

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health and Ageing

*Private Health Insurance Act 2007*

*Private Health Insurance (Prostheses) Rules 2007*

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make *Private Health Insurance (Prostheses) Rules* (the Rules) providing for matters required or permitted by Part 3-3 of the Act, or necessary or convenient in order to carry out or give effect to Part 3-3 of the Act.

As part of reforms to private health insurance announced by the Australian Government on 26 April 2006, regulation of private health insurance was moved from the *National Health Act 1953* (NHA) (and regulations made under the NHA) into the new *Private Health Insurance Act 2007* (PHI) (and Private Health Insurance Rules made under the PHI).

The Rules provide for the continuation of the prostheses arrangements currently regulated under sections 73AAG (6), 73AAG (7), 73BDAAA, Schedule 1(b1) and Schedule 1 (b2) of the *National Health Act 1953*.

The Rules do not alter the amount of benefit payable by private health insurers for listed prostheses, or the circumstances in which private health insurers are required to pay the required benefit, except that new provision is made in relation to hospital-substitute treatment.

Private health insurers are now required to pay the required benefit where the listed prosthesis is provided as part of an episode of hospital-substitute treatment covered by the policy, and medicare benefit is payable for the professional service associated with the provision of the listed prosthesis.

The Rules also make reference to the timing of applications to have a prosthesis listed in the Schedule, and to the role of the Prostheses and Devices Committee and the Prostheses and Devices Negotiating Group.

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

Private health insurers were extensively consulted and provided with opportunities to comment upon the new Private Health Insurance legislative package. Draft Rules were published on the Departmental website for comment, and information sessions were held to provide industry stakeholders with the opportunity to be consulted on the making of the Rules.

Consultations were attended by representatives from individual private health insurers and peak industry bodies (the Australian Health Insurance Association and Health Insurance Restricted Membership Association members funds), private hospitals and their industry representatives (Australian Private Hospitals Association and Catholic Health Australia), the Australian Medical Association, the Private Health Insurance Administration Council, the

Private Health Insurance Ombudsman, Consumers' Health Forum of Australia, the Medical Industry Association of Australia and central agencies. All of the industry representatives have expressed strong support for the proposed legislative framework including the Private Health Insurance Rules.

The Office of Best Practice Regulation has advised that no additional Regulation Impact Statement (RIS) is required. A RIS that was prepared for the Private Health Insurance Bill 2006 (PHI Bill) which analysed the options associated with the Australian Government's recent initiatives to improve the attractiveness of and participation in private health insurance for consumers. The measures include those under the *Private Health Insurance Act 2007* and associated legislative instruments.

Details of the Rules are set out in the Attachment.

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

The Rules commence at the same time as the Act commences; or, if the Rules are registered on or after the Act commences, the Rules commence on the day they are registered.

Authority: Section 333-20 of the  
*Private Health Insurance  
Act 2007*

**DETAILS OF THE *PRIVATE HEALTH INSURANCE (PROSTHESES) RULES 2007*****PART 1 PRELIMINARY****1. Name of Rules**

Rule 1 provides that the title of the rules is the *Private Health Insurance (Prostheses) Rules 2007*.

**2. Commencement**

Rule 2 provides for the Rules to commence at the same time as the Act commences; or, if the Rules are registered on or after the Act commences, the Rules commence on the day they are registered.

**3. Definitions**

Terms used in the Rules have the same meaning as in the Act. In addition, certain terms are defined for the purposes of the Rules, including the definitions of *gap permitted prosthesis* and *no gap prosthesis*.

**Part 2 Benefit requirements****4. Listing of, and benefits, for prostheses**

Paragraph 4 (1) (a) provides that the Schedule to these Rules sets out the prostheses the Minister has listed ('listed prostheses').

The prostheses listed in the Schedule to these Rules on 1 April 2007, were, immediately before the commencement of the PHI on 1 April 2007, listed as a no gap prosthesis or gap permitted prosthesis for the purposes of the NHA. Therefore, the Minister may list the prostheses in the Rules without an application being made in relation to the prosthesis under subsection 72-10(2) of the PHI: section 12, *Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007*.

The person who, immediately before 1 April 2007, was the sponsor of the prosthesis for the purposes of the *National Health Act 1953*, is taken to be the applicant in relation to the prosthesis for the purposes of paying the ongoing listing fee in relation to the prosthesis in accordance with section 72-15 of the PHI.

Paragraph 4(b) provides that rule 5 sets out the method for working out the minimum and maximum benefit for hospital treatment, covered under a complying health insurance policy, that is the provision of a listed prosthesis in circumstances where:

- a medicare benefit is payable in respect of the professional service associated with the provision of the prosthesis; or,
- the provision of the prosthesis is associated with podiatric treatment by an accredited podiatrist.

Paragraph 4(c) provides that rule 6 sets out the method for working out the minimum benefit and maximum benefit for hospital-substitute treatment, covered under a complying private health insurance policy, that is the provision of a listed prosthesis in circumstances where a medicare benefit is payable in respect of the professional service associated with the provision of the prosthesis.

It is not possible for a private health insurer to cover hospital treatment or hospital-substitute treatment under a policy, but exclude coverage of the provision of an associated listed prosthesis. This coverage requirement is provided for in Rule 6 of the *Private Health Insurance (Complying Products) Rules 2007*.

## **5. Benefits for prostheses provided as part of hospital treatment**

Subrule 5 (1) provides that for a no gap prosthesis provided as part of an episode of hospital treatment by a private hospital in the circumstances mentioned in paragraph 4 (b), the minimum and maximum benefit are each the amount for that prosthesis set out under the column heading 'Minimum Benefit' in the Schedule.

Subrule 5 (2) provides that for a gap permitted prosthesis provided as part of an episode of hospital treatment by a private hospital in the circumstances mentioned in paragraph 4 (b) the minimum benefit and the maximum benefit are the amounts set out in the Schedule for that prosthesis under the column headings 'Minimum Benefit' and 'Maximum Benefit'.

Subrule 5 (3) provides that for a no gap prosthesis provided as part of an episode of hospital treatment by a public hospital in the circumstances mentioned in paragraph 4 (b) the minimum benefit is the lesser of: the amount for that prosthesis set out in the Schedule under the column heading 'Minimum Benefit'; or, the amount of the insured person's liability to the public hospital for that prosthesis. The maximum benefit is the amount for that prosthesis set out under the column heading 'Minimum Benefit' in the Schedule.

Subrule 5 (4) provides that for a gap permitted prosthesis provided as part of an episode of hospital treatment by a public hospital in the circumstances mentioned in paragraph 4(b), the minimum benefit is the lesser of: the amount for that prosthesis set out in the Schedule under the column heading 'Minimum Benefit'; or, the amount of the insured person's liability to the public hospital for that prosthesis. The maximum benefit is the amount for that prosthesis set out under the column heading 'Maximum Benefit' in the Schedule.

## **6. Benefits for prostheses provided as part of hospital-substitute treatment**

Subrule 6 (1) provides that for a no gap prosthesis provided as part of an episode of hospital-substitute treatment in the circumstances mentioned in paragraph 4 (c) the minimum and maximum benefit are each the amount for that prosthesis set out under the column heading 'Minimum Benefit' in the Schedule.

Subrule 6 (2) provides that for a gap permitted prosthesis provided as part of an episode of hospital-substitute treatment in the circumstances mentioned in paragraph 4 (c) the minimum benefit and the maximum benefit are the amounts set out in the Schedule for that prosthesis under the column headings 'Minimum Benefit' and 'Maximum Benefit'.

## **7. Timing of applications to have a prosthesis listed**

Rule 7 provides that as a matter of normal administrative practice, if the Minister grants an application, then the prosthesis must be listed in the Schedule the next time the Minister makes or varies the rules.

#### **8. Minister may have regard to recommendations and advice**

Subrule 8 (1) provides that in making a decision under subsection 72-10 of the Act, the Minister may have regard to a recommendation from the Prostheses and Devices Committee when deciding whether or not to grant the application to list a prosthesis.

Subrule 8 (2) provides that the Minister may have regard to the amounts as negotiated between the Prostheses and Devices Negotiating Group and the applicant when setting the minimum and maximum benefit amounts.

#### **SCHEDULE**

The Schedule contains the 'Minimum Benefit' and 'Maximum Benefit' amounts for prostheses for private and public hospital treatment, and hospital-substitute treatment.