

## **EXPLANATORY STATEMENT**

### *Private Health Insurance Act 2007*

#### *Private Health Insurance (Health Insurance Business) Amendment Rules 2023*

#### **Authority**

Subsection 333-20(1) of the *Private Health Insurance Act 2007* (the Act) authorises the Minister of Health and Aged Care (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(1). 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 2023* (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 and Aged Care (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 to in making or revoking a declaration under subsection 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 (paragraph 121-5(7)(e)). Furthermore, subsection 121-7(2) of the Act enables the Rules to specify conditions to which facilities declared under subsection 121-5(6) are subject. Under rule 7 of the Rules, declared private hospitals are subject to conditions requiring provision of data to the Department.

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 21 June 2023); 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 21 June 2023),

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 21 June 2023, replace the documents that were referred to previously in the Rules, and can be found on the Department's website using the following link: <https://www.health.gov.au/resources/collections/hospital-data-resources>.

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 be used by the Department to identify a patient. Further, this information is protected by subsection 323-1(1) of the Act, which makes it an offence to disclose the information where the disclosure is not authorised by 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 2023/24 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.

### **Commencement**

The Amendment Rules commence on 1 July 2023.

### **Consultation**

The Department has consulted with private health insurers and the hospital sector (private and public) about the Amendment Rules through existing working group arrangements. The working groups are comprised of representatives from the Department and industry stakeholders. Feedback received from industry is that it is appropriate for amendments to be managed by the existing working group arrangements. The 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://www.health.gov.au/news/phi-circulars>.

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 27 April 2023.

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

## **Attachment**

### **Details of the *Private Health Insurance (Health Insurance Business) Amendment Rules 2023***

#### **Section 1      Name**

Section 1 provides that the name of the instrument is the *Private Health Insurance (Health Insurance Business) Amendment Rules 2023*.

#### **Section 2      Commencement**

Section 2 provides that the instrument commences on 1 July 2023.

#### **Section 3      Authority**

Section 3 provides that the instrument is 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**

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

**Item 1** repeals subrule 4(2) and substitutes a new subrule 4(2), which provides that in rule 4, ***HCP Data from Hospitals to Insurers*** means the protocol set out in the document approved by the Assistant Secretary of the Data and Analytics Branch of the Department of Health and Aged Care on 21 June 2023 which consists of “Data Specifications (HCP)” and “Explanatory Notes (HCP)”, and sets out the data specifications for data provided by hospitals to private health insurers.

**Item 2** repeals subrule 7(3) and substitutes a new subrule 7(3), which provides that in rule 7, the ***PHDB Data from Private Hospitals to the Department*** means the protocol set out in the document approved by the Assistant Secretary of the Data and Analytics Branch of the Department of Health and Aged Care on 21 June 2023 which consists of “Data Specifications (PHDB)” and “Explanatory Notes (PHDB)”, and sets out the data specifications for data provided by private hospitals to the Department.

## **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 2023***

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 2023* (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 and Aged Care (the Department).

Under paragraph 121-5(7)(e) of the Act, when making or revoking a hospital declaration the Minister of Health and Aged Care 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 21 June 2023); 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 21 June 2023),

from the time the Amendment Rules commence.

The Amendment Rules will commence on 1 July 2023.

The revised Hospital Casemix Protocol (HCP) and the Private Hospital Data Bureau (PHDB) documents, as specified in the Amendment Rules and as approved on 21 June 2023, can be found on the Department’s website using the following link:

<https://www.health.gov.au/resources/collections/hospital-data-resources>.

## **Human rights implications**

The Amendment Rules engage the human right to privacy under Article 17 of the International Covenant on Civil and Political Rights, but does 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 be used by the Department to identify a patient. Further, this information is protected by subsection 323-1(1) of the Act, which makes it an offence to disclose the information where the disclosure is not authorised by the Act.

## **Conclusion**

The Amendment Rules are compatible with human rights as although it engages the right to privacy in relation to disclosure of personal information, it does not limit that right.

**Kayla Jordan**

**Assistant Secretary**

**Data and Analytics Branch**

**Department of Health and Aged Care**