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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

National Cancer Screening Register Bill 2016

No. , 2016

(Health)

**A Bill for an Act to establish and provide for a
cancer screening register, and for related purposes**

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A Bill for an Act to establish and provide for a cancer screening register, and for related purposes

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *National Cancer Screening Register Act 2016*.

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

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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. Sections 1 to 12 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	
2. Section 13	1 May 2017.	1 May 2017
3. Sections 14 to 28	At the same time as the provisions covered by table item 1.	

Note: This table relates only to the provisions of this Act as originally enacted.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 screening associated with certain types of cancer.

The purposes of the register relate to:

- (a) supporting cancer screening programs; and
- (b) providing access to information about cancer screening and diagnoses; and
- (c) cancer screening matters more broadly.

There are protections for sensitive information.

4 Definitions

In this Act:

approved form means a form approved under subsection 25(1).

child protection officer means an officer or employee of a State or Territory, or of a State or Territory authority, who has functions, powers or duties in relation to the care, protection or welfare of children.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

claims information means information about:

- (a) claims for medicare benefit under Part II of the *Health Insurance Act 1973*; or
- (b) treatment, other than information that relates to compensation or benefits, provided under any of the following Acts:
 - (i) the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*;
 - (ii) the *Military Rehabilitation and Compensation Act 2004*;
 - (iii) the *Safety, Rehabilitation and Compensation Act 1988*;
 - (iv) the *Veterans' Entitlements Act 1986*.

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

designated cancer means one of the following types of cancer:

- (a) bowel cancer;
- (b) cervical cancer.

enforcement body has the same meaning as in the *Privacy Act 1988*.

entity means:

- (a) a person; or
- (b) a partnership; or
- (c) any other unincorporated association or body; or
- (d) a trust; or

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- (e) a part of another entity (under a previous application of this definition).

healthcare means health service within the meaning of subsection 6(1) of the *Privacy Act 1988*.

healthcare provider means:

- (a) an individual healthcare provider; or
- (b) a healthcare provider organisation.

healthcare provider organisation means an entity that has conducted, conducts, or will conduct, an enterprise that provides healthcare (including healthcare provided free of charge).

Note: Because of paragraph (e) of the definition of **entity**, a healthcare provider organisation could be part of an entity.

individual healthcare provider means an individual who:

- (a) has provided, provides, or is to provide, healthcare; or
- (b) is registered by a registration authority as a member of a particular health profession.

key information for an individual means the following:

- (a) the individual's name, address, contact details, date of birth and gender;
- (b) the individual's healthcare identifier (within the meaning of the *Healthcare Identifiers Act 2010*) if any;
- (c) the individual's medicare number (within the meaning of Part VII of the *National Health Act 1953*) if any;
- (d) the number allocated to the individual by the Veterans' Affairs Department if any;
- (e) if applicable, the individual's date of death;
- (f) if the register includes information relating to the individual in connection with screening associated with cervical cancer:
 - (i) the individual's sex; and
 - (ii) the individual's Human Papillomavirus vaccination status and number of doses of the vaccine administered to the individual;
- (g) the individual's Indigenous status;
- (h) the individual's country of origin or cultural identity;

- (i) the individual's preferred language and whether an interpreter is required to facilitate communication with the individual;
- (j) the name and contact details of a personal representative of the individual if any;
- (k) if applicable, information on assistance required by the individual for the purposes of this Act because of a medical condition or disability;
- (l) any other information of a kind relevant to the purposes of the register and prescribed by the rules for the purposes of this definition.

nominated healthcare provider of an individual, for screening associated with a designated cancer, means the healthcare provider the individual requested be recorded for screening associated with the designated cancer in a request in effect under section 14.

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*.

participating State or Territory means a State or Territory that has agreed with the Commonwealth to participate in the register.

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

personal representative, of an individual, means:

- (a) a parent or guardian of the individual, if the individual is incapable of managing his or her health affairs; or
- (b) a trustee of an estate of the individual, if the individual is under a legal disability; or
- (c) a person who holds an enduring power of attorney granted by the individual; or
- (d) a person nominated by the individual for the purpose of managing the individual's affairs in relation to screening associated with a designated cancer.

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

professional disciplinary authority means:

- (a) a registration authority; or
- (b) the Health Care Complaints Commission established by the *Health Care Complaints Act 1993* (NSW); or
- (c) the Health Ombudsman appointed under the *Health Ombudsman Act 2013* (Qld); or
- (d) any other authority that is responsible for investigating complaints about the professional conduct of individual healthcare providers.

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

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

purposes of the register means the purposes set out in section 12.

register means the National Cancer Screening Register established under section 9.

registration authority means an entity that is responsible under a law for registering members of a particular health profession.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

rules means the rules made under section 28.

screening means a process in which an individual undergoes testing or procedures in order to determine whether the individual has:

- (a) a designated cancer or a precursor to a designated cancer; or
- (b) any indicator, including genetic markers or cell abnormalities, that may lead to a designated cancer.

screening test means a test or procedure as part of screening.

Secretary means the Secretary of the Department.

State or Territory authority has the same meaning as in the *Privacy Act 1988*.

Veterans' Affairs Department means the Department administered by the Minister administering the *Veterans' Entitlements Act 1986*.

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.

Note: See subsection 24(5) in relation to civil penalties.

7 Act extends to external Territories

This Act extends to every external Territory.

Part 2 Register

Division 1 Simplified outline of this Part

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Part 2—Register

Division 1—Simplified outline of this Part

8 Simplified outline of this Part

The National Cancer Screening Register is established to keep information about cancer screening and diagnoses associated with particular types of cancer.

The purposes of the register relate to:

- (a) supporting cancer screening programs; and
- (b) providing access to information about cancer screening and diagnoses; and
- (c) cancer screening matters more broadly.

Certain healthcare providers are required to notify the Commonwealth Chief Medical Officer about certain types of screening test or diagnosis. In most circumstances, this information will be included on the register.

Individuals can make a number of requests in relation to the register. For example, an individual can opt out of receiving information from the register. An individual can also request that information notified by healthcare providers relating to the individual not be included in the register.

Division 2—Establishment, contents and purposes

9 Establishment of the register

- (1) The Commonwealth must establish and keep a register to be called the National Cancer Screening Register.
- (2) Parts of the register may be kept separate from each other, and be called different names.
- (3) The register is not a legislative instrument.

10 Coverage of the register

- (1) The register may include information relating to individuals in connection with screening associated with bowel cancer.
- (2) The register may include information relating to individuals in connection with screening associated with cervical cancer.

11 Contents of the register

The register may include the following for each individual:

- (a) the individual's key information;
- (b) details of the individual's nominated healthcare provider for screening associated with a designated cancer, if any, including the healthcare provider's healthcare identifier (within the meaning of the *Healthcare Identifiers Act 2010*);
- (c) information about screening tests undergone or to be undergone by the individual;
- (d) if the individual is diagnosed with a designated cancer or a precursor to a designated cancer, that diagnosis;
- (e) claims information which may indicate whether or not the individual has undergone or should undergo screening;
- (f) details of any request or withdrawal made by the individual under section 14;
- (g) any other information relevant to the purposes of the register and prescribed by the rules.

12 Purposes of the register

- (1) The purposes of the register are to facilitate the following:
- (a) establishing and keeping an electronic database of records relating to screening and diagnoses associated with the designated cancers;
 - (b) collecting, analysing and publishing statistics and other information relating to screening and diagnoses associated with the designated cancers;
 - (c) monitoring the effectiveness, quality and safety of screening and diagnoses associated with the designated cancers;
 - (d) providing an individual with an invitation to undergo screening;
 - (e) providing an individual with a test kit for screening;
 - (f) advising an individual when the individual is due to undergo a screening test or when action may need to be taken after a screening test;
 - (g) advising an individual's nominated healthcare provider for screening associated with a designated cancer (if any) when the individual is due to undergo, or when action may need to be taken after, a screening test associated with the designated cancer;
 - (h) advising a participating State or Territory when action may need to be taken after a screening test for an individual residing in the State or Territory;
 - (i) providing an individual access to information relating to the individual about screening and diagnoses associated with a designated cancer;
 - (j) providing healthcare providers access to information about screening and diagnoses associated with a designated cancer in relation to an individual, for the purposes of providing healthcare to the individual in relation to the designated cancer;
 - (k) providing a participating State or Territory with access to information relating to individuals residing in the State or Territory in connection with screening and diagnoses associated with the designated cancers;

- (l) planning, delivering and promoting healthcare and services in relation to the designated cancers;
 - (m) reporting to international organisations in relation to the designated cancers;
 - (n) research relating to healthcare, screening or a designated cancer;
 - (o) anything incidental to any of the above paragraphs.
- (2) For an individual who has a personal representative:
- (a) paragraphs (1)(d) and (e) also apply to providing the representative with an invitation or test kit for the individual;
and
 - (b) paragraph (1)(f) also applies to advising the representative;
and
 - (c) paragraph (1)(i) also applies to providing the representative access to information relating to the individual.

Division 3—Notification to the register

13 Requirement to notify

- (1) The individual healthcare provider prescribed by the rules for a type of screening test or diagnosis prescribed by the rules must notify the Commonwealth Chief Medical Officer in the approved form, by the time prescribed by the rules, of the information prescribed by the rules for the type of screening test or diagnosis.
- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 30 penalty units.

Division 4—Requests about the register

14 Requests about participation in the register

- (1) An individual may, in the approved form, make any of the following requests:
 - (a) that a particular healthcare provider be recorded as the individual's nominated healthcare provider for screening associated with a designated cancer;
 - (b) that the individual not be given, at all or for a period of time, by (or on behalf of) the Commonwealth:
 - (i) any invitation of a kind referred to in paragraph 12(1)(d) or test kit referred to in paragraph 12(1)(e) in relation to screening associated with a designated cancer; or
 - (ii) any advice of a kind referred to in paragraph 12(1)(f) in relation to screening associated with a designated cancer;
 - (c) that information relating to the individual that is:
 - (i) about a designated cancer; and
 - (ii) notified under section 13 after the date of the request; not be included in the register;
 - (d) that a date by which the register indicates the individual is due to undergo a screening test associated with cervical cancer be changed;
 - (e) that the register use a pseudonym for the individual.
- (2) An individual may, in the approved form, withdraw any request made under subsection (1).
- (3) The Commonwealth must give effect to a request or withdrawal under this section as soon as practicable.
- (4) A personal representative of the individual may make or withdraw a request under this section on behalf of the individual.

Division 5—Alternative constitutional bases

15 Alternative constitutional bases

- (1) Without limiting its effect apart from this subsection, this Act also has the effect it would have if its operation were expressly confined to matters relating to:
- (a) the provision of pharmaceutical and sickness benefits; or
 - (b) the provision of medical services (without any form of civil conscription); or
 - (c) census and statistics; or
 - (d) postal, telegraphic, telephonic and other like services; or
 - (e) external affairs, including:
 - (i) giving effect to the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966, in particular Article 12, or to another international agreement to which Australia is a party; or
 - (ii) addressing matters of international concern; or
 - (f) a Territory or a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
 - (g) the implied power of the Parliament to make laws with respect to nationhood; or
 - (h) the executive power of the Commonwealth; or
 - (i) matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

Note: The International Covenant on Economic, Social and Cultural Rights is in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) and could in 2016 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- (2) Without limiting its effect apart from this subsection, this Act also has the effect it would have if its operation were expressly confined to acts or omissions of corporations to which paragraph 51(xx) of the Constitution applies.

- (3) A term used in this section and the Constitution has the same meaning in this section as it has in the Constitution.

Part 3—Dealing with information in the register

16 Simplified outline of this Part

Information can be collected for inclusion in the register.

Personal information included in the register, or derived from information included in the register, is “protected information”.

Section 18 makes it an offence for a person to record, disclose or use protected information without authorisation.

Recording, disclosure and use of protected information is authorised in specific circumstances, including for the purposes of the register and by healthcare providers and States and Territories.

There are also a number of exceptions to the offence.

17 Authorised dealings with information

Uploading personal information etc. to the register

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

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

- (2) Subsection (1) does not apply to information notified under section 13 to the extent that collection, recording, disclosure or use under the subsection would be contrary to a request in effect under section 14.

Using or disclosing information in the register

- (3) A person may collect, make a record of, disclose or otherwise use protected information, or key information included in the register, if:
- (a) the person does so for the purposes of the register and is:
 - (i) an officer or employee of the Commonwealth or of an authority of the Commonwealth; or
 - (ii) engaged by the Commonwealth, or by an authority of the Commonwealth, to perform work relating to the purposes of the register; or
 - (iii) an officer or employee of a person referred to in subparagraph (ii), or engaged by a person referred to in subparagraph (ii) to perform work relating to the purposes of the register; or
 - (iv) a prescribed body; or
 - (b) all of the following apply:
 - (i) the person is a healthcare provider;
 - (ii) the information is about screening or diagnosis associated with a designated cancer in relation to an individual;
 - (iii) the collection, recording, disclosure or use is for the purposes of providing healthcare to the individual in relation to the designated cancer; or
 - (c) the collection, recording, disclosure or use is required or permitted by the law of a participating State or Territory, and the person is:
 - (i) a State or Territory authority of the participating State or Territory; or
 - (ii) an officer or employee of the participating State or Territory, or of a State or Territory authority of the participating State or Territory; or
 - (iii) engaged by the participating State or Territory, or by a State or Territory authority of the participating State or Territory, to perform work relating to the information; or
 - (iv) an officer or employee of a person referred to in subparagraph (iii), or engaged by a person referred to in
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subparagraph (iii) to perform work relating to the information; or

- (d) the person does so for the purposes of performing the person's functions, or exercising the person's powers, under this Act; or
- (e) the person is required or authorised to do so by or under a law of the Commonwealth or of a State or Territory; or
- (f) the information is disclosed to the person under this section and the collection, recording, disclosure or use is for the purposes for which the information was disclosed to the person; or
- (g) all of the following apply:
 - (i) the person is the Secretary;
 - (ii) the collection, recording, disclosure or use is for the purposes of disclosing information to a professional disciplinary authority, a child protection officer or an enforcement body;
 - (iii) the person reasonably believes that the information will enable or assist the authority, officer or body to perform or exercise any of the authority's, officer's or body's functions or powers; or
- (h) the person does so for the purposes of court or tribunal proceedings, or in accordance with an order of a court or tribunal; or
- (i) the person does so for the purposes of a coronial inquiry, or in accordance with an order of a coroner.

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

Note 2: For paragraph (c), collection, recording, disclosure or use by a listed representative of a participating State or Territory is authorised under this subsection if the law of the State or Territory does not prevent the collection, recording, disclosure or use.

- (4) Subsection (3) does not apply to protected information or key information to the extent that collection, recording, disclosure or use under the subsection would be contrary to a request in effect under section 14.

18 Offence relating to protected information

A person commits an offence if:

- (a) the person makes a record of, discloses or otherwise uses information; and
- (b) the information is protected information; and
- (c) the making of the record, or the disclosure or use, is not authorised by section 17.

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

19 Exception for use in good faith

Section 18 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 17.

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

20 Exception if unaware information is commercial-in-confidence

Section 18 does not apply to a person if:

- (a) the person makes a record of, discloses or otherwise uses 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*).

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

- (1) Section 18 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
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- (c) the making of the record, or the disclosure or use, of the protected information is in accordance with the express or 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 personal representative.

22 Exception for disclosure to person who provided the information

Section 18 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 4—Other matters

23 Simplified outline of this Part

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

24 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the civil penalty provisions of this Act:
- (a) the Secretary;
 - (b) an SES employee, or an acting SES employee, in the Department.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia;
 - (c) a court of a State or Territory that has jurisdiction in relation to the matter.

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Extension to external Territories

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

Liability of Crown

- (5) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the Crown liable to a pecuniary penalty.

25 Approved forms

- (1) The Minister may, in writing, approve a form for the purposes of a provision of this Act.
- (2) A request or withdrawal of 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.

26 Agreements

The Minister may, on behalf of the Commonwealth, engage a person under a written agreement to perform services for or on behalf of the Commonwealth in connection with functions of the Commonwealth, the Minister or the Commonwealth Chief Medical Officer under this Act.

27 Delegation

- (1) The Minister may, in writing, delegate his or her functions or powers under:
- (a) section 5 (about commercial-in-confidence information); or
 - (b) section 25 (about approving forms); or
 - (c) section 26 (about engaging persons under agreements);
- to an SES employee, or an acting SES employee, in the Department.

- (2) The Secretary may, in writing, delegate his or her functions or powers under paragraph 17(3)(g) (about disclosing information) to an SES employee, or an acting SES employee, in the Department.
- (3) In performing a function, or exercising a power, under a delegation, the delegate must comply with any directions of the Minister or the Secretary.

28 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.