

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Private Health Insurance Act 2007

Private Health Insurance (Data Provision) 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, the Minister is authorised to make *Private Health Insurance (Data Provision) Rules* specified in item 9 of the table to provide for matters required or permitted by Part 4-5 of the Act, or necessary or convenient in order to carry out or give effect to Part 4-5 of the Act. Part 4-5 of the Act imposes miscellaneous notification and other obligations on private health insurers.

Purpose

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

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 information, relating to the treatment of insured persons, that private health insurers must give to the Secretary of the Department of Health (the Department) under subsection 172-10(1) of the Act.

Background

The information required by the Rules is specified in the following documents, which were approved by the Assistant Secretary of the Health Analytics Branch of the Department on the dates indicated:

- GT-Dental Data from Insurers to the Department, approved 30 May 2018;
- HCP1 Data from Insurers to the Department, approved 30 May 2018; and
- HCP2 Data from Insurers to the Department, approved 30 May 2018.

These documents can be found on the Department's website via the following link to the [Hospital Casemix Protocol \(HCP\)](#).

Supply of the GT-Dental Data, HCP1 Data and HCP2 Data involves private health insurers disclosing to the Department de-identified information about the treatment of insured patients. The Department would not be able to readily use this de-identified information to identify an individual patient. Further, subsection 323-1(1) of the Act creates an offence for a person to disclose protected information to another person that the first person obtains in the course of performing a duty, function or power under the Act, unless the disclosure is an authorised

disclosure. The effect of this provision is to limit the way in which the Department deals with information about individuals.

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

Consultation

The Department has consulted with the private health insurance and private hospital industry through existing working group arrangements. The working groups are comprised of Department and industry stakeholder representatives. 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 amendments to be managed by this Working Group. Previous amendments to the data specifications have been managed in this way. The amended data specifications are distributed to industry via a Private Health Insurance Circular.

The Act does not specify any conditions that need to be met before the power to make the Rules may be exercised.

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 (Data Provision) 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 (Data Provision) Rules provide for matters required or permitted by Part 4-5 of the *Private Health Insurance Act 2007* (the Act), or necessary or convenient in order to carry out or give effect to Part 4-5 of the Act.

The *Private Health Insurance (Data Provision) Rules 2018* (the Rules) specify the information, relating to the treatment of insured persons, that private health insurers must give to the Secretary of the Department of Health (the Department) under subsection 172-10(1) of the Act.

The Rules revoke and replace the *Private Health Insurance (Data Provision) Rules 2017*. The information required by the Rules is specified in the following documents, which were approved by the Assistant Secretary of the Health Analytics Branch of the Department on the dates indicated:

- GT-Dental Data from Insurers to the Department, approved 30 May 2018;
- HCP1 Data from Insurers to the Department, approved 30 May 2018; and
- HCP2 Data from Insurers to the Department, approved 30 May 2018.

These documents can be found on the Department's website via the following link to the [Hospital Casemix Protocol \(HCP\)](#).

The information which, under these Rules, private health insurers must give to the Secretary does not include personal information about patients (i.e. information from which individual patients could be identified).

Human rights implications

This legislative instrument will engage the human right of privacy but will not result in any limitation of that right.

Supply of the GT-Dental Data, HCP1 Data and HCP2 Data involves private health insurers disclosing to the Department de-identified information about the treatment of insured patients. The Department would not be able to readily use this de-identified information to identify an individual patient. Further, Part 6- 8 of the Act creates an offence for a person to disclose protected information to another person that the first person obtains in the course of performing a duty, function or power under the Act, unless the disclosure is an authorised disclosure. The effect of this provision is to limit the way in which the Department deals with information about individuals.

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 derogate from that right.

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