

## **EXPLANATORY STATEMENT**

### *Private Health Insurance Act 2007*

#### *Private Health Insurance (Health Insurance Business) Amendment Rules 2020*

#### **Authority**

Subsection 333-20(1) of the *Private Health Insurance Act 2007* (the Act) authorises the Minister of Health (the Minister) to, by legislative instrument, make Private Health Insurance Rules. The types of rules are specified in the second column of the table provided in subsection 333-20. 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.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a 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 any such instrument.

#### **Purpose**

The *Private Health Insurance (Health Insurance Business) Amendment Rules 2020* (the Amendment Rules) amend the *Private Health Insurance (Health Insurance Business) Rules 2018* (the Rules) to 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 make 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 making or revoking a declaration under section 121-5(6), 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 hospital treatment of insured persons under complying health insurance products that are referable to health benefit funds (subsection 121-5(7)(e)).

The Rules apply and incorporate the following instruments without modification:

- (i) The matters contained in the document titled “HCP Data from Hospitals to Insurers” (the HCP document) (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 6 May 2020); and
- (ii) The matters contained in the document titled “PHDB Data from Private Hospitals to the Department” (the PHDB document) (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 6 May 2020),

from the time the Amendment Rules commence.

The Hospital Casemix Protocol (HCP) and Private Hospital Data Bureau (PHDB) documents, as specified in the Amendment Rules and approved on 6 May 2020, replace the documents that were referred to previously in the Rules, and can be found on the Department's website using the following links – HCP:

<https://www1.health.gov.au/internet/main/publishing.nsf/Content/health-casemix-data-collections-about-HCP>; and PHDB:

<https://www1.health.gov.au/internet/main/publishing.nsf/Content/health-casemix-data-collections-about-PHDB>.

Supply of the HCP Data from hospitals 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.

Data specifications are reviewed routinely every year by the Department. Following consultation with external stakeholders changes are generally introduced effective 1 July in each financial year.

Changes to the 2020/21 data specifications are designed to align with national metadata standards published in METeOR, the Australian Institute of Health and Welfare's Metadata online registry, and to improve data quality.

### **Consultation**

The Department has consulted with the private health insurance and private hospital industry about the Amendment Rules through existing working group arrangements. Private health insurance and private hospital stakeholder representatives interested in developing the amendments also participated in the process. Feedback received from industry is that it is appropriate for amendments to be managed by the existing working group arrangements. Previous amendments have also been managed in this way. The amended data specifications are distributed to industry via a Private Health Insurance Circular published by the Department. Private Health Insurance Circulars can be accessed at the following link:

<https://www1.health.gov.au/internet/main/publishing.nsf/Content/health-phicirculars2020-index1>

Subsection 115-5(2) of the Act requires that the Minister must consult the Australian Prudential Regulation Authority (APRA) before making the Amendment Rules. The Department consulted APRA by email on 24 April 2020.

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

The Amendment Rules commence on 1 July 2020.

## **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) Amendment Rules 2020**

This Disallowable 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 Disallowable 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) Amendment Rules 2020* (the Amendment Rules) amend the *Private Health Insurance (Health Insurance Business) Rules 2018* (the 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 of Health 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 apply and incorporate the following instruments without modification:

- (i) The matters contained in the document titled “HCP Data from Hospitals to Insurers” (the HCP document) (approved by the Assistant Secretary of the Data and Analytics Branch of the Department on 6 May 2020); and
- (ii) The matters contained in the document titled “PHDB Data from Private Hospitals to the Department” (the PHDB document) (approved by the Assistant Secretary of the Data and Analytics Branch of the Department 6 May 2020),

from the time the Amendment Rules commence.

The amendments to the Rules requiring that the information requirements set out in those documents to be provided to the insurer or the Department commence on 1 July 2020.

The revised Hospital Casemix Protocol (HCP) and the Private Hospital Data Bureau (PHDB) documents as specified in the Amendment Rules and as approved on 6 May 2020 can be found on the Department’s website using the following links: HCP: <https://www1.health.gov.au/internet/main/publishing.nsf/Content/health-casemix-data-collections-about-HCP>; and PHDB: <https://www1.health.gov.au/internet/main/publishing.nsf/Content/health-casemix-data-collections-about-PHDB>.

### **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 Hospitals to Insurers involves the disclosure of sensitive personal information of patients, 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, 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.

### **Conclusion**

This Disallowable 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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