

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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*(Presented and read a first time, 6 May 1993)*

(MINISTER FOR FAMILY SERVICES, SENATOR CROWLEY)

## A BILL

FOR

### **An Act to amend the *National Health Act 1953*, and for related purposes**

The Parliament of Australia enacts:

#### **PART 1—PRELIMINARY**

##### **Short title**

1. This Act may be cited as the *National Health Amendment Act 1993*.

##### **Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

#### **PART 2—AMENDMENTS TO THE NATIONAL HEALTH ACT 1953**

##### **Principal Act**

3. In this Part, “**Principal Act**” means the *National Health Act 1953*<sup>1</sup>.

## Repeal of section and substitution of new section

4.(1) Section 135AA of the Principal Act is repealed and the following section is substituted:

### Privacy guidelines

*Information to which this section applies* 5

“135AA.(1) Subject to subsection (2), this section applies to information that:

- (a) is information relating to an individual; and
- (b) is held by an agency (whether or not the information was obtained by that agency or any other agency after the commencement of this section); and 10
- (c) was obtained by that agency or any other agency in connection with a claim for payment of a benefit under the Medicare Benefits Program or the Pharmaceutical Benefits Program.

*Information to which this section does not apply* 15

“(2) This section does not apply to such information:

- (a) so far as it identifies:
  - (i) a person who provided the service or goods in connection with which the claim for payment is made; or
  - (ii) a person who, in his or her capacity as the provider of services, made a referral or request to another person to provide the service or goods; or 20
- (b) so far as it is contained in a database that:
  - (i) is maintained for the purpose of identifying persons who are eligible to be paid benefits under the Medicare Benefits Program or the Pharmaceutical Benefits Program; and 25
  - (ii) does not contain information relating to claims for payment of such benefits; or
- (c) so far as it is not stored in a database.

*Issuing guidelines* 30

“(3) The Privacy Commissioner must, by written notice, issue guidelines relating to information to which this section applies.

### *Replacing or varying guidelines*

“(4) At any time, the Privacy Commissioner may, by written notice, issue further guidelines that vary the existing guidelines. 35

### *Content of guidelines*

“(5) So far as practicable, the guidelines must:

- (a) specify the ways in which information may be stored and, in particular, specify the circumstances in which creating copies of information in paper or similar form is prohibited; and
- (b) specify the uses to which agencies may put information; and
- 5 (c) specify the circumstances in which agencies may disclose information; and
- (d) prohibit agencies from storing in the same database:
  - (i) information that was obtained under the Medicare Benefits Program; and
  - 10 (ii) information that was obtained under the Pharmaceutical Benefits Program; and
- (e) prohibit linkage of:
  - (i) information that is held in a database maintained for the purposes of the Medicare Benefits Program; and
  - 15 (ii) information that is held in a database maintained for the purposes of the Pharmaceutical Benefits Program;unless the linkage is authorised in the way specified in the guidelines; and
- (f) specify the requirements with which agencies must comply in relation to old information, in particular requirements that:
  - 20 (i) require the information to be stored in such a way that the personal identification components of the information are not linked with the rest of the information; and
  - (ii) provide for the longer term storage and retrieval of the information; and
  - 25 (iii) specify the circumstances in which, and the conditions subject to which, the personal identification components of the information may later be re-linked with the rest of the information.

30 *Consultation*

“(6) Before issuing guidelines, the Privacy Commissioner must take reasonable steps to consult with organisations (including agencies) whose interests would be affected by the guidelines.

*Disallowance*

35 “(7) Guidelines are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*When guidelines take effect*

“(8) Despite section 46A and paragraph 48(1)(b) of the *Acts Interpretation Act 1901*, guidelines take effect from:

- (a) the first day on which they are no longer liable to be disallowed; or
- (b) if the guidelines provide for their commencement after that day — in accordance with that provision.

#### *Failure to table first guidelines within 6 months*

“(9) If guidelines issued under subsection (1) are not laid before each House of the Parliament under paragraph 48(1)(c) of the *Acts Interpretation Act 1901* (as applied by section 46A of that Act) within 6 months after the commencement of this section, the Privacy Commissioner must report the failure to issue guidelines within that period to each House of the Parliament within 15 sitting days of that House after the end of the period.

#### *Tabling first guidelines after 6 months*

“(10) Subsection (9) does not render invalid guidelines issued under subsection (3) that are not laid before each House of the Parliament within that period.

#### *Definitions*

“(11) In this section:

‘**agency**’ has the same meaning as in the *Privacy Act 1988*;

‘**database**’ means a discrete body of information stored by means of a computer;

‘**Medicare Benefits Program**’ means the program for providing Medicare benefits under the *Health Insurance Act 1973*;

‘**old information**’ means information to which this section applies that has been held by one or more agencies for at least the preceding 5 years;

‘**personal identification components**’, in relation to information, means so much of the information as includes any of the following:

- (a) the name of the person to whom the information relates;
- (b) the person’s address;
- (c) the person’s Medicare card number;
- (d) the person’s Pharmaceutical entitlements number;

‘**Pharmaceutical Benefits Program**’ means the program for supplying pharmaceutical benefits under Part VII of this Act.”.

(2) On the commencement of this Act, consultations that took place under subsection 135AA(7) of the Principal Act before that commencement are taken to be consultations that took place under subsection 135AA(6) of the Principal Act as amended by this Act.

#### **Breaches of the privacy guidelines**

5. Section 135AB of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) If a complaint is made, Part V of the *Privacy Act 1988* applies, with such modifications as the circumstances require, as if the complaint were an IPP complaint (within the meaning of that Act) made under section 36 of that Act.”.

## 5 PART 3—AMENDMENTS OF THE PRIVACY ACT 1988

### Principal Act

6. In this Part, “**Principal Act**” means the *Privacy Act 1988*<sup>2</sup>.

### Interferences with privacy

7. Section 13 of the Principal Act is amended by inserting after  
10 paragraph (ba) the following paragraph:

“(bb) constitutes a breach of the guidelines in force under section 135AA of the *National Health Act 1953*.”.

### Functions of Commissioner in relation to interferences with privacy

8. Section 27 of the Principal Act is amended by inserting after  
15 paragraph (1)(p) the following paragraph:

“(pa) to issue guidelines under section 135AA of the *National Health Act 1953*.”.

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## NOTES

1. No. 95, 1953, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; Nos. 100 and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972, Nos. 49 and 202, 1973; No. 37, 1974; Nos. 1, 13 and 93, 1975; Nos. 1, 60, 91, 99, 108, 157 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88, 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 92, 118, 163 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 35, 54 and 139, 1983; Nos. 46, 63, 72, 120, 135 and 165, 1984; Nos. 24, 53, 65, 70, 95, 127 and 167, 1985; Nos. 28, 75, 94 and 115, 1986; Nos. 22, 44, 72, 118, 131 and 132, 1987; Nos. 79, 87, 99 and 155, 1988; No. 95, 1989; Nos. 3, 84, 106 and 141, 1990; Nos. 6, 68, 70, 73, 83, 84, 115, 116, 119, 122, 141, 169, 175, 208 and 211, 1991; and Nos. 70, 81, 88, 136, 192, 200 and 204, 1992.
2. No. 119, 1988, as amended. For previous amendments, see Nos. 11, 75, and 116, 1990; Nos 20, 28, 122, 136, and 194, 1991; No. 143, 1992.







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