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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Australian Immunisation Register Bill 2015

No. , 2015

(Health)

**A Bill for an Act to establish and provide for an
immunisation register, and for related purposes**

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A Bill for an Act to establish and provide for an immunisation register, and for related purposes

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Australian Immunisation Register Act 2015*.

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.

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	1 January 2016.	1 January 2016

Note: This table relates only to the provisions of this Act as originally enacted.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 Simplified outline of this Act

This Act establishes a register of information about vaccinations.

The purposes of the register relate to:

- (a) supporting vaccination programs for young individuals; and
- (b) vaccination matters more broadly.

Sensitive information in the register is protected.

4 Definitions

In this Act:

ACI register means the Australian Childhood Immunisation Register.

approved form means a form approved under subsection 29(1).

arrangement includes a contract or deed.

Chief Executive Medicare has the same meaning as in the *Human Services (Medicare) Act 1973*.

commercial-in-confidence has the meaning given by section 5.

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family assistance has the same meaning as in the *A New Tax System (Family Assistance) Act 1999*.

general practitioner has the same meaning as in the *Health Insurance Act 1973*.

parent: without limiting who is a parent of anyone for the purposes of this Act, a person is the **parent** of another person if the other person is a child of the person within the meaning of the *Family Law Act 1975*.

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

prescribed body means a person prescribed by the rules for the purposes of this definition.

protected information means personal information, relevant identifying information or information that is commercial-in-confidence, to the extent that this information:

- (a) is obtained under, or in accordance with, this Act; or
- (b) is derived from a record of information that was made under, or in accordance with, this Act; or
- (c) is derived from a disclosure or use of information that was made under, or in accordance with, this Act.

purposes of the ACI register means the purposes set out in section 10.

recognised vaccination provider means:

- (a) a general practitioner; or
- (b) an individual, or body, endorsed to administer vaccines in Australia, if the endorsement:
 - (i) is for purposes that include the purposes of the ACI register; and
 - (ii) is by the Commonwealth, a State or a Territory.

relevant identifying information for an individual means the following:

- (a) the individual's name, contact details, date of birth, gender and Indigenous status;

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- (b) the individual's medicare number (within the meaning of Part VII of the *National Health Act 1953*) (if any);
- (c) the individual's healthcare identifier (within the meaning of the *Healthcare Identifiers Act 2010*) (if any);
- (d) the name and contact details of a parent or guardian of the individual if the individual is incapable of managing his or her health affairs;
- (e) any other information of a kind prescribed by the rules for the purposes of this definition that identifies the individual.

relevant vaccination means a vaccination administered:

- (a) in Australia; or
- (b) outside Australia, if information about the vaccination is given to a recognised vaccination provider.

rules means the rules made under section 31.

vaccine preventable disease means a disease listed as a vaccine preventable disease in the latest edition of the Australian Immunisation Handbook published by the Government Printer.

Note: The Handbook could in 2015 be viewed on the Department's website (<http://www.immunise.health.gov.au/internet/immunise/publishing.nsf/Content/Handbook10-home>).

young individual means an individual under the age of 20 years.

5 Meaning of *commercial-in-confidence*

Information is **commercial-in-confidence** if a person demonstrates to the Minister that:

- (a) release of the information would cause competitive detriment to the person; and
- (b) the information is not in the public domain; and
- (c) the information is not required to be disclosed under a law of the Commonwealth, or of a State or Territory; and
- (d) the information is not readily discoverable.

6 Act binds the Crown

This Act binds the Crown in each of its capacities. However, it does not make the Crown liable to be prosecuted for an offence.

Part 2—Australian Childhood Immunisation Register

Division 1—Simplified outline

7 Simplified outline of this Part

The Australian Childhood Immunisation Register is established to keep information about vaccinations of young individuals.

The purposes of the register relate to:

- (a) supporting vaccination programs for young individuals;
and
- (b) vaccination matters more broadly.

Individuals can opt out from receiving certain information from the register. They can also request for their information in the register not to be disclosed for certain purposes.

Payments relating to vaccinations may be made on behalf of the Commonwealth.

Division 2—Establishment, contents and purposes

8 Establishment of the register

- (1) The Commonwealth must establish and keep a register to be called the Australian Childhood Immunisation Register.
- (2) Parts of the register may be kept separate from each other.
- (3) The register is not a legislative instrument.

9 Contents of the register

The ACI register may include the following:

- (a) relevant identifying information for each young individual who has, or could have, a relevant vaccination;
- (b) information about each of those vaccinations, including:
 - (i) the day of the vaccination; and
 - (ii) information about the vaccine administered; and
 - (iii) if the vaccine was administered in Australia—the name and contact details of the recognised vaccination provider who administered the vaccine; and
 - (iv) if the vaccine was administered outside Australia—the name and contact details of the recognised vaccination provider who has been given information about the vaccination;
- (c) relevant identifying information for each young individual who is assessed by a general practitioner as:
 - (i) not requiring a vaccination because the young individual has contracted a disease or diseases, and as a result has developed a natural immunity; or
 - (ii) having a medical contraindication to a vaccine, and as a result should not receive a vaccination;
- (d) information about each of those assessments, including:
 - (i) the day of the assessment; and
 - (ii) information about the vaccine relevant to the assessment; and

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- (iii) the name and contact details of the general practitioner who conducted the assessment;
- (e) other information relating to vaccinations of young individuals.

10 Purposes of the register

- (1) The purposes of the ACI register are to facilitate the following:
 - (a) establishing and keeping an electronic database of records relating to vaccinations of young individuals;
 - (b) collecting, analysing and publishing statistics, and other information, about vaccination coverage across Australia and parts of Australia;
 - (c) monitoring vaccination coverage across Australia and parts of Australia;
 - (d) monitoring the effectiveness of vaccines and vaccination programs in preventing vaccine preventable diseases;
 - (e) identifying any parts of Australia at risk during disease outbreaks because of the number of unvaccinated young individuals in those parts;
 - (f) checking a young individual's vaccination status by that individual or by a recognised vaccination provider;
 - (g) checking a young individual's vaccination status:
 - (i) by (or on behalf of) the Commonwealth; and
 - (ii) to the extent that this is necessary for determining eligibility for family assistance;
 - (h) advising a young individual when he or she is, or was, due to receive doses of a vaccine;
 - (i) certifying when a course of vaccination has been completed;
 - (j) promoting young individuals' health and well-being by giving information on new developments associated with vaccinations to them and to recognised vaccination providers;
 - (k) payments relating to vaccinations;
 - (l) research relating to vaccinations;
 - (m) anything incidental to any of the above paragraphs.
- (2) For a young individual who is incapable of managing his or her health affairs:

- (a) paragraph (1)(f) also applies to checking of the young individual's vaccination status by a parent or guardian of the young individual; and
- (b) paragraphs (1)(h), (i) and (j) also apply to advising, or giving a certificate or information to, a parent or guardian of the young individual.

Division 3—Requests about personal information in the register

11 Requests about personal information in the register

- (1) An individual may, in the approved form, request that the individual not be given by (or on behalf of) the Commonwealth:
- (a) any advice of a kind referred to in paragraph 10(1)(h); or
 - (b) any certification of a kind referred to in paragraph 10(1)(i); or
 - (c) any information of a kind referred to in paragraph 10(1)(j).

Note: The request could be made by a parent or guardian of a young individual who is incapable of managing his or her health affairs (see subsection 10(2)).

- (2) An individual may, in the approved form, request that personal information on the ACI register relating to or identifying:
- (a) the individual; or
 - (b) if the individual is a parent or guardian of a young individual who is incapable of managing his or her health affairs—that young individual;
- not be disclosed from the ACI register for one or more purposes of the ACI register.
- (3) The Commonwealth must comply with a request under this section as soon as practicable.

Division 4—Payments relating to the register

12 Payments relating to vaccinations

- (1) The Minister may, on behalf of the Commonwealth, make a payment to a recognised vaccination provider in relation to:
 - (a) the provider's administrative costs incurred in providing information for inclusion in the ACI register; or
 - (b) the provider:
 - (i) identifying a young individual who is overdue for a relevant vaccination; and
 - (ii) administering the vaccination; and
 - (iii) providing information about the vaccination for inclusion in the ACI register.
- (2) The Minister may, on behalf of the Commonwealth, make a payment:
 - (a) for the purposes of the ACI register; and
 - (b) in circumstances of a kind prescribed by the rules for the purposes of this subsection.

Division 5—Alternative constitutional bases

13 Alternative constitutional bases

- (1) Without limiting its effect apart from this section, this Act also has the effect it would have if the purposes of the ACI register were, by express provision, confined to purposes relating to:
 - (a) the provision of pharmaceutical benefits; or
 - (b) the provision of medical services (without any form of civil conscription); or
 - (c) census or statistics; or
 - (d) external affairs, including:
 - (i) giving effect to an international agreement to which Australia is a party; or
 - (ii) addressing matters of international concern; or
 - (e) a Territory or a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
 - (f) the implied power of the Parliament to make laws with respect to nationhood; or
 - (g) the executive power of the Commonwealth; or
 - (h) matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.
- (2) A term used in this section and the Constitution has the same meaning in this section as it has in the Constitution.

Part 4—Dealing with protected information in the register

21 Simplified outline of this Part

Information can be collected for inclusion in the ACI register.

Section 23 makes it an offence if a person, while unauthorised to do so, discloses or uses protected information.

The main authorisation relates to disclosure or use for the purposes of the register. There are also a number of exceptions to the offence.

22 Authorised dealings with protected information

Uploading personal information etc. to the ACI register

- (1) A person may collect, make a record of, disclose or otherwise use:
- (a) personal information; or
 - (b) relevant identifying information; or
 - (c) information that is commercial-in-confidence;
- if the person does so for the purposes of including the information in the ACI register.

Note: This subsection is an authorisation for the purposes of other laws, including the Australian Privacy Principles.

Using or disclosing protected information in the ACI register

- (2) A person may make a record of, disclose or otherwise use protected information if:
- (a) the person does so for the purposes of the ACI register, and the person is:
 - (i) an officer or employee of the Commonwealth or of an authority of the Commonwealth; or

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- (ii) engaged by the Commonwealth, or by an authority of the Commonwealth, to perform work relating to the purposes of the ACI register; or
- (iii) an officer or employee of, or is engaged by, a person referred to in subparagraph (ii) to perform work relating to the purposes of the ACI register; or
- (iv) a prescribed body; or
- (v) a recognised vaccination provider; or
- (b) the person is authorised to do so under subsection (3); or
- (c) the person does so for the purposes of performing the person's functions, or exercising the person's powers, under this Act; or
- (d) the person is required or authorised to do so by or under a law of the Commonwealth or of a State or Territory; or
- (e) the person does so for the purposes of court or tribunal proceedings, or in accordance with an order of a court or tribunal; or
- (f) the person does so for the purposes of a coronial inquiry, or in accordance with an order of a coroner; or
- (g) the person does so for the purposes of updating the register kept under section 9BA of the *National Health Act 1953*.

Note 1: This subsection is an authorisation for the purposes of other laws, including the Australian Privacy Principles.

Note 2: Protected information is not limited to information in the register (see section 4). It can also cover information that:

- (a) is obtained as the result of a disclosure from the register, whether directly or indirectly because of one or more on-disclosures; or
 - (b) is derived from information that was in the register.
- (3) The Minister may, in writing, authorise a person to make a record of, disclose or otherwise use protected information for a specified purpose that the Minister is satisfied is in the public interest.
- (4) Paragraph (2)(a) does not apply to personal information to the extent that a disclosure under that paragraph would be contrary to a request in force under subsection 11(2).

23 Offence relating to protected information

A person commits an offence if:

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- (a) the person obtains information; and
 - (b) the information is protected information; and
 - (c) the person makes a record of, discloses or otherwise uses the information; and
 - (d) the making of the record, or the disclosure or use, is not authorised by section 22.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

24 Exception for use in good faith

Section 23 does not apply to a person to the extent that the person makes a record of, discloses or otherwise uses protected information in good faith and in purported compliance with section 22.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3) of the *Criminal Code*).

25 Exception if unaware information is commercial-in-confidence

Section 23 does not apply to a person if:

- (a) the person makes a record of, discloses or otherwise uses protected information; and
- (b) the information is commercial-in-confidence; and
- (c) the person does not know that the information is commercial-in-confidence.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3) of the *Criminal Code*).

26 Exceptions relating to the person to whom the protected information relates

- (1) Section 23 does not apply to a person if:
 - (a) the person discloses protected information to the person to whom the information relates; or
 - (b) the person is the person to whom the protected information relates; or
 - (c) the making of the record, or the disclosure or use, of the protected information is in accordance with the express or
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implied consent of the person to whom the information relates.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (2) Subsection (1) applies as if a reference in that subsection to the person to whom the protected information relates includes a reference to the person's parent or guardian if the person is incapable of managing his or her health affairs.

27 Exception for disclosure to person who provided the information

Section 23 does not apply to a person if:

- (a) the person obtains protected information from another person; and
- (b) the person discloses that information to the other person.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3) of the *Criminal Code*).

Part 5—Other matters

28 Simplified outline of this Part

This Part deals with other matters, such as approved forms, delegations and rules.

29 Approved forms

- (1) The Minister may, in writing, approve a form for the purposes of a provision of this Act.
- (2) A request required by a provision of this Act to be in the approved form must be given to the person specified in the form for that purpose.

30 Delegation

- (1) The Minister may, in writing, delegate his or her functions or powers under subsection 22(3) (about authorising disclosures etc.) to:
 - (a) a person who holds or performs the duties of an SES Band 3 position, or an equivalent or higher position, in the Department; or
 - (b) the Chief Executive Medicare.
- (2) The Minister may, in writing, delegate his or her functions or powers under:
 - (a) section 5 (about commercial-in-confidence information); or
 - (b) section 12 (about payments relating to vaccinations); or
 - (c) section 29 (about approved forms);to an SES employee, or an acting SES employee, in the Department or to the Chief Executive Medicare.
- (3) In performing a function, or exercising a power, under a delegation, the delegate must comply with any directions of the Minister.

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31 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.