



Healthcare Identifiers (Consequential Amendments) Bill 2010

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Healthcare Identifiers (Consequential Amendments) Bill 2010

Date introduced: 10 February 2010

House: House of Representatives

Portfolio: Health and Ageing

Commencement: Sections 1–3: on Royal Assent; Schedule 1 and Schedule 2 Part 1: at the same time as the *Healthcare Identifiers Act 2010* commences; Schedule 2 Part 2: the later of immediately after the commencement of item 26 of Schedule 5 to the *Personal Property Securities (Consequential Amendments) Act 2009* and immediately after the commencement of the *Healthcare Identifiers Act 2010*.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of this Bill is to make minor amendments to the *Health Insurance Act 1973* and the *Privacy Act 1988* to ensure that the Healthcare Identifiers Service to be established under the Healthcare Identifiers Bill 2010 (once enacted) operates efficiently and correctly.

Amendments to the *Health Insurance Act 1973* will authorise the Chief Executive Officer (CEO) of Medicare Australia to delegate functions to officers of that organisation to support the day-to-day operation of the Healthcare Identifier Service.

Amendments to the *Privacy Act 1988* will enhance the functions of the Privacy Commissioner as the independent regulator of the Healthcare Identifiers Service.

Background

Basis of policy commitment

Detailed information on the policy background and issues raised in relation to the Healthcare Identifiers Service are discussed in the [Bills Digest](#) prepared for the principal Bill dealing with the national system, the Healthcare Identifiers Bill 2010.

Warning:

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Committee consideration

On 24 February 2010 the Healthcare Identifiers Bill 2010 and the Healthcare Identifiers (Consequential Amendments) Bill 2010 were referred to the [Community Affairs Legislation Committee](#) for inquiry and report by 15 March 2010.

Reason stated for referral and principal issues for consideration:

- privacy safeguards in the Bill
- operation of the Healthcare Identifier Service, including access to the Identifier
- Relationship to national e-health agenda and electronic health records

It is expected that submissions on the Bills will be received from:

- Australian Medical Association
- Royal Australasian College of General Practitioners
- National e-Health Transition Authority
- Australian Nursing Federation,
- Australian Information Industry Association

Financial implications

The Healthcare Identifiers Service will be funded to 30 June 2012 as part of \$218 million allocated by the Council of Australian Governments to the National E-Health Transition Authority (NEHTA) in November 2008.¹ Under the *National Partnership Agreement on E-Health*, funding is contributed to by the Commonwealth and the states and territories.²

NEHTA has allocated \$52.02 million to fund the operation of the Healthcare Identifiers Service by Medicare Australia for 2010–11 and 2011–12.³

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1. Council of Australian Governments' Meeting, 29 November 2008, Outcomes, Attachment A, Health and Ageing, viewed 12 February 2010, http://www.coag.gov.au/coag_meeting_outcomes/2008-11-29/attachments.cfm
 2. That is, the Commonwealth contributes just over 40 per cent and the states and territories contribute on a proportional basis, the remaining funding. Council of Australian Governments (COAG), National partnership agreement on e-health, viewed 12 February 2010, http://www.coag.gov.au/coag_meeting_outcomes/2009-12-07/docs/npa_e-health.pdf
 3. Funding will be \$26.01million in both financial years. Explanatory Memorandum, Healthcare Identifiers Bill 2010 and Healthcare Identifiers (Consequential Amendments) Bill 2010, p.7, viewed 12 February 2010,

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In addition, the Commonwealth has provided funding of \$0.5 million for 2010–11 and 2011–12 to the Office of the Privacy Commissioner to provide regulatory oversight and advice on the introduction of healthcare identifiers.

Funding for the Healthcare Identifiers Service from 30 June 2012 will be determined through discussion between the Commonwealth, states and territories.

Main provisions

There are two Schedules to this Bill.

Schedule 1

Item 1 of Schedule 1 will amend the *Health Insurance Act 1973* subsection 131(1) in relation to delegation powers held by the Minister, the Secretary of the Department of Health and Ageing and the Chief Executive Officer (CEO) of Medicare Australia to include the *Health Care Identifiers Act 2010*. This will allow the CEO of Medicare Australia to delegate functions associated with the operation of the Healthcare Identifiers Service to officers of that organisation.

Schedule 2 Part 1

Schedule 2 Part 1 proposes to amend the *Privacy Act 1988*. Schedule 2 Part 1 (**items 1–3**) Section 6(1) of the Privacy Act as follows to:

- include ‘service operator of the Healthcare Identifiers Act in the existing definition of ‘agency’
- insert the new term ‘healthcare identifier’ to mean the same as in the Healthcare Identifiers Act and
- insert the new term ‘healthcare identifiers’ offence to mean
 - an offence against section 26 of the Healthcare Identifiers Act or
 - an offence against section 6 of the *Crimes Act 1914* that relates to an offence under section 26 of the Healthcare Identifiers Act 2010.

Item 4 proposes to add a note to section 13 stating that contravention of the Healthcare Identifiers Act or regulations made under the Act is an interference with the privacy of the individual and is covered under section 13 of that Act.

http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4299_ems_b3f370a9-21fa-4d53-a227-65c1fcaad5df/upload_pdf/339202.pdf;fileType=application%2Fpdf

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Additional powers to Privacy Commissioner

The Bill proposes to insert a new section 27A to identify additional functions for the Privacy Commissioner in relation to healthcare identifiers.

Item 5 proposes that these will be:

- to investigate an act or practice that may be an interference with the privacy of an individual under subsection 29(1) of the *Healthcare Identifiers Act 2010* and, if the Commissioner considers it appropriate to do so, to attempt by conciliation, to effect a settlement of the matters that gave rise to the investigation
- to do anything incidental or conducive to the performance of that function.

Proposed **subsection 27A(2)** will enable the Privacy Commissioner to do all things that are necessary or convenient to be done for or in connection with the performance of the Commissioner's functions under subsection (1).

Proposed **subsection 27A(3)** provides that Section 38 (severability) of the Healthcare Identifiers Act applies to this section in the same way as it applies to Parts 3 and 4 of that Act.

Item 6 will make technical amendments to recognise the insertion of section 27A.

Item 7 proposes to amend subsection 49(1) by adding 'healthcare identifier offence' to the types of offences which in the commissioner's opinion have been committed. The commissioner would have formed such an opinion during the course of an investigation under section 340 of the Privacy Act. Where the commissioner forms this opinion, he or she must inform the Commissioner of Police or the Director of Public Prosecutions of that opinion.

Schedule 2 Part 2

Schedule 2 Part 2 (**items 8 to 11**) will insert minor amendments to the Privacy Act contingent on the *Personal Property Securities (Consequential Amendments) Act 2009* which has yet to commence operation.

Concluding comments

This Bill contributes to the government strategy to establish a single national healthcare identifier system for patients, healthcare providers and healthcare facilities by making minor amendments to existing Acts. These amendments are intended to ensure that a

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Healthcare Identifiers Service, to be established under the Healthcare Identifiers Bill 2010, operates efficiently and appropriately.

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