

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health

*Private Health Insurance Act 2007*

*Private Health Insurance (Health Insurance Business) Rules 2018*

Subsection 333-20(1) of the *Private Health Insurance Act 2007* (the Act) authorises the Minister of Health to, by legislative instrument, make *Private Health Insurance Rules* specified in the second column of the table provided in that provision. In particular, item 6 of the table authorises the Minister to make *Private Health Insurance (Health Insurance Business) Rules* providing for matters required or permitted by Part 4-2 of the Act, or necessary or convenient in order to carry out or give effect to Part 4-2 of the Act. Part 4-2 defines the key concept of health insurance business and provides for associated requirements.

### **Purpose**

The *Private Health Insurance (Health Insurance Business) Rules 2018* (the Rules) revoke and remake the *Private Health Insurance (Health Insurance Business) Rules 2017* (the previous Rules).

Under subsection 33(3) of the *Acts Interpretation Act 1901* (the AI Act), where an Act confers power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary such instrument. The power to revoke the Rules relies on subsection 33(3) of the AI Act.

The Rules update the kinds of statistical information to be provided by hospitals to private health insurers and by private hospitals to the Department of Health (the Department).

### **Background**

Subsection 121-5(6) of the Act enables the Minister to grant or revoke a declaration that a facility is a public or private hospital for the purposes of the Act. The Act specifies a number of matters to which the Minister must have regard in granting or revoking a hospital declaration, including whether the facility has entered into or complied with undertakings to provide private health insurers with the kinds of information specified in the Rules relating to the treatment of insured persons under complying health insurance products that are referable to health benefit funds (paragraph 121-5(7)(e)).

The Rules specify that for paragraph 121-5(7)(e) of the Act, the kinds of information are those specified in the HCP Data from Hospital to Insurers document (HCP document) approved on 30 May 2018 by the Assistant Secretary of the Health Analytics Branch of the Department (see rule 4).

Subsection 121-7(2) of the Act provides that hospital declarations made under paragraph 121-5(6)(a) of the Act may be subject to conditions specified in the Rules. Rule 7 of the Rules provides that private hospital declarations are subject to the condition that the hospital provides the Department with the kinds of information specified in the PHDB Data from Private Hospital to the Department document (PHDB document) approved on 26 March 2018 by the Assistant Secretary of the Health Analytics Branch of the Department. This information must be provided within 6 weeks from the time the insured person is discharged from hospital.

The [HCP](#) and [PHDB](#) documents replace the documents that were referred to in the previous Rules, and can be found on the Department of Health website.

Supply of the HCP Data from Hospital to Insurers involves the disclosure of sensitive personal information, including health information, from hospitals to private health insurers. However the information supplied is provided by hospitals with the patient's consent as part of the patient's contractual relationship with their hospital and private health insurer. There are protections for the information provided to insurers under the *Privacy Act 1988* and/or State or Territory privacy laws.

Supply of the PHDB Data from Private Hospitals to the Department involves the disclosure of de-identified statistical information about the treatment of insured persons, from private hospitals to the Department. The information supplied could not reasonably be used by the Department to identify a patient. Further, subsection 323-1(1) of the Act creates an offence for the unauthorised disclosure of information obtained by any person in the course of performing duties or powers, or exercising functions, under the Act.

The changes are minor housekeeping in nature.

There are no other changes from the previous Rules.

### **Consultation**

The Department has consulted with the private health insurance and private hospital industry through existing Working Group arrangements regarding the amendments required to the HCP and PHDB specifications. Private health insurance and private hospital stakeholder representatives interested in developing the amendments participated in the process. Industry is of the view that it is appropriate for minor amendments to be managed by this Working Group. Previous minor amendments have been managed in this way. The amended data specifications are distributed to industry via Private Health Insurance Circulars.

Subsection 115-5(2) of the Act requires that the Australian Prudential Regulation Authority (APRA) is consulted before *Private Health Insurance (Health Insurance Business) Rules* are made. The APRA has been consulted 2 May 2018.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Rules commence on 1 July 2018.

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

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

### **Private Health Insurance (Health Insurance Business) Rules 2018**

This legislative 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**

*Private Health Insurance (Health Insurance Business) Rules* provide for matters required or permitted by Part 4-2 of the *Private Health Insurance Act 2007* (the Act), or necessary or convenient in order to carry out or give effect to Part 4-2 of the Act.

The *Private Health Insurance (Health Insurance Business) Rules 2018* (the Rules) revoke and remake the *Private Health Insurance (Health Insurance Business) Rules 2017* (the previous Rules) to update the kinds of statistical information to be provided by hospitals to insurers and by private hospitals to the Department of Health (the Department).

Under paragraph 121-5(7)(e) of the Act, when making or revoking a hospital declaration the Minister must have regard to whether the facility has entered into or complied with undertakings to provide private health insurers with information specified in the Rules relating to the treatment of insured persons.

The Rules specify that for paragraph 121-5(7)(e) of the Act, the kinds of information are those specified in the HCP Data from Hospital to Insurers document (HCP document) approved on 26 March 2018 by the Assistant Secretary of the Health Analytics Branch of the Department (see rule 4).

Subsection 121-7(2) of the Act provides that hospital declarations are subject to any conditions specified in the Rules. Rule 7 of the Rules provides that private hospital declarations are subject to the conditions that the hospital provides the Department with the kinds of information specified in the PHDB Data from Private Hospital to the Department document (PHDB document) approved 30 May 2018 by the Assistant Secretary of the Health Analytics Branch of the Department.

The revised [HCP](#) and [PHDB](#) documents can be found on the Department of Health website.

The changes consist of minor housekeeping type changes.

The Rules also:

- provide for inclusions and exclusions to the definitions of ‘hospital treatment’ and ‘general treatment’ in the Act; and
- specify certain treatment that is to be excluded from being ‘health insurance business’ - only registered private health insurers may carry on health insurance business and an insurer may only offer insurance as part of its health insurance business in the form of a complying health insurance product.

However, no changes to these provisions have been made from the previous Rules.

### **Human rights implications**

The Rules will engage the human right to privacy but will not result in any limitation of that right.

Supply of the HCP Data from Hospital to Insurers involves the disclosure of sensitive personal information, including health information, from hospitals to private health insurers. However the information supplied is provided by hospitals with the patient’s consent as part of the patient’s contractual relationship with their hospital and private health insurer. There are protections for the information provided to insurers under the *Privacy Act 1988* and/or State or Territory privacy laws.

Supply of the PHDB Data from Private Hospital to the Department involves the disclosure of de-identified statistical information about the treatment of insured persons, from private hospitals to the Department. The information supplied could not reasonably be used by the Department to identify a patient. Further, Part 6-8 of the Act creates an offence for the unauthorised disclosure of information obtained by any person in the course of performing duties or powers, or exercising functions, under the Act.

The revisions to the documents are essentially mechanical in nature, and do not substantively alter any legislative requirements.

### **Conclusion**

This legislative instrument is compatible with human rights as although it engages the right of privacy in relation to personal information, it will not result in any limitation of that right.

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