 (b) to use the healthcare identifier or information for the purpose
- 11 of establishing or maintaining the record mentioned in
- 12 section 10.

13 **14 Maintaining healthcare identifiers**

- 14 The regulations may require an identified healthcare provider to
- 15 provide to the service operator information that:
- 16 (a) relates to the healthcare provider's healthcare identifier; and
- 17 (b) is prescribed by the regulations for the purposes of this
- 18 section.

19 **15 Service operator's duty of confidentiality**

- 20 (1) A person commits an offence if:
- 21 (a) information was disclosed to the person for the purpose of
- 22 Part 2 or this Division; and
- 23 (b) the person:
- 24 (i) uses the information; or
- 25 (ii) discloses the information.

26 **Penalty:** Imprisonment for 2 years or 120 penalty units, or both.

27 **Note:** If a body corporate is convicted of an offence against subsection (1),

28 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a

29 fine of up to 600 penalty units.

- 30 (2) Subsection (1) does not apply if the person uses or discloses the
- 31 information for:

Section 15

1 (a) the purpose for which the information was disclosed to the
2 person; or

3 (b) a purpose that is authorised under another law.

4 Note: A defendant bears an evidential burden in relation to the matters in
5 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

6 (3) A person commits an offence if:

7 (a) information was disclosed to the person in contravention of
8 subsection (1); and

9 (b) the person knows that the disclosure of the information to the
10 person contravened that subsection; and

11 (c) the person:

12 (i) uses the information; or

13 (ii) discloses the information.

14 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

15 Note: If a body corporate is convicted of an offence against subsection (3),
16 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
17 fine of up to 600 penalty units.

18 (4) Subsection (3) does not apply if the person discloses the
19 information for the purpose of an appropriate authority
20 investigating the contravention mentioned in paragraph (3)(b).

21 Note: A defendant bears an evidential burden in relation to the matter in
22 subsection (4): see subsection 13.3(3) of the *Criminal Code*.

23

Section 16

1 **Division 2—Disclosure of healthcare identifier by service**
2 **operator**

3 **Subdivision A—Request by healthcare provider for healthcare**
4 **recipient’s healthcare identifier**

5 **16 Disclosure of healthcare recipient’s identifying information by**
6 **healthcare provider**

- 7 (1) An identified healthcare provider is authorised to disclose
8 identifying information of a healthcare recipient to the service
9 operator for the purpose of the service operator disclosing the
10 healthcare recipient’s healthcare identifier to the healthcare
11 provider under section 17.
- 12 (2) The service operator is authorised:
13 (a) to collect the information; and
14 (b) to use the information for the purpose of disclosing the
15 healthcare recipient’s healthcare identifier to the healthcare
16 provider under section 17.

17 **Subdivision B—Disclosure of healthcare identifier by service**
18 **operator**

19 **17 Disclosure to healthcare provider**

- 20 (1) For the purpose of an identified healthcare provider
21 communicating or managing health information, as part of
22 providing healthcare to a healthcare recipient, the service operator
23 is authorised to disclose a healthcare identifier to:
24 (a) an identified healthcare provider (the *collecting provider*); or
25 (b) an employee (the *authorised employee*) of an identified
26 healthcare provider, if that identified healthcare provider has,
27 by notice to the service operator, authorised the employee to
28 act on behalf of that identified healthcare provider under this
29 section.
- 30 (2) The collecting provider or authorised employee is authorised to
31 collect the healthcare identifier.

- 1 Note 1: Section 24 authorises a healthcare provider to use, or to disclose, a
2 healthcare identifier:
3 (a) for the purpose of communicating or managing health
4 information, as part of the provision of healthcare to a healthcare
5 recipient; or
6 (b) for certain other purposes.
- 7 Note 2: Section 25 authorises a healthcare provider to adopt the healthcare
8 identifier of a healthcare recipient as the healthcare provider's own
9 identifier of the healthcare recipient.

10 **18 Disclosure to healthcare recipient**

- 11 The service operator must, if asked to do so by a healthcare
12 recipient or a person who is responsible (within the meaning of
13 subclause 2.5 of National Privacy Principle 2) for a healthcare
14 recipient, disclose to the healthcare recipient or responsible person:
15 (a) the healthcare recipient's healthcare identifier (if any); or
16 (b) information that:
17 (i) relates to the healthcare recipient or to the healthcare
18 recipient's healthcare identifier; and
19 (ii) is included in the record the service operator maintains
20 under section 10.

21 **19 Disclosure to registration authority**

- 22 (1) The service operator is authorised to disclose an identified
23 healthcare provider's healthcare identifier to a registration
24 authority for the purpose of the registration authority registering
25 the healthcare provider.
- 26 (2) The registration authority is authorised:
27 (a) to collect the healthcare identifier; and
28 (b) to use the healthcare identifier for the purpose of the
29 registration authority:
30 (i) registering the healthcare provider; or
31 (ii) performing any other function of the registration
32 authority under a law.

Section 20

1 **20 Disclosure for authentication of healthcare provider’s identity**

2 (1) The service operator is authorised to disclose an identified
3 healthcare provider’s healthcare identifier to an entity for the
4 purpose of enabling the healthcare provider’s identity to be
5 authenticated in electronic transmissions (for example, as part of a
6 public key infrastructure).

7 (2) The entity is authorised:
8 (a) to collect the healthcare identifier; and
9 (b) to use the healthcare identifier for the purpose of enabling the
10 healthcare provider’s identity to be authenticated in
11 electronic transmissions.

12 **21 Access controls**

13 The regulations may prescribe rules about the disclosure of
14 healthcare identifiers by the service operator, including rules about
15 requests to the service operator to disclose healthcare identifiers.

16 **22 Information about disclosures by service operator**

17 If the service operator discloses a healthcare identifier to an entity,
18 the regulations may require the entity to provide prescribed
19 information to the service operator in relation to that disclosure.

20 Note: The regulations may provide for the imposition of a penalty for
21 contravention of a regulation: see subsection 39(2).
22

1 **Division 3—Use, disclosure and adoption of healthcare**
2 **identifier by healthcare provider**

3 **23 Disclosure to healthcare recipient**

4 A healthcare provider is authorised to disclose a healthcare
5 recipient's healthcare identifier to:

- 6 (a) the healthcare recipient; or
7 (b) a person who is responsible (within the meaning of subclause
8 2.5 of National Privacy Principle 2) for the healthcare
9 recipient.

10 **24 Use and disclosure for other purposes**

11 *Use and disclosure for other purposes*

12 (1) A healthcare provider is authorised to use a healthcare identifier, or
13 to disclose a healthcare identifier to an entity, (including a
14 healthcare identifier disclosed to the healthcare provider for any
15 purpose under a previous application of this section) if:

- 16 (a) the purpose of the use or disclosure is to communicate or
17 manage health information as part of:
18 (i) the provision of healthcare to a healthcare recipient; or
19 (ii) the management (including the investigation or
20 resolution of complaints), funding, monitoring or
21 evaluation of healthcare; or
22 (iii) the provision of indemnity cover for a healthcare
23 provider; or
24 (iv) the conduct of research that has been approved by a
25 Human Research Ethics Committee; or
26 (b) the healthcare provider reasonably believes that the use or
27 disclosure is necessary to lessen or prevent:
28 (i) a serious threat to an individual's life, health or safety;
29 or
30 (ii) a serious threat to public health or public safety.

31 (2) The entity is authorised:

- 32 (a) to collect the healthcare identifier; and

Part 3 Use and disclosure of healthcare identifiers and other information

Division 3 Use, disclosure and adoption of healthcare identifier by healthcare provider

Section 25

1 (b) to use the healthcare identifier, or to disclose the healthcare
2 identifier to a healthcare provider, for the purpose for which
3 it was disclosed to the entity.

4 (3) A healthcare provider to which a healthcare identifier is disclosed
5 under paragraph (2)(b) is authorised to collect the healthcare
6 identifier.

7 Note 1: Subsection (1) authorises the healthcare provider to use, or to disclose,
8 the healthcare identifier. Section 25 authorises the healthcare provider
9 to adopt the healthcare identifier.

10 Note 2: An entity may also use, or disclose, a healthcare identifier for a
11 purpose that is authorised under another law: see paragraph 26(2)(b).

12 *Certain purposes excluded*

13 (4) This section does not authorise the use or disclosure of the
14 healthcare identifier of a healthcare recipient for the purpose of
15 communicating or managing health information as part of:
16 (a) underwriting a contract of insurance that covers the
17 healthcare recipient; or
18 (b) determining whether to enter into a contract of insurance that
19 covers the healthcare recipient (whether alone or as a
20 member of a class); or
21 (c) determining whether a contract of insurance covers the
22 healthcare recipient in relation to a particular event; or
23 (d) employing the healthcare recipient.

24 **25 Adoption by healthcare provider**

25 A healthcare provider is authorised to adopt the healthcare
26 identifier of a healthcare recipient (including a healthcare identifier
27 disclosed to the healthcare provider for any purpose under
28 section 24) as the healthcare provider's own identifier of the
29 healthcare recipient.

30 Note: This Division authorises the collection, use, disclosure and adoption
31 of only healthcare identifiers, and information relating to healthcare
32 identifiers. The collection, use, disclosure or adoption of other
33 personal information (e.g. health information), is dealt with in other
34 legislation, including the *Privacy Act 1988*.

35

1 **Division 4—Unauthorised use and disclosure of healthcare**
2 **identifiers**

3 **26 Unauthorised use and disclosure of healthcare identifiers**
4 **prohibited**

5 *Offence*

- 6 (1) A person commits an offence if:
7 (a) a healthcare identifier is disclosed to the person; and
8 (b) the person:
9 (i) uses the healthcare identifier; or
10 (ii) discloses the healthcare identifier.

11 **Penalty:** Imprisonment for 2 years or 120 penalty units, or both.

12 **Note:** If a body corporate is convicted of an offence against subsection (1),
13 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
14 fine of up to 600 penalty units.

- 15 (2) However, subsection (1) does not apply if:
16 (a) the person:
17 (i) is authorised to use, or to disclose, the healthcare
18 identifier for a purpose that is authorised under this Act;
19 and
20 (ii) uses or discloses the healthcare identifier for that
21 purpose; or
22 (b) the person uses or discloses the healthcare identifier for a
23 purpose that is authorised under another law; or
24 (c) the person uses or discloses the healthcare identifier only for
25 the purpose of, or in connection with, the person's personal,
26 family or household affairs (within the meaning of
27 section 16E of the *Privacy Act 1988*).

28 **Note:** A defendant bears an evidential burden in relation to the matters in
29 subsection (2); see subsection 13.3(3) of the *Criminal Code*.
30

Section 27

1 **Division 5—Protection of healthcare identifiers**

2 **27 Protection of healthcare identifiers**

3 An entity must:

4 (a) take reasonable steps to protect healthcare identifiers the
5 entity holds from:

6 (i) misuse and loss; and

7 (ii) unauthorised access, modification or disclosure; and

8 (b) comply with any requirements prescribed by the regulations
9 for the protection of healthcare identifiers the entity holds.

10 Note: The regulations may provide for the imposition of a penalty for
11 contravention of a regulation: see subsection 39(2).
12

Part 4—Interaction with the Privacy Act 1988

28 Interaction with the *Privacy Act 1988*

An authorisation to collect, use or disclose a healthcare identifier or identifying information under this Act is also an authorisation to collect, use or disclose the healthcare identifier or identifying information for the purpose of the *Privacy Act 1988*.

29 Functions of Privacy Commissioner

Breach of this Act is an interference with privacy

- (1) An act or practice that contravenes this Act or the regulations in connection with the healthcare identifier of an individual is taken to be:
- (a) for the purposes of the *Privacy Act 1988*, an interference with the privacy of the individual; and
 - (b) covered by section 13 of that Act.

Note: The act or practice may be the subject of a complaint under section 36 of that Act.

- (2) For the purpose of applying Part V of that Act (Investigations) in relation to the act or practice, treat a State or Territory authority as if it were an organisation (within the meaning of that Act).

Audits

- (3) For the purpose of paragraph 27(1)(h) of the *Privacy Act 1988* (about audits), a healthcare identifier is taken to be personal information.

30 Annual reports by Privacy Commissioner

- (1) The Privacy Commissioner must, as soon as practicable after the end of each financial year, prepare a report on the Privacy Commissioner's compliance and enforcement activities under this Act during the financial year.

Section 30

- 1 (2) The Privacy Commissioner must give a copy of the report to the
2 Minister, and to the Ministerial Council, no later than on
3 30 September after the end of the financial year to which the report
4 relates.
- 5 (3) The Minister must table a copy of the report in each House of
6 Parliament within 15 sitting days after the Privacy Commissioner
7 gives a copy of the report to the Minister.
8

Part 5—Healthcare Provider Directory**31 Healthcare Provider Directory**

- (1) The service operator must establish and maintain a record (the *Healthcare Provider Directory*) of the professional and business details of the healthcare providers who have consented to those details being included in the Healthcare Provider Directory.
- (2) The service operator may disclose the professional or business details of a healthcare provider who is listed in the Healthcare Provider Directory to:
 - (a) an identified healthcare provider; or
 - (b) an employee of an identified healthcare provider, if that identified healthcare provider has, by notice to the service operator, authorised the employee to act on behalf of that identified healthcare provider under this section.

Section 32

1 **Part 6—Oversight role of Ministerial Council**
2

3 **32 Directions to service operator**

- 4 (1) After consulting the Ministerial Council, the Minister may, by
5 legislative instrument, give directions to the service operator about
6 the performance of the service operator's functions under this Act.

7 Note 1: Section 42 (disallowance) of the *Legislative Instruments Act 2003*
8 does not apply to the directions—see section 44 of that Act.

9 Note 2: Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not
10 apply to the directions—see section 54 of that Act.

- 11 (2) The service operator must comply with a direction given under
12 subsection (1).

13 **33 Consultation with Ministerial Council about regulations**

14 Before the Governor-General makes a regulation for the purpose of
15 this Act, the Minister must consult with the Ministerial Council.

16 **34 Annual reports by service operator**

- 17 (1) The service operator must, as soon as practicable after the end of
18 each financial year, prepare a report on the activities, finances and
19 operations of the service operator during the financial year, so far
20 as they relate to this Act and the regulations.

- 21 (2) The service operator must give a copy of the report to:

22 (a) the Minister; and

23 (b) either:

24 (i) the Ministerial Council; or

25 (ii) if the Ministerial Council directs the service operator to
26 give the report to another entity—that other entity;

27 no later than on 30 September after the end of the financial year to
28 which the report relates.

- 29 (3) The Minister must table a copy of the report in each House of
30 Parliament within 15 sitting days after the service operator gives a
31 copy of the report to the Minister.

1 **35 Review of operation of Act**

2 (1) The Minister must, after consulting the Ministerial Council,
3 appoint an individual:

4 (a) to review the operation of this Act; and

5 (b) to prepare a report on the review before 30 June 2013.

6 (2) The Minister must:

7 (a) provide a copy of the report to the Ministerial Council; and

8 (b) table a copy of the report in each House of Parliament within
9 15 sitting days after the report is prepared.

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Part 7—Miscellaneous

36 Extent of authorisation

4 An authorisation under this Act to an entity for a particular purpose
5 is an authorisation to an individual:

- 6 (a) who is an employee of the entity; and
7 (b) whose duties involve the implementation of that purpose.

37 Relationship to State and Territory laws

9 *Relationship to State and Territory laws*

- 10 (1) A law of a State or Territory has effect to the extent that the law is
11 capable of operating concurrently with this Act or the regulations.
- 12 (2) However, if:
13 (a) a person's act or omission is both:
14 (i) an offence under this Act; and
15 (ii) an offence under the law of a State or Territory; and
16 (b) that person is convicted of either of those offences;
17 the person is not liable to be convicted of the other offence.
- 18 (3) Nothing in this Act limits, restricts or otherwise affects any right or
19 remedy that a person would have had if this Act had not been
20 enacted.

21 *Declarations that Act does not apply*

- 22 (4) A provision of this Act does not apply to the public bodies of a
23 State or Territory if a declaration made under subsection (5) is in
24 force in relation to that provision and that State or Territory.
- 25 (5) The Minister must, by legislative instrument, declare that specified
26 provisions of this Act do not apply to the public bodies of a
27 specified State or Territory if:
28 (a) a Minister of the State or Territory, by written notice,
29 requests the Minister to make the declaration; and

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- 1 (b) the Minister is satisfied that a law in force in the State or
2 Territory contains provisions that have been agreed to by the
3 Ministerial Council.
- 4 (6) The Minister may, by legislative instrument, revoke the declaration
5 if:
6 (a) a Minister of the State, by written notice, requests the
7 Minister to do so; or
8 (b) a provision in the State or Territory law, which had been
9 agreed to by the Ministerial Council, is amended without the
10 agreement of the Ministerial Council.
- 11 (7) Neither section 42 (disallowance) nor Part 6 (sunsetting) of the
12 *Legislative Instruments Act 2003* applies to a declaration or
13 revocation made under subsection (5) or (6) of this section.

38 Severability—additional effect of Parts 3 and 4

- 14
- 15 (1) Without limiting their effect apart from each of the following
16 subsections of this section, Parts 3 and 4 have effect in relation to a
17 collection, use or disclosure of information as provided by that
18 subsection.
- 19 (2) Parts 3 and 4 also have the effect they would have if their operation
20 in relation to a collection, use or disclosure of information were
21 expressly confined to a collection, use or disclosure taking place in
22 the course of, or in relation to, trade or commerce:
23 (a) between Australia and places outside Australia; or
24 (b) among the States; or
25 (c) within a Territory, between a State and a Territory or
26 between 2 Territories.
- 27 (3) Parts 3 and 4 also have the effect they would have if their operation
28 in relation to a collection, use or disclosure of information were
29 expressly confined to a collection, use or disclosure using a postal,
30 telegraphic, telephonic or other like service (within the meaning of
31 paragraph 51(v) of the Constitution).
- 32 (4) Parts 3 and 4 also have the effect they would have if their operation
33 in relation to a collection, use or disclosure of information were
34 expressly confined to a collection, use or disclosure in relation to

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- 1 census or statistics (within the meaning of paragraph 51(xi) of the
2 Constitution).
- 3 (5) Parts 3 and 4 also have the effect they would have if their operation
4 in relation to a collection, use or disclosure of information were
5 expressly confined to a collection, use or disclosure in relation to
6 aliens (within the meaning of paragraph 51(xix) of the
7 Constitution).
- 8 (6) Parts 3 and 4 also have the effect they would have if their operation
9 in relation to a collection, use or disclosure of information were
10 expressly confined to a collection, use or disclosure by, or to, a
11 trading, foreign or financial corporation (within the meaning of
12 paragraph 51(xx) of the Constitution).
- 13 (7) Parts 3 and 4 also have the effect they would have if their operation
14 in relation to a collection, use or disclosure of information were
15 expressly confined to a collection, use or disclosure in relation to
16 the provision of:
17 (a) sickness or hospital benefits; or
18 (b) medical or dental services (but not so as to authorise any
19 form of civil conscription);
20 (within the meaning of paragraph 51(xxiiiA) of the Constitution).
- 21 (8) Parts 3 and 4 also have the effect they would have if their operation
22 in relation to a collection, use or disclosure of information were
23 expressly confined to a collection, use or disclosure:
24 (a) in relation to which the Commonwealth is under an
25 obligation under an international agreement, including, the
26 International Covenant on Civil and Political Rights, and in
27 particular Article 17 of the Covenant; or
28 Note: The text of the Covenant is set out in Australian Treaty Series
29 1980 No. 23 ([1980] ATS 23). In 2010, a text of a Covenant in
30 the Australian Treaties Series was accessible through the
31 Australian Treaties Library on the AustLII website
32 (www.austlii.edu.au).
- 33 (b) that is of international concern, including the international
34 concern reflected by the Guidelines Governing the Protection
35 of Privacy and Transborder Flows of Personal Data,
36 recommended by the Council of the Organisation for

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1 Economic Co-operation and Development on 23 September
2 1980.

3 Note: In 2010, the text of the Guidelines was accessible through the
4 Organisation for Economic Co-operation and Development
5 website (www.oecd.org).

6 (9) Parts 3 and 4 also have the effect they would have if their operation
7 in relation to a collection, use or disclosure of information were
8 expressly confined to a collection, use or disclosure by, or to, the
9 Commonwealth or a Commonwealth authority.

10 (10) Parts 3 and 4 also have the effect they would have if their operation
11 in relation to a collection, use or disclosure of information were
12 expressly confined to a collection, use or disclosure taking place in
13 a Territory.

39 Regulations

14 (1) The Governor-General may make regulations prescribing matters:
15 (a) required or permitted to be prescribed by this Act; or
16 (b) necessary or convenient to be prescribed for carrying out or
17 giving effect to this Act.
18

19 Note: Before the Governor-General makes a regulation for the purpose of
20 this Act, the Minister must consult with the Ministerial Council: see
21 section 33.

22 (2) Without limiting subsection (1), the regulations may provide for
23 the imposition of a penalty of not more than 50 penalty units for
24 contravention of a regulation.