

## EXPLANATORY STATEMENT

*National Health Security Act 2007*

### ***National Health Security (Responsible Bodies) Amendment Determination 2020***

Part 2 of the *National Health Security Act 2007* (the Act) provides for protected information to be passed between the National Focal Point (NFP), established within the Office of Health Protection in the Department of Health, and responsible Commonwealth, State or Territory bodies that are determined by the *National Health Security (Responsible Bodies) Determination 2008* (Principal Determination).

Under subsection 3(2) of the Act, the Minister may determine, by legislative instrument, one or more bodies nominated by a State or Territory Health Minister, and one or more Commonwealth bodies, to be a 'responsible Commonwealth, State or Territory body' for the purposes of Part 2 of the Act. Part 2 of the Act deals with public health surveillance.

The purpose of the *National Health Security (Responsible Bodies) Determination 2020* (Amending Instrument) is to amend the Principal Determination to update the list of responsible bodies in Schedule 1 to the Principal Determination.

### **Background**

Part 2 of the Act aims to:

- provide for the exchange of public health surveillance information between the Commonwealth and other jurisdictions and with the World Health Organization (WHO) to enhance the early identification of, and timely responses to, public health events of national or international significance; and
- enhance Australia's compliance with the International Health Regulations 2005 (IHR), which aim to prevent, protect against, control and provide a public health response to the international spread of disease in ways which avoid unnecessary interference with international trade and traffic.

Part 2 of the Act authorises the disclosure of protected information, including personal information, for public health surveillance purposes when required to support an effective national or international response. It sets out the permissible purposes for which information may be collected and provides authority for disclosure of the information in certain circumstances.

- Protected information is defined in section 18 of the Act.
- Personal information has the same meaning as in the *Privacy Act 1988*.
- Permissible purposes is defined in section 8 of the Act.

Part 2 enables the establishment of a NFP to liaise with Commonwealth, State and Territory bodies in relation to public health events of national significance and for the purposes of giving effect to the IHR, and to liaise with and be accessible at all times to the WHO and other countries. The NFP operates from the National Incident Room, located in the Office of Health Protection within the Department of Health in Canberra.

Part 2 also provides for protected information to be passed between the NFP and a responsible Commonwealth, State or Territory body. These responsible bodies are government agencies that have been nominated by each State and Territory Health Minister,

and Commonwealth government agencies, each of which has been identified as an agency with which the NFP and the Minister can share protected information, including personal information, when required for a permissible purpose under the Act.

A ‘State or Territory Health Minister’ means a Minister of a State, or the Northern Territory, or the Australian Capital Territory (ACT), who is responsible, or principally responsible, for the administration of matters relating to health in the State, the Northern Territory, or the ACT (Definitions, section 3 of the Act).

The Act requires the Department of Health to include in its Annual Report a report on the use of protected information (within the meaning of section 18) by the Commonwealth.

## **Consultation**

Consultation occurred with each State and Territory Health Minister in relation to which responsible bodies should be included in the Principal Determination. Nominations were received from the Health Ministers of each State and Territory of agencies within each jurisdiction to be determined as a responsible body for the purposes of Part 2 of the Act.

The changes relating to Commonwealth bodies are minor and mechanical, to reflect changes due to Administrative Arrangements Orders changes, and in place due to the *Acts Interpretation Act 1901*. The Principal Determination is updated for ease of reading.

The Amending Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Instrument commences on the day after it is registered on the Federal Register of Legislation.

A provision by provision description of the Amending Instrument is contained in the Attachment.

***National Health Security (Responsible Bodies) Amendment Determination 2020***

**1 Name**

Section 1 provides for the Amending Instrument to be referred to as the *National Health Security (Responsible Bodies) Amendment Determination 2020*.

**2 Commencement**

Section 2 provides that the Amending Instrument commences the day after it is registered.

**3 Authority**

Section 3 provides that the Amending Instrument is made under subsection 3(2) of the *National Health Security Act 2007*.

**4 Schedules**

Section 4 provides that each instrument that is specified in a Schedule to this Amending Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Amending Instrument has effect according to its terms.

**Schedule 1 – Amendments**

Schedule 1 of the Amending Instrument repeals the list of Commonwealth, and State and Territory responsible bodies in the Principal Determination and substitutes it with an updated list of responsible bodies.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **National Health Security (Responsible Bodies) Amendment Determination 2020**

The Amending Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Amending Instrument updates the list of responsible bodies in Schedule 1 to the Principal Determination for the purposes of Part 2 of the Act.

#### **Human rights implications**

The Amending Instrument engages and is consistent with Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by assisting with the progressive realisation by all appropriate means of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including steps necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases.

The Amending Instrument assists to protect public health in Australia by assisting with the exchange of information, including personal information, to support public health surveillance. The movement of information between State, Territory and Commonwealth bodies, facilitated by the National Focal Point, improves the coordination of public health surveillance information and responses to public health events of national or international significance. The Amending Instrument also supports Australia's relationship with the World Health Organization, and compliance with the International Health Regulations 2005.

The Amending Instrument engages and is consistent with the right to privacy contained in Article 17 of the International Covenant on Civil and Political Rights (ICCPR), related to protection from arbitrary or unlawful interference with privacy.

The Act provides for certain information to be protected information, with an associated offence provision. The Act permits the lawful sharing of personal information to support public health surveillance. The Act ensures that the impact on individual privacy is not arbitrary, and is proportionate to the protection of public health.

The Act also requires the Department of Health to include in its Annual Report a report on the use of protected information (within the meaning of section 18) by the Commonwealth.

#### **Conclusion**

This Amending Instrument is compatible with Article 12 of the ICESCR and Article 17 of the ICCPR as it promotes the human right to the enjoyment of the highest attainable standard of physical and mental health, and is consistent with the right to privacy.

**Greg Hunt**  
**Minister for Health**