EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Ageing

Health Insurance Act 1973

Health Insurance (Gippsland and South Eastern New South Wales Mobile MRI Trial) Determination 2009 (No. 3)

Subsection 3C(1) of the *Health Insurance Act 1973* (the Act) provides that the Minister may, by writing, determine that a health service not listed in the diagnostic imaging services table (the Table) shall, in specified circumstances and for specified legislative provisions, be treated as if it were so listed. The Table is set out in the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2008* (the DIST Regulations).

A determination made under subsection 3C(1) is a legislative instrument (see subsection 3C(4) of the Act and paragraph 6(d) of the *Legislative Instruments Act 2003*).

On 1 November 2006, the Commonwealth commenced a 3 year trial of Medicare benefit eligibility for a mobile Magnetic Resonance Imaging (MRI) service operating in the Gippsland region of Victoria and the South Eastern region of New South Wales. Regional Imaging Pty Limited [ABN 81 095 630] (RIL) provides mobile Medicare-eligible MRI services in these regions for the purposes of the trial.

The details of RIL's participation in the trial are outlined in the funding agreement between the Department of Health and Ageing and RIL, as in force on the day the *Health Insurance (Gippsland and South Eastern New South Wales Mobile MRI Trial) Determination 2009 (No. 3)* (the Determination) commences.

The *Health Insurance (Gippsland and South Eastern New South Wales Mobile MRI Trial) Determination 2009 (No. 2)* (the Previous Determination) enables Medicare benefits to be paid for mobile MRI services provided by RIL pursuant to the funding agreement during the establishment period leading up to the trial (1 July 2006 – 31 October 2006) and as part of the trial (1 November 2006 – 31 October 2009).

The Schedule to the Determination identifies each health service by item number and the applicable fee. The health services listed in the Schedule are similar to those listed in the DIST Regulations.

The *Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2009 (No. 2)* (which commence on 1 July 2009) will amend the DIST Regulations by:

(a) inserting a new item (item 63476) to enable Medicare benefits to be payable for MRI services used for the initial staging of rectal cancer (including cancer of the rectosigmoid and anorectum); and
(b) making minor amendments to the wording of the descriptors to existing items 63470 and 63473 to ensure consistency with other items in Schedule 1, Part 3, subgroup 20 of the DIST Regulations.

As a result of the above amendments to the DIST Regulations, corresponding changes need to be made to the Previous Determination.

Accordingly, the purpose of this Determination is to repeal and replace the Previous Determination in order to:

(a) insert a new item (item 63478) to enable Medicare benefits to be payable for mobile MRI services used for the initial staging of rectal cancer (including cancer of the rectosigmoid and anorectum) where those services are provided by RIL in accordance with the circumstances set out in the Determination; and

(b) make minor amendments to the wording of the descriptors to existing items 63472 and 63475 to ensure consistency with other items in the Determination.

Consultation

The Medical Services Advisory Committee (MSAC) recommended that the Government support public funding of MRI for the initial staging of rectal cancer. The Minister for Health and Ageing has endorsed MSAC's recommendation. Consultation took place with the diagnostic imaging industry and key stakeholders, including the Royal Australian and New Zealand College of Radiologists, the Australian Diagnostic Imaging Association and the Colorectal Surgical Society of Australia and New Zealand, to develop and finalise the descriptor to item 63478, schedule fee level and service delivery models.

No consultation was undertaken in relation to the amendments to the descriptors to existing items 63472 and 63475. This is because these amendments are considered minor in nature.

Section 18 of the *Legislative Instruments Act 2003* specifically provides for circumstances where consultation may not be necessary or appropriate. One of these circumstances is where the instrument is considered minor or machinery in nature, and does not substantially alter existing arrangements.

Details of the Determination are set out in the Attachment.

The Determination ceases to have effect at the end of 31 October 2009.

This Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

Authority: Section 3C of the *Health Insurance Act 1973*

ATTACHMENT

DETAILS OF THE *HEALTH INSURANCE (GIPPSLAND AND SOUTH EASTERN NEW SOUTH WALES MOBILE MRI TRIAL) DETERMINATION 2009 (No. 3)*

Section 1 Name of Determination
This section provides that the name of the Determination is the *Health Insurance (Gippsland and South Eastern New South Wales Mobile MRI Trial) Determination 2009 (No. 3).*

Section 2 Commencement and Revocation
This section provides that the Determination commences on 1 July 2009.

This section also provides that the Determination revokes the *Health Insurance (Gippsland and South Eastern New South Wales Mobile MRI Trial) Determination 2009 (No. 2).*

Section 3 Cessation
This section provides that the Determination will cease to have effect at the end of 31 October 2009.

Section 4 Interpretation
Subsection 4(1) defines terms used in the Determination.

Subsection 4(2) provides that for the avoidance of doubt, a reference to the Act includes a reference to regulations made under the Act. Similarly, a reference to the *National Health Act 1953* includes a reference to regulations made under that Act. Subsection 4(2) also provides that a reference to any legislation shall be construed as a reference to that legislation as in force from time to time. Further, a reference to the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2008* is a reference to the regulations made pursuant to section 4AA of the Act that are in force from time to time.

Section 5 Circumstances where this Determination applies

Subsection 5(1) and 5(2)
Subsection 5(1) provides that the Determination applies to a relevant service where certain circumstances apply. If the relevant service is a service described in item 63002 to 63483, the Determination will only apply to such a service if the requirements in paragraphs 5(1)(a), 5(1)(b), 5(1)(c) and either 5(1)(d) or 5(1)(e) are met. If the relevant service is a service described in any of the other items listed in the Schedule, the Determination will only apply to such a service if the requirements in paragraph 5(1)(b), 5(1)(c) and either 5(1)(d) or 5(1)(e) are met.

The requirements set out in the various paragraphs of subsection 5(1) are explained below. Paragraph 5(1)(a) and subsection 5(2) provide that items 63002 to 63483 will not apply unless the service is performed pursuant to a written request that is made by a practitioner who is a specialist, a consultant physician or dental practitioner. The request must identify the clinical indications for the service. These requirements correspond to the requirements

for requests for services pertaining to the equivalent items of the Table (items 63001 to 63482).

Paragraph 5(1)(b) provides that the Determination will apply where the service is performed pursuant to the funding agreement during either the establishment period or as part of the trial. If the funding agreement is terminated or the trial ceases, Medicare benefits will cease to be payable under the Determination for any relevant services rendered.

Paragraph 5(1)(c) provides that the Determination will apply where the service is performed in a permissible circumstance in accordance with one of the subsections 5(3), 5(3A), 5(4), 5(5) or 5(6) (these subsections are explained below).

Paragraph 5(1)(d) and 5(1)(e) set out the two alternate patients charging requirements that must be met for the Determination to apply.

Paragraph 5(1)(d) provides that where the relevant service is a service of a kind referred to in paragraph 10(2)(a) of the Act, the fee that RIL charges the patient for the service must be no more than 75% of the amount specified in the Schedule as the fee applicable to the item that relates to the service. Subparagraph 10(2)(a)(i) of the Act refers to a service provided as part of an episode of hospital treatment. Subparagraph 10(2)(a)(ii) refers to a service provided as part of an episode of hospital-substitute treatment in respect of which the person to whom the treatment is provided chooses to receive a benefit from a private health insurer. The terms 'hospital treatment' and 'hospital-substitute' treatment have the same meaning as in the *Private Health Insurance Act 2007*.

Paragraph 5(1)(e) provides that where the relevant service is not a service to which paragraph 5(1)(d) of the Determination applies (that is, in every case where the service is not a service of a kind referred to in paragraph 10(2)(a) of the Act), the fee that RIL charges the patient for the service must be no more than 85% of the amount specified in the Schedule as the fee applicable to the item that relates to the service.

Subsection 5(3)

Relevant to paragraph 5(1)(c), subsection 5(3) provides that a relevant service is performed in a 'permissible circumstance' if it is performed at Bega and:

- performed under the professional supervision of an eligible provider who is available to monitor and influence the conduct and diagnostic quality of the examination via telephone and real-time teleradiology (paragraph 5(3)(a)); and
- reported by an eligible provider (paragraph 5(3)(b)); and
- monitored by a medical practitioner by personal attendance on the patient if the circumstances are such as to require on-site monitoring by a medical practitioner (paragraph 5(3)(c)).

In relation to the provision of MRI services at Bega, due to possible difficulties with ensuring that an eligible provider will be available on site to supervise the performance of MRI services, paragraph 5(3)(a) provides that supervision of such services may be conducted via teleradiology.

The term 'teleradiology' is defined in subsection 4(1). Under teleradiology arrangements, a relevant service performed in Bega is to be supervised by an eligible provider who is at another location and who is communicating with the service site via teleradiology.

The Determination allows Medicare benefits to be payable under these circumstances at the Bega location.

The requirement set out in paragraph 5(3)(b) that an eligible provider provides a report on the relevant service corresponds to the reporting requirements for services relating to items 63001 to 63482 of the Table as specified in subrule 33(1)(b) of Schedule 1, Part 2 of the DIST Regulations.

The requirement set out in paragraph 5(3)(c) provides that if there are circumstances that require on-site monitoring by a medical practitioner, for example a patient who is unconscious, the items in the Schedule to the Determination will only apply if the service is monitored by a medical practitioner in personal attendance.

Subsection 5(3A)
Relevant to paragraph 5(1)(c), subsection 5(3A) provides that a relevant service is performed in a 'permissible circumstance' if it is performed during after hours at Traralgon and:

- performed under the professional supervision of an eligible provider who is available to monitor and influence the conduct and diagnostic quality of the examination via telephone and real-time teleradiology (paragraph 5(3A)(a)); and
- reported by an eligible provider (paragraph 5(3A)(b)); and
- monitored by a medical practitioner by personal attendance on the patient if the circumstances are such as to require on-site monitoring by a medical practitioner (paragraph 5(3A)(c)); and
- not a service to which items 63492 to 63495 are attributable (paragraph 5(3A)(d)).

This subsection replicates in whole the permissible circumstances allowed at Bega and described in subsection 5(3). As with Bega there is a difficulty ensuring that an eligible provider will be available on site to supervise the performances of MRI services during the after hours period at Traralgon. Consequently paragraph 5(3A)(a) provides that, in line with Bega, supervision of such services may be conducted via teleradiology.

In addition to replicating in whole all paragraphs in subsection 5(3), subsection 5(3A) prohibits payment of Medicare benefits for services to which items 63492 to 63495 are attributable (paragraph 5(3A)(d)). These services are permitted at Bega under the teleradiology professional supervision arrangements because patients requiring sedation, anaesthetic or a contrast MRI would otherwise have to travel to another MRI service. However, at Traralgon these services are available during normal hours when professional supervision is available on site if required.

Subsection 5(4)
Subsection 5(4) provides an exception to subsections 5(3) and 5(3A). Under subsection 5(4), a relevant service is performed in a permissible circumstance for the purposes of paragraph 5(1)(c) if it is performed in Bega or during after hours at Traralgon and it is performed in an emergency. Failure to comply with the supervision, reporting and attendance requirements of subsections 5(3) and 5(3A) will not prevent a Medicare benefit being paid for a relevant service where these requirements could not be complied with because the service was performed in an emergency.

Subsection 5(5)
Relevant to paragraph 5(1)(c), subsection 5(5) provides that a relevant service is performed in a 'permissible circumstance' if it is:

(a) performed under the professional supervision of an eligible provider who is available to monitor and influence the conduct and diagnostic quality of the examination, including, if necessary, by personal attendance on the patient; and

(b) reported by an eligible provider.

These requirements reflect the equivalent requirements which apply to items 63001 to 63482 of the Table as specified in subrule 33(1) of Schedule 1, Part 2 of the DIST Regulations.

Subsection 5(6)

Subsection 5(6) provides an exception to subsection 5(5). Under subsection 5(6), a relevant service is performed in a permissible circumstance for the purposes of paragraph 5(1)(c) if it is performed either in an emergency; or because of medical necessity, in a remote location. Failure to comply with the supervision, attendance and reporting requirements of subsection 5(5) will not prevent a Medicare benefit being paid for a relevant service where these requirements could not be complied with because the service was performed in an emergency; or because of medical necessity, in a remote location.

This reflects the equivalent exception specified in subrule 33(2) of Schedule 1, Part 2 of the DIST Regulations.

Section 6 Treatment of a relevant service

Section 6 identifies which legislative provisions will apply in respect of a relevant service. Paragraph 6(a) provides that all provisions of the Act, the *National Health Act 1953*, regulations made under the Act and regulations made under the *National Health Act 1953* that make provision in relation to professional services or medical services will apply to a relevant service. (By reason of paragraphs 4(2)(a) and (b), the references to the Act and the *National Health Act 1953* in paragraph 6(a) also include references to regulations made under these Acts).

Paragraph 6(b) provides that a relevant service shall be treated as if there were an item in the Table that related to the relevant service and specified the relevant fee in respect of the service.

The effect of paragraph 6(c) is that each of the items pertaining to the relevant services is to be treated as if it is part of Group I5 of the Table and of the relevant subgroup of Group I5 as specified in column 4 of the table in the Schedule to the Determination. Group I5 of the Table lists all of the MRI services included in the DIST Regulations. This means that the various rules in the DIST Regulations which are stated to apply to items in Group I5 (eg rule 41 of Schedule 1, Part 2), or to a relevant Subgroup of Group I5 (eg subrule 30(8) and rule 38 of Schedule 1, Part 2), will also apply to the items for relevant services created by this Determination.

Section 7 MRI and MRA services – meaning of scan

Section 7 applies rule 37 of Schedule 1, Part 2 of the DIST Regulations to items 63002 to 63483 of the Schedule to the Determination. Hence these items only apply to scans which have a minimum of 3 sequences.

Section 8 MRI and MRA services – related services that can be claimed in a 12 month period

Section 8 applies rule 39 of Schedule 1, Part 2 of the DIST Regulations to relevant items in the Schedule to the Determination. Rule 39 caps the number of times in any 12 month

period that a Medicare benefit is payable to a person for the particular kind of MRI service described in the specified items.

Section 9 MRI services – limit for items 63472 and 63475

Section 9 applies rule 40 of Schedule 1, Part 2 of the DIST Regulations to items 63472 and 63475. This means that items 63470 and 63473 in the Table, and items 63472 and 63475 in the Schedule to the Determination, will not apply to a service so described in the item if the individual who receives the service has previously been provided with a service described in any of the four items.

Section 10 MRI services – limit for item 63478

Section 10 provides that item 63478 does not apply to the service described in that item if the person to whom the service is provided has previously been provided with that service or a service described in item 63476 of Schedule 1, Part 3 of the DIST Regulations.

Section 11 MRI and MRA services – modifying items

Section 11 applies rule 41 of Schedule 1, Part 2 of the DIST Regulations to items 63492, 63493 and 63495. This means that the fee specified in these items will apply in addition to the fee specified in another item in the Schedule to the Determination which applies to the service (per subrule 41(1)). However, where two or more services described in item 63493 are performed for a person on the same day, the fee specified in that item applies to one of those services only (per subrule 41(2)). A similar rule applies in relation to the performance of two or more services described in item 63495 for a person on the same day (per subrule 41(3)).

Where one or more services described in item 63493 and one or more services described in item 63495 are performed for a person on the same day, the fee specified in item 63493 or 63495 applies to one of those services only (per subrule 41(4)).

Section 12 Diagnostic imaging services which dental practitioners may request

In relation to paragraph 5(2)(a), it is noted that subsection 16B(2) of the Act limits the R-type diagnostic imaging services in respect of which a Medicare benefit is payable where the services is requested by a dental practitioner.

Subsection 16B(2) of the Act provides that:

> "A request made by a dental practitioner, acting in his or her capacity as a dental practitioner, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it is a request for a service of a kind specified in regulations made for the purposes of this subsection."

Regulation 10 of the *Health Insurance Regulations 1975* specifies, for subsection 16B(2) of the Act, the diagnostic imaging services that various 'types' of dental practitioners may request. Accordingly, section 12 of the Determination operates to ensure that regulation 10 applies to services relating to relevant items in the Schedule to the Determination.

Schedule – Specified health services

The Schedule sets out the relevant services and assigns to each service the applicable item number, item descriptor and fee. The new rectal cancer MRI item (item 63478) has been added to the Schedule and the existing items 63472 and 63475 have been amended to ensure consistency with other MRI items in the Schedule.