



# Healthcare Identifiers Regulations 2010<sup>1</sup>

## Select Legislative Instrument 2010 No.

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I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Healthcare Identifiers Act 2010*.

Dated 2010

Governor-General

By Her Excellency's Command

**[DRAFT ONLY – NOT FOR SIGNATURE]**

Minister for Health and Ageing

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**CONSULTATION DRAFT ONLY**

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### 1 Name of Regulations

These Regulations are the *Healthcare Identifiers Regulations 2010*.

### 2 Commencement

These Regulations commence on 1 July 2010.

### 3 Definitions

In these Regulations:

*Act* means the *Healthcare Identifiers Act 2010*.

*healthcare provider organisation* means an entity, or part of an entity, mentioned in paragraph (b) of the definition of *healthcare provider* in section 5 of the Act.

***individual healthcare identifier*** means the type of healthcare identifier mentioned in paragraph 9 (3) (c) of the Act.

***individual healthcare provider*** means an individual mentioned in paragraph (a) of the definition of ***healthcare provider*** in section 5 of the Act.

***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 law of the State or Territory;
- (b) for Western Australia — the legislation enacted by the *Health Practitioner Regulation National Law (WA) Act 2010* that corresponds to the Health Practitioner Regulation National Law.

*Note* See the Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions made on 26 March 2008.

***organisation maintenance officer*** has the meaning given by paragraph 6 (1) (c).

***professional association*** means an organisation that:

- (a) is a separate legal entity under a law of the Commonwealth or a State or Territory; and
- (b) has the following characteristics:
  - (i) its members practise the same healthcare profession;
  - (ii) it has enough membership to be considered representative of the healthcare profession practised by its members;
  - (iii) it sets its own admission requirements, including acceptable qualifications;
  - (iv) it sets standards of practice and ethical conduct;
  - (v) it aims to maintain the standing of the healthcare profession practised by its members;
  - (vi) it has written rules, articles of association, by-laws or codes of conduct for its members;
  - (vii) it has the ability to impose sanctions on members who contravene the association's written rules, articles of association, by-laws or codes of conduct;

- (viii) it sets requirements to maintain its members' professional skills and knowledge by continuing professional development; and
- (c) has members who:
  - (i) may take part in decisions affecting their profession; and
  - (ii) have the right to vote at meetings of the association; and
  - (iii) have the right to be recognised as being a member of the professional association.

*responsible officer* has the meaning given by paragraph 6 (1) (b).

*sole practitioner* means a person who is both an individual healthcare provider and a healthcare provider organisation.

#### **4 National registration authorities**

For section 8 of the Act, each of the following registration authorities is a *national registration authority*:

- (a) a National Health Practitioner Board established by the National Law;
- (b) if it is authorised under the National Law to assign healthcare identifiers to healthcare providers — the Australian Health Practitioner Regulation Agency established by the National Law.

*Note* National Health Practitioner Boards and the Australian Health Practitioner Regulation Agency are expected to be established by all States and Territories under the National Law.

#### **5 Classes of healthcare providers — individuals**

For paragraph 9 (1) (a) of the Act, each of the following is a class of healthcare provider:

- (a) individual healthcare providers who are registered by a registration authority as members of a health profession;
- (b) individual healthcare providers who are members of a professional association that:
  - (i) relates to the healthcare that has been, is, or is to be provided by the members; and

- (ii) has uniform national membership requirements, whether or not in legislation.

## 6 Class of healthcare provider — organisations

- (1) For paragraph 9(1)(a) of the Act, a class of healthcare providers is healthcare provider organisations each of which has:
  - (a) an employee who:
    - (i) is an identified healthcare provider; and
    - (ii) provides healthcare as part of his or her duties; and
  - (b) only 1 employee (a *responsible officer*) to act on behalf of the organisation in its dealings with the service operator; and
  - (c) an employee (an *organisation maintenance officer*) to maintain information about the healthcare provider organisation that is held by the service operator, and to provide any further information about the healthcare provider organisation that is requested by the service operator.

*Note* More than 1 employee may be an organisation maintenance officer. An employee may be the responsible officer and the organisation maintenance officer for a healthcare provider organisation.

- (2) However, a sole practitioner is in the class of healthcare providers mentioned in subregulation (1) if he or she provides healthcare and performs the roles of responsible officer and organisation maintenance officer.

## 7 Information that may be requested before assigning healthcare identifiers

- (1) For subsection 9(5) of the Act, the service operator or a national registration authority may ask an individual healthcare provider for the following information before assigning the healthcare provider a healthcare identifier:
  - (a) identifying information about the individual healthcare provider;
  - (b) information that shows that the healthcare provider is in a class of healthcare provider mentioned in regulation 5.

## Regulation 8

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*Note* **Identifying information** is defined in section 7 of the Act. Regulation 8 prescribes additional identifying information for individual healthcare providers and healthcare provider organisations.

- (2) For subsection 9 (5) of the Act, the service operator may ask a healthcare provider organisation for the following information:
  - (a) identifying information about the healthcare provider organisation;
  - (b) information that shows that the healthcare provider organisation is in the class of healthcare provider mentioned in regulation 6;
  - (c) information identifying its responsible officer and organisation maintenance officer, including the person's name, work address, work email address, work phone number or work fax number.
- (3) The healthcare provider must give the information in any form asked for by the service operator or national registration authority.

*Example*

A healthcare provider may be asked for original documentation, or for the information to be given in writing or in a statutory declaration.

- (4) If the information given does not satisfy the body that asked for the information, that body does not have to assign a healthcare identifier to the healthcare provider.

## 8 Identifying information

- (1) For paragraph 7 (1) (g) of the Act, each of the following is identifying information:
  - (a) an e-mail address;
  - (b) a phone number;
  - (c) a fax number;
  - (d) a work address.
- (2) For paragraph 7 (2) (e) of the Act, each of the following is identifying information:
  - (a) an e-mail address;
  - (b) a phone number;
  - (c) a fax number.

## 9 Information that may be requested after assigning healthcare identifiers

- (1) This regulation applies to a person:
  - (a) who is any of the following:
    - (i) an identified healthcare provider organisation;
    - (ii) a partner in a partnership that is a healthcare provider organisation;
    - (iii) a trustee of a trust that is a healthcare provider organisation;
    - (iv) an office holder of an unincorporated association or body that is a healthcare provider organisation;
    - (v) an identified individual healthcare provider who is not regulated under the National Law; and
  - (b) for whom the entity mentioned in paragraph (a) that applies to the person is assigned a healthcare identifier by the service operator.
- (2) For section 14 of the Act, the person must tell the service operator about:
  - (a) any change of circumstances, including any change to the identifying information of the healthcare provider, that removes it from a class of healthcare provider mentioned in regulation 5 or 6; and
  - (b) any change to the identifying information of the healthcare provider other than a change mentioned in paragraph (a).
- (3) For subregulation (2), the identified healthcare provider must tell the service operator of the change of circumstances within 14 days after the healthcare provider becomes aware of the change of circumstances.
- (4) It is an offence for a person not to comply with paragraph (2) (a).

Penalty: 50 penalty units.

*Note* A healthcare provider regulated under the National Law must tell the national registration authority of specified relevant events and changes of circumstances — see National Law.

**10 Rules about the disclosure of healthcare identifiers by the service operator**

- (1) For section 21 of the Act, a healthcare provider or an employee of a healthcare provider organisation may request the service operator to disclose an individual healthcare identifier to the person making the request only if:
- (a) the healthcare provider or healthcare provider organisation is an identified healthcare provider; and
  - (b) the person making the request provides healthcare or has duties in relation to its provision; and
  - (c) the healthcare identifier is to be used or disclosed by the healthcare provider or healthcare provider organisation to manage or communicate information supporting the provision of healthcare.

*Note* The service operator is authorised to disclose a healthcare identifier only to an identified healthcare provider or an authorised employee of an identified healthcare provider — see Act s 17.

- (2) It is an offence for a healthcare provider to make a request under subregulation (1) if paragraphs (1) (a) to (1) (c) do not apply to the healthcare provider.

Penalty: 50 penalty units.

- (3) An individual healthcare provider who ceases to be in the class of healthcare providers mentioned in regulation 5, or to be registered under the National Law, must not make a request under subregulation (1).

Penalty: 50 penalty units.

- (4) A sole practitioner who ceases to be in the class of healthcare providers mentioned in regulation 6 must not make a request under subregulation (1).

Penalty: 50 penalty units.

- (5) Subregulations (6), (7) and (9) apply to the following persons:

- (a) a healthcare provider organisation;
- (b) a partner in a partnership that is a healthcare provider organisation;

- (c) a trustee of a trust that is a healthcare provider organisation;
  - (d) an office holder of an unincorporated association or body that is a healthcare provider organisation.
- (6) A person mentioned in subregulation (5) commits an offence if:
- (a) the healthcare provider organisation is in the class of healthcare providers mentioned in regulation 6; and
  - (b) an employee of the healthcare provider organisation makes a request under subregulation (1); and
  - (c) the person has not taken reasonable steps to ensure that the requirements of paragraphs (1) (a) to (c) have been met.

Penalty: 50 penalty units.

- (7) A person mentioned in subregulation (5) commits an offence if the healthcare provider organisation has not taken reasonable steps to ensure that only authorised employees make requests under subregulation (1).

Penalty: 50 penalty units.

- (8) For section 21 of the Act, a healthcare provider organisation that asks the service operator to disclose a healthcare identifier must:
- (a) maintain a retrievable record of each person the provider has authorised to access healthcare identifiers from the service operator, including each person's name, designation and dates of employment with the provider, for the time the person is authorised and for 7 years starting on the day after the person ceased to be authorised; and
  - (b) ensure that information it exchanges with, or receives from, the service operator is kept secure so that it is not accessed, modified or disclosed to or by unauthorised persons; and
  - (c) ensure that the service operator always has the current names and contact details of the provider's responsible officer and organisation maintenance officer; and

- (d) ensure its responsible officer, organisation maintenance officer and any other person authorised to access disclosed healthcare identifiers, are aware of their obligations under the Act and these Regulations.

*Note 1* A healthcare provider organisation must also comply with section 27 of the Act in relation to the protection of healthcare identifiers. All healthcare providers must comply with the *Privacy Act 1988* in relation to the protection of **health information** as defined in section 6 of that Act, or with equivalent State or Territory legislation, to the extent that it applies to them.

*Note 2* A breach of the regulations in relation to the healthcare identifier of an individual is taken to be an interference with the privacy of the individual for the purposes of the *Privacy Act 1988*. The act or practice may be the subject of a complaint to the Privacy Commissioner under section 36 of that Act — see Act s 29 (1).

- (9) It is an offence for a person mentioned in subregulation (5) not to take reasonable steps to ensure that a healthcare provider organisation complies with subregulation (8).

Penalty: 50 penalty units.

## 11 Information that may be requested after disclosure of healthcare identifiers

- (1) For section 22 of the Act, a healthcare provider must comply with a written request by the service operator for information that is sufficient to identify a person who accessed, from the service operator, a healthcare identifier for the healthcare provider.
- (2) For subregulation (1):  
**information** includes the name, position and period of time that the person was authorised by the healthcare provider to access healthcare identifiers.
- (3) Subregulation (4) applies to the following persons:
- (a) a person who is the healthcare provider organisation;
  - (b) a partner in a partnership that is the healthcare provider organisation;
  - (c) a trustee of a trust that is the healthcare provider organisation;

- (d) an office holder of an unincorporated association or body that is the healthcare provider organisation.
- (4) It is an offence for a healthcare provider not to give the information mentioned in subregulation (1):
- (a) in writing if requested by the service operator; and
  - (b) within 14 days after receiving the request.
- Penalty: 50 penalty units.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.