Health Legislation Amendment (Data-matching and Other Matters) Act 2019

No. 121, 2019

An Act to amend the law relating to health, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Health Legislation Amendment (Data-matching and Other Matters) Act 2019

No. 121, 2019

An Act to amend the law relating to health, and for related purposes

[*Assented to 12 December 2019*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Health Legislation Amendment (Data-matching and Other Matters) Act 2019*.

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2 Commencement

(1) Each provision of this Act 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 Act	The day after this Act receives the Royal Assent.	13 December 2019

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Data-matching

Part 1—Main amendments

National Health Act 1953

1 After Part VIII

Insert:

Part VIIIA—Data-matching

132A Definitions

In this Part:

authorised Commonwealth entity means a Commonwealth entity that is authorised under subsection 132B(2) to match information under subsection 132B(1) on the Chief Executive Medicare's behalf.

Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

general treatment has the same meaning as in the *Private Health Insurance Act 2007*.

Health Practitioner Regulation National Law means:

(a) for a State or Territory other than Western Australia—the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld), as it applies (with or without modification) as a law of the State or Territory; or

(b) for Western Australia—the *Health Practitioner Regulation National Law (WA) Act 2010* (WA), so far as that Act corresponds to the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld).

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inappropriate practice has the same meaning as in Part VAA of the *Health Insurance Act 1973*.

permitted purpose: each of the following is a ***permitted purpose*** for the matching of data:

(a) identifying whether a person may have, under a medicare program, claimed or been paid a benefit that exceeds the amount of the benefit that was payable to the person;

(b) recovering overpayments of benefits under a medicare program;

(c) detecting or investigating contraventions of a law of the Commonwealth relating to a medicare program;

(d) detecting or investigating whether a person may have engaged in inappropriate practice;

(e) analysing services, benefits, programs or facilities that are provided for under a medicare program, in connection with the purposes mentioned in paragraphs (a) to (d);

(f) educating healthcare providers about medicare program requirements.

Note: The *Privacy Act 1988* contains provisions relevant to the use and disclosure of information under this Act.

personal information has the same meaning as in the *Privacy Act 1988*.

132B Data-matching by the Chief Executive Medicare

(1) Subject to this Part, the Chief Executive Medicare may, for a permitted purpose, match any of the following information:

(a) information that is held or has been obtained by the Chief Executive Medicare for the purpose of a medicare program;

(b) therapeutic goods information (within the meaning of subsection 61(1) of the *Therapeutic Goods Act 1989*) that has been disclosed under subsection 132C(1) of this Act;

(c) information that has been disclosed to the Chief Executive Medicare under section 132D;

(d) information that has been provided to the Chief Executive Medicare in accordance with the Health Practitioner Regulation National Law for a State or Territory;

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(e) information that has been provided to the Chief Executive Medicare in accordance with any of the following Acts:
  (i) the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*;
  (ii) the *Military Rehabilitation and Compensation Act 2004*;
  (iii) the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*;
  (iv) the *Treatment Benefits (Special Access) Act 2019;*
  (v) the *Veterans' Entitlements Act 1986*;

(f) any other information that may be lawfully provided to the Chief Executive Medicare (other than information that may only be obtained by the Chief Executive Medicare for the purpose of performing functions under the *My Health Records Act 2012*).

Note 1: For the purposes of paragraph (1)(a)—to avoid doubt, information that is held or has been obtained by the Chief Executive Medicare for the purpose of a medicare program includes information in a document that has been produced to the Chief Executive Medicare or to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) in accordance with section 129AAD of the *Health Insurance Act 1973*.

Note 2: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988*.

Data-matching by authorised Commonwealth entity on Chief Executive Medicare's behalf

(2) Subject to this Part, the Chief Executive Medicare may, in writing, authorise a Commonwealth entity to match information under subsection (1) on the Chief Executive Medicare's behalf for a permitted purpose.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988*.

(3) An authorised Commonwealth entity:
  (a) must comply with any other terms and conditions relating to the matching of the information that are determined, in writing, by the Chief Executive Medicare; and

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(b) must, if requested to do so by the Chief Executive Medicare, disclose the results of the matching to the Chief Executive Medicare.

Information must not be matched until Minister's principles have commenced

(4) Information must not be matched under subsection (1) by the Chief Executive Medicare or an authorised Commonwealth entity until after the principles made by the Minister under subsection 132F(1) have commenced.

132C Secretary may disclose therapeutic goods information to the Chief Executive Medicare

(1) The Secretary may disclose to the Chief Executive Medicare therapeutic goods information (within the meaning of subsection 61(1) of the *Therapeutic Goods Act 1989*) for the purpose of facilitating the matching of that information under subsection 132B(1).

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988*.

(2) The Chief Executive Medicare may use information disclosed in accordance with subsection (1) for the purpose of facilitating the matching of that information under subsection 132B(1).

132D Private health insurer may disclose information about hospital or general treatment to the Chief Executive Medicare

(1) A private health insurer may disclose to the Chief Executive Medicare information relating to hospital treatment or general treatment provided to a person who is insured under an insurance policy of the insurer, for the purpose of facilitating the matching of that information under subsection 132B(1), if:

(a) the insurance policy was taken out after the commencement of this section; or

(b) the insurance policy provided that information of that kind may be disclosed if the disclosure is authorised under an Australian law; or

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(c) the insurer had notified the person under subclause 5.1 of the Australian Privacy Principles in Schedule 1 to the *Privacy Act 1988* that information of that kind may be disclosed if the disclosure is authorised under an Australian law.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988*.

(2) A private health insurer may disclose the information under subsection (1) on the private health insurer's own initiative, or on request by the Chief Executive Medicare.

(3) If information is disclosed to the Chief Executive Medicare in accordance with subsection (1), the disclosure is taken to be an authorised disclosure for the purposes of section 323-1 of the *Private Health Insurance Act 2007*.

132E Breach of provision of this Part is an interference with privacy

A breach of a provision of this Part in relation to an individual constitutes an act or practice involving interference with the privacy of the individual for the purposes of section 13 of the *Privacy Act 1988*.

Note: The act or practice may be the subject of a complaint under section 36 of the *Privacy Act 1988*.

132F Data-matching principles

(1) The Minister must, by legislative instrument, make principles in relation to the matching of information under subsection 132B(1) by:

(a) the Chief Executive Medicare; and

(b) an authorised Commonwealth entity.

(2) Without limiting subsection (1), the principles must:

(a) require the Chief Executive Medicare to establish and maintain a publicly available register of the kinds of information matched by the Chief Executive Medicare or an authorised Commonwealth entity under subsection 132B(1); and

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(b) require the Chief Executive Medicare to keep records of information matched by the Chief Executive Medicare under subsection 132B(1); and

(c) require an authorised Commonwealth entity to keep records of information matched by the Commonwealth entity under subsection 132B(1); and

(d) require the Chief Executive Medicare and an authorised Commonwealth entity to take reasonable steps to destroy personal information that has been matched under subsection 132B(1) if the information is no longer needed for any purpose for which the information was matched; and

(e) require the Chief Executive Medicare and an authorised Commonwealth entity to take reasonable steps to ensure that personal information that is matched under subsection 132B(1) is accurate, complete and up to date; and

(f) require the Chief Executive Medicare and an authorised Commonwealth entity not to match information for a permitted purpose under subsection 132B(1) unless the Chief Executive Medicare is satisfied that the matching is reasonably necessary for that purpose.

(3) In making principles under subsection (1), the Minister must take into account the guidelines (if any) on data-matching in Australian Government administration made by the Information Commissioner under paragraph 28(1)(a) of the *Privacy Act 1988*.

2 After subsection 135A(5C)

Insert:

(5D) Notwithstanding anything in subsection (1), the Secretary or the Chief Executive Medicare may provide information to an authorised Commonwealth entity (within the meaning of Part VIIIA) for the purpose of facilitating the matching of that information by the Commonwealth entity under subsection 132B(1).

3 After subsection 135AA(5B)

Insert:

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(5C) Nothing in this section, or in the rules issued by the Information Commissioner, precludes the matching of information under subsection 132B(1) or the operation of Part VIIIA generally.

4 Application—information collected etc. before commencement

Section 132B of the *National Health Act 1953*, as inserted by this Part, applies in relation to information collected, accessed or obtained before, on or after the commencement of this item.

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Part 2—Other amendments

National Health Act 1953

5 At the end of section 6

Add:

(9) The Chief Executive Medicare may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Chief Executive Medicare, delegate to a person all or any of the Chief Executive Medicare's powers under this Act, the regulations or another legislative instrument under this Act, other than this power of delegation.

(10) A power so delegated under subsection (9), when exercised by the delegate, is, for the purposes of this Act, the regulations or another legislative instrument under this Act, taken to have been exercised by the Chief Executive Medicare.

(11) A delegate under subsection (9) is, in the exercise of a power so delegated, subject to the directions (if any) of the Chief Executive Medicare.

(12) A delegation under subsection (9) does not prevent the exercise of a power by the Chief Executive Medicare.

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Part 3—Consequential amendments

Health Insurance Act 1973

6 After subsection 130(5H)

Insert:

(5J) Notwithstanding anything contained in the preceding provisions of this section, a person may divulge information to a Commonwealth entity for the purpose of facilitating the matching of that information by the Commonwealth entity under subsection 132B(1) of the *National Health Act 1953*.

Privacy Act 1988

7 At the end of subsection 33C(1)

Add:

; (f) whether the matching of information under Part VIIIA of the *National Health Act 1953*, and the handling of information relating to that matching, is in accordance with that Part, including:

(i) any terms and conditions relating to the matching of the information determined by the Chief Executive Medicare under paragraph 132B(3)(a) of that Act; and

(ii) the principles made by the Minister under subsection 132F(1) of that Act.

Private Health Insurance Act 2007

8 At the end of section 323-1

Add:

Note: A disclosure in accordance with subsection 132D(1) of the *National Health Act 1953* is also taken to be an ***authorised disclosure*** for the purposes of this section: see subsection 132D(3) of the *National Health Act 1953*.

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Therapeutic Goods Act 1989

9 At the end of subsection 61(8)

Add:

Note: The Secretary may also disclose therapeutic goods information provided to the Department to the Chief Executive Medicare for the purpose of certain data-matching: see section 132C of the *National Health Act 1953*.

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Schedule 2—Other amendments

Part 1—Professional Services Review Scheme

Health Insurance Act 1973

1 Subsection 81(1)

Insert:

relevant DVA law means any of the following:

(a) the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*;

(b) Chapter 6 of the *Military Rehabilitation and Compensation Act 2004*;

(c) the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*;

(d) the *Treatment Benefits (Special Access) Act 2019;*

(e) Part V of the *Veterans' Entitlements Act 1986*;

(f) any other Commonwealth law prescribed by the regulations for the purposes of this paragraph.

2 Subsection 81(1) (after paragraph (b) of the definition of *service*)

Insert:

; or (c) a service that:

(i) has been rendered in connection with the provision of treatment under a relevant DVA law; and

(ii) is of a kind that, if the service had not been rendered in connection with the provision of treatment under the relevant DVA law, medicare benefit or dental benefit would have been payable in respect of the service.

3 Subsection 82(1)

After "initiating services", insert "(other than a service of a kind referred to in paragraph (c) of the definition of ***service*** in subsection 81(1))".

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4 After paragraph 92(2)(c)

Insert:

(ca) if an amount has been paid (whether or not to the person) for treatment under a relevant DVA law relating to services referred to in paragraph (1)(a)—that the person is to repay to the Commonwealth an amount equal to the whole or a specified part of the amount paid for the treatment;

(cb) that any amount for treatment under a relevant DVA law that would otherwise be payable for services referred to in paragraph (1)(a) is to cease to be payable;

5 At the end of subsection 92(4)

Add:

; and (f) if the agreement provides for the person under review to pay to the Commonwealth an amount equal to the whole or a specified part of the amount paid for treatment under a relevant DVA law and the amount or part of the amount is not paid—the unpaid amount is a debt due by the person to the Commonwealth and is recoverable by action in any court of competent jurisdiction.

6 After paragraph 106U(1)(cb)

Insert:

(d) that any amount for treatment under a relevant DVA law that would otherwise be payable for a service in the provision of which the person is stated in a report under section 106L to have engaged in inappropriate practice ceases to be payable;

(da) if an amount has been paid (whether or not to the person under review) for treatment under a relevant DVA law relating to a service:

(i) that was rendered or initiated by the person under review or an associated person; and

(ii) in connection with the rendering or initiation of which the person under review or an associated person is stated in a report under section 106L (other than a report based on a finding made under subsection 106K(2) or 106KB(3)) to have engaged in inappropriate practice;

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that the person under review repay to the Commonwealth the whole or a part of the amount paid for that service;

7 Application

The amendments of the *Health Insurance Act 1973* made by this Part apply in relation to services provided on or after the commencement of this item.

Military Rehabilitation and Compensation Act 2004

8 Subsection 409(2) (after table item 2A)

Insert:

2B	The Secretary of the Health Department	A purpose of the Health Department
2C	The Chief Executive Medicare (within the meaning of the *Human Services (Medicare) Act 1973*)	A purpose relating to the exercise of the Chief Executive Medicare's powers or the performance of the Chief Executive Medicare's functions

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Part 2—Other amendments

Health Insurance Act 1973

9 Before paragraph 129AEF(1)(a)

Insert:

(aaa) an unpaid amount under paragraph 92(4)(e) or (f);

[*Minister's second reading speech made in—*
House of Representatives on 23 October 2019
Senate on 2 December 2019]

(211/19)

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