

EXPOSURE DRAFT

2008-2009-2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

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 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

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Part 1 Preliminary

Section 3

1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 5 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Parts 2 to 6	The day after this Act receives the Royal Assent.	

4 Note: This table relates only to the provisions of this Act as originally
5 passed by both Houses of the Parliament and assented to. It will not be
6 expanded to deal with provisions inserted in this Act after assent.

7 (2) Column 3 of the table contains additional information that is not
8 part of this Act. Information in this column may be added to or
9 edited in any published version of this Act.

3 Purpose of this Act

- 11 (1) The purpose of this Act is to provide a way of ensuring that a
12 person who provides or receives healthcare is correctly matched to
13 health information that is created when healthcare is provided.
- 14 (2) This purpose is to be achieved by assigning a unique identifying
15 number to each healthcare provider and healthcare recipient.

4 Act to bind the Crown

- 17 (1) This Act binds the Crown in right of the Commonwealth, of each
18 of the States, of the Australian Capital Territory, of the Northern
19 Territory and of Norfolk Island.
- 20 (2) This Act does not make the Crown liable to be prosecuted for an
21 offence.

5 Definitions

1
2 In this Act:

3 ***data source*** means:

- 4 (a) Medicare Australia; or
5 (b) the Department administered by the Minister administering
6 the *Veterans' Entitlements Act 1986*; or
7 (c) a registration authority; or
8 (d) an entity prescribed by the regulations.

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

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

13 ***entity*** includes a person or an unincorporated body.

14 ***healthcare*** means health service.

15 ***healthcare identifier*** has the meaning given in section 6.

16 ***healthcare provider*** means an entity that has provided, provides, or
17 is to provide, healthcare.

18 ***Healthcare Provider Directory*** means a record of healthcare
19 providers that lists the professional and business details of the
20 healthcare providers who have given the service operator consent
21 to those details being listed.

22 ***healthcare recipient*** means an individual who has received,
23 receives, or is to receive, healthcare.

24 ***health information*** has the meaning given by subsection 6(1) of
25 the Privacy Act.

26 ***health service*** has the meaning given by subsection 6(1) of the
27 Privacy Act.

28 ***Human Research Ethics Committee*** has the meaning given by the
29 National Statement on Ethical Conduct in Human Research, as
30 amended from time to time, made in 2007 by the National Health

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Part 1 Preliminary

Section 5

- 1 and Medical Research Council under the *National Health and*
2 *Medical Research Council Act 1992.*
- 3 ***identified healthcare provider*** means a healthcare provider who
4 has been assigned an identifier.
- 5 ***identifying information*** of an entity means only so much of the
6 following information that is necessary to uniquely identify the
7 entity:
- 8 (a) for a healthcare recipient:
- 9 (i) the Medicare number, or Department of Veterans'
10 Affairs file number, of the healthcare recipient; or
- 11 (ii) the name by which the healthcare recipient is known; or
- 12 (iii) the address of the healthcare recipient; or
- 13 (iv) the date of birth, and date of birth accuracy indicator, of
14 the healthcare recipient; or
- 15 (v) the sex of the healthcare recipient; or
- 16 (vi) for a healthcare recipient who was part of a multiple
17 birth—the order in which the healthcare recipient was
18 born (e.g. the second of twins); or
- 19 (vii) if applicable, the date of death, and date of death
20 accuracy indicator, of the healthcare recipient;
- 21 (b) for a healthcare provider who is an individual:
- 22 (i) the name by which the healthcare provider is known; or
- 23 (ii) the address of the healthcare provider; or
- 24 (iii) the date of birth, and date of birth accuracy indicator, of
25 the healthcare provider; or
- 26 (iv) the sex of the healthcare provider; or
- 27 (v) the type of healthcare provider that the individual is
28 (e.g. nurse, oncologist, pharmacist); or
- 29 (vi) if the healthcare provider is registered by a registration
30 authority—the registration authority's identifier for the
31 healthcare provider and the status of the registration
32 (e.g. conditional, suspended, cancelled); or
- 33 (vii) other information that is prescribed by the regulations;
- 34 (c) for a healthcare provider who is not an individual:
- 35 (i) the name by which the healthcare provider is known; or

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- 1 (ii) the address of the healthcare provider; or
2 (iii) the ABN (within the meaning of the *A New Tax System*
3 *(Australian Business Number) Act 1999*) of the
4 healthcare provider; or
5 (iv) the ACN (within the meaning of the *Corporations Act*
6 *2001*) of the healthcare provider; or
7 (v) other information that is prescribed by the regulations.

8 **law** includes:

- 9 (a) an Act or legislative instrument; or
10 (b) an Act or legislative instrument of a State or Territory.

11 **Medicare Australia** has the same meaning it has for the purposes
12 of the *Medicare Australia Act 1973*.

13 **Ministerial Council** has the meaning given by the National
14 Partnership Agreement on E-Health made on [*date to be inserted*]
15 between the Commonwealth, the States, the Australian Capital
16 Territory and the Northern Territory of Australia, as amended from
17 time to time.

18 **personal information** means personal information within the
19 meaning given by subsection 6(1) of the Privacy Act.

20 **Privacy Act** means the *Privacy Act 1988*.

21 **Privacy Commissioner** means the person who holds the office of
22 the Privacy Commissioner under the Privacy Act.

23 **registration authority** is an entity that is responsible under a law
24 for registering suitably qualified and competent persons in a health
25 profession.

26 **service operator** means:

- 27 (a) the Medicare Australia CEO, as defined in the *Health*
28 *Insurance Act 1973*; or
29 (b) another entity prescribed by the regulations.

30 **to employ** a person includes to secure the person's services under a
31 contract for services.

32 **to use** information includes to adopt the information.

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Part 1 Preliminary

Section 5

1

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Part 2—Assigning healthcare identifiers

6 Service operator may assign healthcare identifiers

- (1) The service operator may assign a number (a *healthcare identifier*) to uniquely identify a healthcare recipient or healthcare provider.
- (2) The types of healthcare identifiers include:
 - (a) an identifier that is assigned to a healthcare recipient; and
 - (b) an identifier that is assigned to a healthcare provider who is an individual; and
 - (c) an identifier that is assigned to a healthcare provider who conducts an enterprise that provides healthcare (including free of charge), either:
 - (i) as a self-employed individual; or
 - (ii) by employing individuals to provide healthcare (e.g. a public hospital, or a corporation that runs a medical centre).
- (3) The regulations may prescribe requirements for assigning a healthcare identifier to a healthcare recipient or healthcare provider.
- (4) A healthcare identifier is an identifier for the purposes of clause 7 of the National Privacy Principles in the Privacy Act.

7 Service operator must keep record of healthcare identifiers etc.

- The service operator must establish and maintain an accurate record of:
- (a) healthcare identifiers that have been assigned; and
 - (b) the information that the service operator has that relates to those healthcare identifiers.

8 Data source may disclose identifying information

- (1) A data source is authorised to disclose identifying information of a healthcare provider or recipient to the service operator for the

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Part 2 Assigning healthcare identifiers

Section 9

1 purposes of the service operator assigning a healthcare identifier to
2 the healthcare provider or recipient.

- 3 (2) The service operator is authorised:
4 (a) to collect the information; and
5 (b) to use the information for the purposes of assigning a
6 healthcare identifier to the healthcare provider or recipient.

7 **9 Disclosure by healthcare provider entities**

8 (1) If a healthcare provider wants to be assigned a healthcare
9 identifier, the healthcare provider must give to the service operator
10 the identifying information that the service operator requires for
11 the purposes of assigning a healthcare identifier to the healthcare
12 provider.

- 13 (2) The service operator is authorised:
14 (a) to collect the information; and
15 (b) to use the information for the purposes of assigning a
16 healthcare identifier to the healthcare provider.

17 **10 Service operator's duty of confidentiality**

- 18 (1) A person commits an offence if:
19 (a) information was disclosed to the person under this Part; and
20 (b) the person:
21 (i) uses the information; or
22 (ii) discloses the information.

23 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 24 (2) Subsection (1) does not apply if the person uses or discloses the
25 information for:
26 (a) the purpose for which the information was disclosed to the
27 person under this Act; or
28 (b) a purpose that is authorised under another law.

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

- 31 (3) A person commits an offence if:
-

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Section 10

- 1 (a) the person receives, whether directly or indirectly,
2 information from a person who discloses the information in
3 contravention of subsection (1); and
4 (b) the person:
5 (i) uses the information; or
6 (ii) discloses the information.

7 Penalty: 120 penalty units or imprisonment for 2 years, or both.

- 8 (4) For this section, it is irrelevant whether the information relates to a
9 person who is dead.
10

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Part 3 Service operator's disclosure

Section 11

Part 3—Service operator's disclosure

11 Disclosure to healthcare provider

(1) For the purposes of a healthcare provider communicating or managing health information, as part of providing healthcare to a healthcare recipient, the service operator is authorised to disclose a healthcare identifier to:

- (a) an identified healthcare provider; or
- (b) an individual employed by an identified healthcare provider who the healthcare provider has authorised, by written notice to the service provider, to act on behalf of the healthcare provider under this section.

(2) The healthcare provider is authorised:

- (a) to collect the healthcare identifier; and
- (b) to use the healthcare identifier for the purposes of communicating or managing health information, as part of providing healthcare to the healthcare recipient.

12 Disclosure to registration authority

(1) The service operator is authorised to disclose an identified provider's healthcare identifier to a registration authority for the purposes of the registration authority registering the healthcare provider.

(2) The registration authority is authorised:

- (a) to collect the healthcare identifier; and
- (b) to use the healthcare identifier for the purposes of the registration authority registering the healthcare provider.

13 Disclosure for authentication of healthcare provider's identity

(1) The service operator is authorised to disclose an identified healthcare provider's information to an entity for the purposes of the entity issuing a key to the healthcare provider to enable the healthcare provider's identity to be authenticated in electronic transmissions (e.g. as part of a public key infrastructure).

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- 1 (2) The entity is authorised:
- 2 (a) to collect the healthcare identifier; and
- 3 (b) to use the healthcare identifier for the purposes of the entity
- 4 issuing a key to the healthcare provider to enable the
- 5 healthcare provider's identity to be authenticated in
- 6 electronic transmissions.
- 7

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Part 4 Healthcare provider's use or disclosure

Section 14

Part 4—Healthcare provider's use or disclosure

14 Disclosure to get healthcare identifier

- (1) This section applies if:
 - (a) an identified healthcare provider is providing, or is to provide, healthcare to a healthcare recipient; and
 - (b) it is necessary for the healthcare provider to disclose the healthcare recipient's identifying information for the purposes of the service operator disclosing the healthcare recipient's healthcare identifier to the healthcare provider.
- (2) The healthcare provider is authorised to disclose identifying information of a healthcare recipient to the service operator, for the purposes of the service operator disclosing the healthcare recipient's healthcare identifier to the healthcare provider.
- (3) The service operator is authorised:
 - (a) to collect the information; and
 - (b) to use the information for the purposes of disclosing the healthcare recipient's healthcare identifier to the healthcare provider.

15 Disclosure and use for other purposes

- (1) A healthcare provider is authorised to use a healthcare identifier, or to disclose a healthcare identifier to an entity, for the purposes of communicating or managing information, as part of:
 - (a) the provision of healthcare to a healthcare recipient; or
 - (b) the management, funding, monitoring or evaluation of healthcare; or
 - (c) the conduct of health or medical research that has been approved by a Human Research Ethics Committee.
- (2) The entity is authorised:
 - (a) to collect the information; and
 - (b) to use the information for the purpose for which it was disclosed to the person.

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Section 15

1 Note: This Part authorises the collection, use and disclosure of only healthcare identifiers. The
2 collection, use or disclosure of other personal information (e.g. health information), is
3 dealt with in other legislation, including the Privacy Act, for example.
4

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Part 5 Unauthorised use or disclosure

Section 16

Part 5—Unauthorised use or disclosure

16 Use of identifier for insurance and employment prohibited

(1) This Act does not authorise an entity to use or disclose a healthcare recipient's healthcare identifier, which is disclosed to the entity under this Act, for the purposes of an insurance business, other than for the purposes of providing healthcare to a person.

(2) An *insurance business* is:

- (a) a health insurance business within the meaning of Division 121 of the *Private Health Insurance Act 2007*; or
- (b) a life insurance business within the meaning of section 11 of the *Life Insurance Act 1995*; or
- (c) any other business of undertaking liability, by way of insurance (including reinsurance), for any loss or damage, including liability to pay damages or compensation, contingent on the happening of a specified event; or
- (d) any business incidental to a business mentioned in paragraph (a), (b) or (c).

(3) This Act does not authorise an entity to use or disclose a healthcare recipient's healthcare identifier, which is disclosed to the entity under this Act, for the purposes of the employment of a person, other than for the purposes of providing healthcare to the person.

17 Unauthorised use or disclosure of healthcare identifier

(1) A person commits an offence if:

- (a) a healthcare identifier is disclosed to the person; and
- (b) the person:
 - (i) uses the healthcare identifier; or
 - (ii) discloses the healthcare identifier.

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

(2) However, subsection (1) does not apply if:

- (a) the person:

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- 1 (i) is authorised to use or disclose the healthcare identifier
2 for a purpose that is authorised under this Act; and
3 (ii) uses or discloses the healthcare identifier for that
4 purpose; or
5 (b) the person uses or discloses the healthcare identifier for a
6 purpose that is authorised under another law.

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

- 9 (3) A person commits an offence if:
10 (a) a healthcare identifier is disclosed to the person; and
11 (b) the person:
12 (i) uses the healthcare identifier; or
13 (ii) discloses the healthcare identifier.

14 Penalty: 60 penalty units.

- 15 (4) However, subsection (3) does not apply if:
16 (a) the person:
17 (i) is authorised to use or disclose the healthcare identifier
18 for a purpose that is authorised under this Act; and
19 (ii) uses or discloses the healthcare identifier only for that
20 purpose; or
21 (b) the person uses or discloses the healthcare identifier only for
22 a purpose that is authorised under another law; or
23 (c) the person uses or discloses the healthcare identifier only for
24 the purposes of, or in connection with, the person's personal,
25 family or household affairs (within the meaning of the
26 Privacy Act).

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

- 29 (5) An offence against subsection (3) is an offence of strict liability.

30 Note: For strict liability, see section 6.1 of the *Criminal Code*.
31

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Part 6 Miscellaneous

Section 18

Part 6—Miscellaneous

18 Interaction with Privacy Act

- (1) An authorisation to collect, use or disclose personal information under this Act is also an authorisation to collect, use or disclose personal information for the purposes of the Privacy Act.
- (2) An authorisation to an entity for a particular purpose is an authorisation to a person:
 - (a) who is employed by the entity; and
 - (b) whose duties involve the implementation of that purpose.
- (3) An act or practice that constitutes an offence under this Act is an act or practice involving interference with the privacy of an individual for the purposes of section 13 of the Privacy Act.
- (4) An individual may complain about that type of act or practice to the Privacy Commissioner.
- (5) If an individual does complain, Part V of the Privacy Act applies as if:
 - (a) the complaint were a complaint made under section 36 of that Act; and
 - (b) the definition of *organisation* in the Privacy Act includes a State or Territory authority (within the meaning of that Act).
- (6) The service operator is an agency within the meaning of the Privacy Act for the purposes of the performance of the Privacy Commissioner's functions under that Act.

19 Relationship to State or Territory laws

- (1) A law of a State or Territory (a *State*) has effect to the extent that the law is capable of operating concurrently with this Act or the regulations.
- (2) However, if a person's act or omission is both an offence under this Act and an offence under the law of a State, and that person is

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- 1 convicted of either of those offences, the person is not liable to be
2 convicted of the other offence.
- 3 (3) Nothing in this Act limits, restricts or otherwise affects any right or
4 remedy that a person would have had if this Act had not been
5 enacted.
- 6 (4) The Minister may, by notice in the *Gazette*, declare that certain
7 provisions of this Act do not apply to a State if:
8 (a) the State, by written notice, requests the Minister to make the
9 declaration; and
10 (b) the Minister is satisfied a law is in force in the State that
11 contains provisions that:
12 (i) are consistent with the provisions of this Act; and
13 (ii) have been agreed to by the Ministerial Council.
- 14 (5) The Minister may, by notice in the *Gazette*, revoke the declaration
15 only if:
16 (a) the State, by written notice, requests the Minister to do so; or
17 (b) a provision in the State law, which had been agreed to by the
18 Ministerial Council, is amended without the agreement of the
19 Ministerial Council.
- 20 (6) A *Gazette* notice made under subsection (4) or (5) is not a
21 legislative instrument.

22 **20 Healthcare Provider Directory**

- 23 (1) The service operator must establish and maintain a Healthcare
24 Provider Directory.
- 25 (2) The service operator may disclose the professional or business
26 details of a healthcare provider who is listed in the Directory to an
27 identified healthcare provider.

28 **21 Annual reports—service operator**

- 29 (1) The service operator must, as soon as practicable after the end of
30 each financial year, prepare a report on the activities, finances and
31 operations of the service operator during the financial year.

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Part 6 Miscellaneous

Section 22

- 1 (2) The service operator must give a copy of the report to:
2 (a) the Ministerial Council; or
3 (b) another entity, if the Ministerial Council directs the service
4 operator to do so.
- 5 (3) The service operator must do so no later than on 30 September
6 after the end of the financial year that the report relates to.

22 Annual reports—Privacy Commissioner

- 8 (1) The Privacy Commissioner must, as soon as practicable after the
9 end of each financial year, prepare a report on the Privacy
10 Commissioner's compliance and enforcement activities under this
11 Act during the financial year.
- 12 (2) The Privacy Commissioner must give a copy of the report to the
13 Ministerial Council.
- 14 (3) The Privacy Commissioner must do so no later than on
15 30 September after the end of the financial year that the report
16 relates to.

23 Review of operation of Act

- 18 The Minister must:
19 (a) review the operation of this Act; and
20 (b) prepare a report on the review within 3 years after this
21 section commences; and
22 (c) table a copy of the report in each House of Parliament within
23 15 sitting days after the report is prepared.

24 Regulations

- 25 (1) The Governor-General may make regulations prescribing matters:
26 (a) required or permitted to be prescribed by this Act; or
27 (b) necessary or convenient to be prescribed for carrying out or
28 giving effect to this Act.

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Section 24

- 1 (2) Without limiting subsection (1), the regulations may provide for
- 2 the imposition of a penalty of not more than 50 penalty units for
- 3 contravention of a regulation.
- 4