

EXPOSURE DRAFT

2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Health Legislation Amendment (Data-matching) Bill 2019

No. , 2019

(Health)

**A Bill for an Act to amend the law relating to
health, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **health, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Health Legislation Amendment (Data-matching)*
6 *Act 2019*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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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.	

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

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

7 **3 Schedules**

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9 repealed as set out in the applicable items in the Schedule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

1 **Schedule 1—Amendments**

2 **Part 1—Data-matching**

3 *National Health Act 1953*

4 **1 At the end of section 6**

5 Add:

- 6 (9) The Chief Executive Medicare may, either generally or as
7 otherwise provided by the instrument of delegation, by writing
8 signed by the Chief Executive Medicare, delegate to a person all or
9 any of the Chief Executive Medicare’s powers under this Act, the
10 regulations or another legislative instrument under this Act, other
11 than this power of delegation.
- 12 (10) A power so delegated under subsection (9), when exercised by the
13 delegate, shall, for the purposes of this Act, the regulations or
14 another legislative instrument under this Act, be deemed to have
15 been exercised by the Chief Executive Medicare.
- 16 (11) A delegate under subsection (9) is, in the exercise of a power so
17 delegated, subject to the directions (if any) of the Chief Executive
18 Medicare.
- 19 (12) A delegation under subsection (9) does not prevent the exercise of
20 a power by the Chief Executive Medicare.

21 **2 After Part VIII**

22 Insert:

23 **Part VIIIA—Data-matching**

24
25 **132A Definitions**

26 In this Part:

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

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Schedule 1 Amendments

Part 1 Data-matching

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

3 **Health Practitioner Regulation National Law** means:

- 4 (a) for a State or Territory other than Western Australia—the
5 Health Practitioner Regulation National Law set out in the
6 Schedule to the *Health Practitioner Regulation National Law*
7 *Act 2009* (Qld), as it applies (with or without modification) as
8 a law of the State or Territory; or
9 (b) for Western Australia—the *Health Practitioner Regulation*
10 *National Law (WA) Act 2010* (WA), so far as that Act
11 corresponds to the Health Practitioner Regulation National
12 Law set out in the Schedule to the *Health Practitioner*
13 *Regulation National Law Act 2009* (Qld).

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

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

- 18 (a) identifying whether a person may have, under a medicare
19 program, claimed or been paid a benefit that exceeds the
20 amount of the benefit that was payable to the person;
21 (b) recovering overpayments of benefits under a medicare
22 program;
23 (c) detecting or investigating contraventions of a law of the
24 Commonwealth relating to a medicare program;
25 (d) detecting or investigating whether a person may have
26 engaged in inappropriate practice;
27 (e) analysing services, benefits, programs or facilities that are
28 provided for under a medicare program in relation to the
29 purposes mentioned in paragraphs (a) to (d);
30 (f) educating healthcare providers about medicare program
31 requirements.

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

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Amendments **Schedule 1**
Data-matching **Part 1**

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 purposes 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 of a State or Territory;
 - (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 has been collected for the purposes of 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 purposes 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*.

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Schedule 1 Amendments

Part 1 Data-matching

1

Data-matching on behalf of the Chief Executive Medicare

2

- (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.

3

4

5

6

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

7

8

- (3) The Commonwealth entity must:

9

(a) comply with:

10

(ii) any other terms and conditions relating to the matching of the information that are determined, in writing, by the Chief Executive Medicare; and

11

12

13

(b) only disclose the results of the matching to:

14

(i) the Chief Executive Medicare; or

15

(ii) a person authorised, in writing, by the Chief Executive Medicare.

16

17

- (4) An authorisation under subparagraph (3)(b)(ii) may be subject to such terms and conditions as are determined, in writing, by the Chief Executive Medicare.

18

19

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

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

23

24

25

26

27

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

28

29

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

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Amendments **Schedule 1**
Data-matching **Part 1**

1 **132D Private health insurer may disclose information about hospital**
2 **or general treatment to the Chief Executive Medicare**

- 3 (1) A private health insurer may disclose to the Chief Executive
4 Medicare information relating to hospital treatment or general
5 treatment for the purposes of facilitating the matching of that
6 information under subsection 132B(1).

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

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

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

16 **132E Breach of provision of this Part is an interference with privacy**

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

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

23 **132F Systems and processes to ensure compliance with this Part**

- 24 (1) The Chief Executive Medicare must:
25 (a) establish and maintain systems and processes to ensure that:
26 (i) the matching of information by the Chief Executive
27 Medicare under subsection 132B(1) complies with this
28 Part; and
29 (ii) the matching of information by a Commonwealth entity
30 that is authorised by the Chief Executive Medicare
31 under subsection 132B(2) complies with this Part; and
32 (b) make and keep records of:
33 (i) the systems and processes; and
-

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Schedule 1 Amendments

Part 1 Data-matching

- 1 (ii) any decisions taken under, or in relation to, the systems
2 and processes.
- 3 (2) Without limiting subsection (1), the systems and processes must
4 include the following:
- 5 (a) systems and processes for ensuring that only information that
6 is reasonably necessary for the purpose for which the
7 information is to be matched under section 132B is so
8 matched;
- 9 (b) record-keeping systems and processes that apply in relation
10 to the matching of information under section 132B;
- 11 (c) systems and processes for ensuring that information that is
12 matched under section 132B is accurate, up to date and
13 complete;
- 14 (d) systems and processes for when and how information that is
15 matched under section 132B, and the results of the matching
16 of that information, are to be destroyed;
- 17 (e) systems and processes for establishing and maintaining a
18 publicly available register of the matching of information
19 under section 132B.
- 20 (3) Before establishing the systems and process under subsection (1),
21 the Chief Executive Medicare must consult the Information
22 Commissioner.
- 23 (4) A system or process under subsection (1) is not a legislative
24 instrument.

8 After subsection 135A(5C)

25 Insert:

- 26 (5D) Notwithstanding anything in subsection (1), the Secretary or the
27 Chief Executive Medicare may provide information to a
28 Commonwealth entity for the purposes of facilitating the matching
29 of that information by the Commonwealth entity under
30 subsection 132B(2).
31

9 After subsection 135AA(5B)

32 Insert:
33

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Amendments **Schedule 1**
Data-matching **Part 1**

1 (5C) Nothing in this section, or in the rules issued by the Information
2 Commissioner, precludes the matching of information under
3 section 132B.

4 **10 Application—information collected etc. before**
5 **commencement**

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

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Schedule 1 Amendments
Part 2 Other amendments

1 **Part 2—Other amendments**

2 ***Health Insurance Act 1973***

3 **12B Subsection 81(1)**

4 Insert:

5 ***relevant DVA law*** means any of the following:

- 6 (a) the *Australian Participants in British Nuclear Tests and*
7 *British Commonwealth Occupation Force (Treatment) Act*
8 *2006*;
- 9 (b) Chapter 6 of the *Military Rehabilitation and Compensation*
10 *Act 2004*;
- 11 (c) the *Safety, Rehabilitation and Compensation*
12 *(Defence-related Claims) Act 1988*;
- 13 (d) the *Treatment Benefits (Special Access) Act 2019*;
- 14 (e) Part V of the *Veterans' Entitlements Act 1986*.

15 **13 Subsection 81(1) (after paragraph (b) of the definition of**
16 ***service*)**

17 Insert:

18 ; or (c) a service that:

- 19 (i) has been rendered in connection with the provision of
20 treatment under a relevant DVA law; and
- 21 (ii) is of a kind that, if the service had not been rendered in
22 connection with the provision of treatment under the
23 relevant DVA law, medicare benefit or dental benefit
24 would have been payable in respect of the service.

25 **13A Subsection 82(1)**

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

29 **14 After paragraph 92(2)(c)**

30 Insert:

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Amendments **Schedule 1**
Other amendments **Part 2**

- 1 (ca) if an amount has been paid (whether or not to the person) for
2 treatment under a relevant DVA law relating to services
3 referred to in paragraph (1)(a)—that the person is to repay to
4 the Commonwealth an amount equal to the whole or a
5 specified part of the amount paid for the treatment;
- 6 (cb) that any amount for treatment under a relevant DVA law that
7 would otherwise be payable for services referred to in
8 paragraph (1)(a) is to cease to be payable;

9 **15 At the end of subsection 92(4)**

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

18 **16 After paragraph 106U(1)(cb)**

- 19 Insert:
- 20 (d) that any amount for treatment under a relevant DVA law that
21 would otherwise be payable for a service in the provision of
22 which the person is stated in a report under section 106L to
23 have engaged in inappropriate practice ceases to be payable;
- 24 (da) if an amount has been paid (whether or not to the person
25 under review) for treatment under a relevant DVA law
26 relating to a service:
- 27 (i) that was rendered or initiated by the person under
28 review or an associated person; and
- 29 (ii) in connection with the rendering or initiation of which
30 the person under review or an associated person is
31 stated in a report under section 106L (other than a report
32 based on a finding made under subsection 106K(2) or
33 106KB(3)) to have engaged in inappropriate practice;
- 34 that the person under review repay to the Commonwealth the
35 whole or a part of the amount paid for that service;

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Schedule 1 Amendments

Part 2 Other amendments

- 1 (db) if an amount has been paid (whether or not to the person
2 under review) for treatment under a relevant DVA law
3 relating to a class of services:
4 (i) that were rendered or initiated by the person under
5 review or an associated person; and
6 (ii) in connection with the rendering or initiation of which,
7 or of a proportion of which, the person under review or
8 an associated person is stated in a report under
9 section 106L, based on a finding made under
10 subsection 106K(2), to have engaged in inappropriate
11 practice;
12 that the person under review repay to the Commonwealth the
13 whole or a part of the amount paid for the services or that
14 proportion of the services, as the case may be;

15 **17 After subsection 106U(1A)**

16 Insert:

- 17 (1B) For the purposes of paragraph (1)(db), it is to be assumed that all
18 the amounts that were paid for services in the class of services
19 referred to in that paragraph were paid at the lowest rate that was
20 payable for any of the services included in the relevant class.

21 **18 After subsection 130(5H)**

22 Insert:

- 23 (5J) Notwithstanding anything contained in the preceding provisions of
24 this section, a person may divulge information to a Commonwealth
25 entity for the purposes of facilitating the matching of that
26 information by the Commonwealth entity under
27 subsection 132B(2) of the *National Health Act 1953*.

28 **22 Application**

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

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Amendments **Schedule 1**
Other amendments **Part 2**

1 ***Military Rehabilitation and Compensation Act 2004***

2 **23A Subsection 409(2) (after table item 2A)**

3 Insert:

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- | | | |
|----|---|--|
| 2B | The Secretary of the Health Department | A purpose of the Health Department |
| 2C | The Chief Executive Medicare (within the meaning of the <i>Human Services (Medicare) Act 1973</i>) | 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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Schedule 2 Consequential amendments

1 **Schedule 2—Consequential amendments**
2

3 ***Privacy Act 1988***

4 **4 Subsection 13(5) (note)**

5 After “the *Anti-Money Laundering and Counter-Terrorism Financing*
6 *Act 2006*”, insert “, the *National Health Act 1953*”.

7 **5 At the end of subsection 33C(1)**

8 Add:

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

12 (i) the systems and processes established by the Chief
13 Executive Medicare under section 132F of that Act; and

14 (ii) if the matching of information is by a Commonwealth
15 entity that is authorised by the Chief Executive
16 Medicare under subsection 132B(2) of that Act—the
17 terms and conditions on the matching of the information
18 that are determined by the Chief Executive Medicare
19 under subsection 132B(3) of that Act.

20 ***Private Health Insurance Act 2007***

21 **6 At the end of section 323-1**

22 Add:

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

27 ***Therapeutic Goods Act 1989***

28 **7 At the end of subsection 61(8)**

29 Add:

30 Note: The Secretary may also disclose therapeutic goods information
31 provided to the Department to the Chief Executive Medicare for the

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Consequential amendments **Schedule 2**

1
2

purposes of certain data-matching: see section 132C of the *National Health Act 1953*.

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