

## **EXPLANATORY STATEMENT**

### *Private Health Insurance Act 2007*

#### *Private Health Insurance Legislation Amendment Rules (No.6) 2020*

##### Authority

Section 333-20(1) of the *Private Health Insurance Act 2007* (the Act) authorises the Minister to, by legislative instrument, make Private Health Insurance Rules providing for matters required or permitted by the corresponding Chapter, Part or section to be provided; or necessary or convenient to be provided in order to carry out or give effect to that Chapter, Part or section.

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 Legislation Amendment Rules (No.6) 2020* (the Amendment Rules) amends the *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules) and the *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules).

The Amendment Rules make consequential amendments to the Benefit Requirements Rules and the Complying Product Rules to reflect changes to minimum accommodation benefits in Tasmanian public hospitals (amendments were made by other jurisdictions from 1 July 2020), and new Medicare Benefits Schedule (MBS) items for cardiac services and GP and Allied Health mental health services that took effect on 7 August and 15 September 2020.

This is achieved by amending:

- Schedules 1 and 3 of the Benefit Requirements Rules for the purpose of increasing the minimum benefits payable by private health insurers for private patients' overnight and same-day accommodation in public hospitals in Tasmania. The increase is in line with the annual increase to March 2020 in the Consumer Price Index (CPI) of 2.2 per cent;
- Schedule 5 of the Complying Product Rules for the purpose of describing hospital treatment(s) that must be covered under insurance policies, to place new MBS items into the clinical category "Hospital psychiatric services"; and,
- Schedule 3 of the Benefit Requirements Rules for the purpose of minimum hospital accommodation benefit requirements, to classify new MBS mental health and cardiac services as Type C Procedures, specifically, procedures not normally requiring hospital treatment.

##### Background

The Department of Health (the Department) assesses all changes to MBS items for their impact on, and implementation as appropriate to, the Private Health Insurance Rules. MBS items with the potential to be provided to privately insured patients as hospital treatment (defined in section 121-5 of the Act) are further considered for allocation to clinical treatment categories and hospital accommodation classifications to provide clarity in the administration of treatments to be covered by insurers.

### **MBS Expansion of GP and Allied Health Mental Health Services**

On 7 August 2020, the *Health Insurance (Section 3C General Medical – Expansion of GP and Allied Health Mental Health Services) Determination 2020* (GMST Determination) listed 36 new temporary mental health treatment items on the General Medical Services Table (GMST) in the *Health Insurance (General Medical Services Table) Regulations (No. 2) 2020*. The new items provide up to 10 additional Medicare-subsidised psychological therapy sessions, to eligible people (persons with a mental health disorder subject to COVID-19 public health orders) under the existing ‘Better Access to Psychiatrists, Psychologists and General Practitioners through the Medicare Benefits Schedule’ (otherwise known as the ‘Better Access’ initiative). These items do not normally require hospital treatment.

For consistency with existing private health insurance categorisations and classifications of Subgroup 2 of Group A20 of the GMST for focussed psychological strategies, these Amendment Rules add MBS attendance items 93300, 93303, 93306 and 93309 to the list of Type C Procedures, and to the clinical category ‘Hospital psychiatric services.’

### **MBS Cardiac Services and inclusion in the Amendment Rules**

On 15 September 2020, changes commenced to MBS items for cardiac services. This is part of the first phase of the Government’s response to recommendations made by the clinician-led MBS Review Taskforce to cardiac services.

The cardiac services MBS item changes were enacted by the *Health Insurance Legislation Amendment (Section 3C – Cardiac Services) Determination 2020* (DIST Determination), which amended the *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac Services) Determination 2020* (Principal Cardiac Services DIST Determination) and the *Health Insurance (Section 3C General Medical Services – Cardiac Services) Determination 2020* (Principal Cardiac Services GMST Determination), to amend some existing cardiac items to clarify the intent and list six new items for cardiac services.

On 1 August 2020, the Principal Cardiac Services DIST Determination listed 19 new MBS items for cardiac diagnostic imaging services on the Diagnostic Imaging Services Table (DIST) in the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020*, and the Principal Cardiac Services GMST Determination listed ten new MBS items for cardiac investigation services on the GMST. The *Private Health Insurance Legislation Amendment Rules (No.5) 2020* made consequential amendments to the Benefit Requirement Rules and Complying Product Rules from 1 August 2020 to classify new MBS cardiac services as Type C Procedures and place new cardiac services MBS items into the Support treatments category.

Of the additional cardiac services in the DIST Determination commencing 15 September 2020, the five myocardial perfusion study items (61394, 61398, 61406, 61410 and 61414) do not normally require hospital treatment. These items may, in some circumstances, be undertaken in hospital, and so are included in the Amendment Rules as

Type C Procedures. DIST items are automatically categorised as Support Treatments under Schedule 7 of the Complying Product Rules.

### **The Amendment Rules**

The consequential amendments in these Amendment Rules are administrative in nature and do not substantively alter existing arrangements. Classifications and categorisations of the new MBS items are consistent with existing items.

### *Benefit Requirements Rules*

The Benefit Requirements Rules provide for the minimum benefit requirements for psychiatric care, rehabilitation, palliative care and other hospital treatments. Schedules 1 to 5 of the Benefit Requirements Rules set out the minimum levels of accommodation benefits payable for hospital treatment. Overnight hospital accommodation benefits payable by insurers are in Schedules 1 and 2 of the Benefits Requirements Rules. Same-day hospital accommodation benefits payable by insurers are in Schedule 3. Schedule 3 also lists MBS items not normally considered hospital treatment. Nursing-home type patient accommodation benefits payable by insurers are in Schedule 4. Second-tier default benefit arrangements are in Schedule 5.

Schedule 1 of the Benefit Requirements Rules also sets benefits for different patient categories by categorising MBS item numbers into patient classifications for accommodation benefits. Procedures requiring hospital treatment that includes part of an overnight stay ('Type A procedures') comprise 'Advanced surgical patient', 'Obstetric patient', 'Surgical patient', 'Psychiatric patient', 'Rehabilitation patient' and 'Other patients.'

Against these patient classifications, Schedule 1 sets out the minimum accommodation benefit payable by insurers per night for overnight accommodation for private patients at private hospitals in all states and territories, and for private patients in overnight shared ward accommodation at public hospitals in Victoria and Tasmania.

Schedule 2 of the Benefit Requirements Rules states the minimum accommodation benefit payable by insurers per night, for private patients in overnight shared-ward accommodation at all other State and Territory public hospitals. For each jurisdiction listed in Schedule 2, the minimum benefit payable by insurers per night is averaged across all patients, rather than being specific to patient classification as for Schedule 1.

Schedule 3 of the Benefit Requirements Rules sets out minimum same-day hospital accommodation benefits payable by insurers for procedures requiring hospital treatment that does not include part of an overnight stay at a hospital ('Type B procedures'). Type B procedures are further classified into four separate treatment bands (1 to 4) based on anaesthesia type and/or theatre time, and a fifth 'non-band specific' classification for items that could fall into different bands depending on how treatment is delivered to an individual patient. Part 2 of Schedule 3 identifies MBS items against Type B procedure Band 1, or the Type B non-band specific classification. The Benefit Requirements Rules also sets out circumstances in which benefits for accommodation including part of an overnight stay may be payable for patients receiving a Certified Type B Procedure.

Schedule 3 of the Benefit Requirements Rules also identifies by MBS item those procedures that do not normally require hospital treatment ('Type C procedures') so do not normally qualify for minimum benefits for hospital accommodation.. The Benefit Requirements Rules,

together with the *Private Health Insurance (Health Insurance Business) Rules 2018*, sets out the circumstances in which benefits may be payable for patients where they receive as hospital treatment a Certified Type C Procedure.

#### *Complying Product Rules*

The Complying Product Rules sets out the gold, silver, bronze and basic product tiers for hospital cover, and which clinical treatment categories are included in each Hospital Treatment Product Tier.

The 38 clinical categories (Schedule 5) are treatments that must be covered by private health insurance products in the product tiers basic, bronze, silver and gold.

The Common treatments list (Schedule 6) consists of MBS items that are used across, and therefore common to, multiple clinical categories.

The Support treatments list (Schedule 7) consists of MBS items, such as pathology tests and diagnostic tests, which are generally used to support the provision of a primary treatment in one of the clinical categories, or in the Common treatments list. Items in the Support treatments list are unlikely to be the primary reason for treatment in hospital. Insurers are not required to provide benefits for items not delivered as hospital treatment, even if the item is on the Support treatments list.

Insurers are required to provide cover for MBS items in the Common and Support treatments lists where the MBS item is for hospital treatment within the scope of cover for a clinical category included in a patient's private health insurance policy.

#### Commencement

The Amendment Rules commence on 30 September 2020.

#### Consultation

In line with adjustments in the CPI, on 22 May 2020, the Department undertook routine consultation with all states and territories to ask whether they would increase hospital accommodation fees, and agree to corresponding increases in minimum accommodation benefits payable by private health insurers, from 1 July 2020. Resulting adjustments for each jurisdiction, except Tasmania, were made through amendments in the *Private Health Insurance Legislation Amendment Rules (No. 4) 2020*, available on the Federal Register of Legislation (FRL). The increases were in line with adjustments in the CPI to March 2020. Tasmania subsequently agreed to the increases in minimum accommodation benefits, and advised they intend to increase their accommodation fees, effective 30 September 2020.

Medical officers within the Department were consulted for their expert clinical opinion to determine the appropriate level of accommodation benefits and clinical categories in respect of the MBS items added by the Amendment Rules, and to the Benefit Requirements Rules and Complying Product Rules respectively.

As the amendments relating to MBS items are consequential to those in the GMST and DIST Determinations, detail on related consultations undertaken on the MBS items can be found in

the Explanatory Statements of those instruments published on FRL, and in factsheets available online from the MBS Online website at [www.mbsonline.gov.au](http://www.mbsonline.gov.au).

Cardiac services quick reference guides, made available at MBS online on 14 and 16 September 2020 to inform individuals most likely to be affected by the amendments, contain details of the proposed private health insurance classifications and categorisations for the new cardiac services items and contact details for feedback on private health insurance changes.

On 24 September 2020, the Department also notified private health industry stakeholders through the Department's weekly private health insurance email.

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

**Details of the *Private Health Insurance Legislation Amendment (No. 6) Rules 2020***

**Section 1 Name**

Section 1 provides that the name of the instrument is the *Private Health Insurance Legislation Amendment Rules (No. 6) 2020*.

**Section 2 Commencement**

Section 2 provides that the instrument commences on 30 September 2020.

**Section 3 Authority**

Section 3 provides that the Amendment Rules are made under section 333-20 of the *Private Health Insurance Act 2007*.

**Section 4 Schedules**

Section 4 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

**Schedule 1—Amendments—Minimum Accommodation Benefits**

***Private Health Insurance (Benefit Requirements) Rules 2011***

**Item 1 - Clause 2 of Schedule 1 (Table 3)**

Item 1 amends clause 2 of Schedule 1 of the Benefit Requirements Rules to repeal ‘Table 3 – Tasmania - overnight shared ward accommodation for private patients at public hospitals’ and substitute a new table that sets out the minimum benefits payable per night by private health insurers for specified classes of private patients in overnight shared ward accommodation at public hospitals in Tasmania from 30 September 2020.

**Item 2 - Clause 2 of Schedule 3 (Table 1)**

Item 2 amends clause 2 of Schedule 3 of the Benefit Requirements Rules to repeal ‘Table 1- Same day accommodation for private patients at public hospitals in all States/Territories’ and substitutes a new table that contains amendments for minimum benefits payable by private health insurers for private patients in same-day accommodation at public hospitals in Tasmania, from 30 September 2020. Benefits listed for all other jurisdictions in the table remain unchanged.

## Schedule 2—Amendments— Clinical categories

### *Private Health Insurance (Complying Product) Rules 2015*

#### **Item 1 - Clause 2 of Schedule 5 (table item dealing with clinical category “Hospital psychiatric services”), column headed “Treatments that must be covered (MBS Items) (see Notes 1, 2 and 3)”**

Item 1 amends clause 2 of Schedule 5 of the Complying Product Rules Clinical category ‘Hospital Psychiatric Services’ to add 5 new items (93300, 93303, 93306 and 93309) for focussed psychological strategy services by general practitioners and other medical practitioners.

## Schedule 3—Amendments—Type C procedures

### *Private Health Insurance (Benefit Requirements) Rules 2011*

#### **Item 1 - Clause 8 of Schedule 3 (Category 1 – Attendances, after the paragraph “A39:”)**

Item 1 amends clause 8 of Schedule 3 of the Benefit Requirements Rules to insert a new paragraph under the paragraph “Category 1 – Attendances A39:”. The new paragraph A41 inserts MBS items 93300, 93303, 93306, and 93309 for focussed psychological strategy services by general practitioners and other medical practitioners, to the Type C procedures list. Type C procedures do not normally require hospital treatment.

#### **Item 2 - Clause 8 of Schedule 3 (Category 5 – Diagnostic Imaging Services, under the heading “I4:”)**

This item amends clause 8 of Schedule 3 of the Benefit Requirements Rules to add new MBS items 61394, 61398, 61406, 61410 and 61414 for cardiac myocardial perfusion studies to the Type C procedures list under Category 5 - Diagnostic Imaging Services, heading I4. Type C procedures do not normally require hospital treatment.

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

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

### ***Private Health Insurance Legislation Amendment Rules (No. 6) 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**

The purpose of the *Private Health Insurance Legislation Amendment Rules (No. 6) 2020* (the Amendment Rules) is to amend the following instruments:

- *Private Health Insurance (Benefit Requirements) Rules 2011* (the Benefit Requirements Rules), and;
- *Private Health Insurance (Complying Product) Rules 2015* (the Complying Product Rules).

The Amendment Rules make consequential amendments to the Benefit Requirements Rules and the Complying Product Rules to:

- reflect changes to minimum accommodation benefits for private patients in Tasmanian public hospitals in line with movements in the Consumer Price Index in the year to 20 March 2020 (other jurisdictions adjusted these benefits from 1 July 2020); and,
- categorise and classify new Medicare Benefits Schedule (MBS) items for cardiac services, and mental health services that took effect on 7 August and 15 September 2020.

This is achieved by amending:

- Schedules 1 and 3 of the Benefit Requirements Rules for the purpose of increasing the minimum benefits payable by private health insurers for private patients' overnight and same-day accommodation in public hospitals in Tasmania. The increase is in line with the annual increase to March 2020 in the Consumer Price Index (CPI) of 2.2 per cent;
- Schedule 5 of the Complying Product Rules for the purpose of describing hospital treatment(s) that must be covered under insurance policies, to place new MBS items into the clinical category "Hospital psychiatric services"; and,
- Schedule 3 of the Benefit Requirements Rules for the purpose of minimum hospital accommodation benefit requirements, to classify new MBS mental health and cardiac services as Type C Procedures, specifically, procedures not normally requiring hospital treatment.

#### **Human rights implications**

The Amendment Rules engage the right to health by facilitating the payment of private health insurance benefits for health care services, encouraging access to, and choice in, health care services. Under Article 12 of the International Covenant on Economic, Social and Cultural Rights, specifically the right to health, the Amendment Rules assist with the progressive realisation by all appropriate means of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.



Private health insurance regulation assists with the advancement of these human rights by improving the governing framework for private health insurance in the interests of consumers. Private health insurance regulation aims to encourage insurers and providers of private health goods and services to provide better value for money to consumers, and to improve information provided to consumers of private health services to allow consumers to make more informed choices when purchasing services. Private health insurance regulation also requires that insurers do not differentiate the premiums they charge according to individual health characteristics such as poor health.

### *Analysis*

The amendments relating to insertion of MBS items in the Benefit Requirements Rules and the Complying Product Rules are as a consequence of the changes to the MBS that took effect on 7 August and 15 September 2020.

The addition of new MBS items to accommodation benefit requirements classifications, and specified clinical categories, allows for the specified treatments under those items and the related benefit amounts to be claimed by patients who have the relevant private health insurance policies.

### **Conclusion**

This disallowable legislative instrument only engages human rights to the extent that it maintains current arrangements with respect to the regulation of private health insurance. Therefore, this instrument is compatible with human rights because these changes continue to ensure that existing arrangements advancing the protection of human rights are maintained.