

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Ageing

Private Health Insurance (Prostheses Application and Listing Fees) Act 2007

Private Health Insurance (Prostheses Application and Listing Fee) Rules 2007 (No.2)

Section 8 of the *Private Health Insurance (Prostheses Application and Listing Fees) Act 2007* (the Act) provides that the Minister may make Private Health Insurance (Prostheses Application and Listing Fee) Rules providing for matters required or permitted by the Act to be provided; or necessary or convenient to be provided in order to carry out or give effect to the Act.

Sections 3 and 4 of the Act provide that the Private Health Insurance (Prostheses Application and Listing Fee) Rules may specify:

- an application fee for applications made under section 72-10 of the *Private Health Insurance Act 2007* (the PHI Act);
- an initial listing fee for the purposes of subsection 72-10(5) of the PHI Act;
- an ongoing listing fee for the purposes of section 72-15 of the PHI Act; and
- ongoing listing fee imposition days.

These specified fees are imposed as taxes (see subsections 3(2), 4(2) and 4(4) of the Act).

The purpose of these taxes is to recover the cost from industry for the administration of the prostheses list arrangements and for the clinical assessment of products using expert advisory groups established to advise on products placed on the list.

The Act does not specify any conditions that need to be met before the power to make the Private Health Insurance (Prostheses Application and Listing Fee) Rules may be exercised.

The *Private Health Insurance (Prostheses Application and Listing Fee) Rules 2007* (the Previous Rules) commenced on 1 April 2007.

The *Private Health Insurance (Prostheses Application and Listing Fee) Rules 2007 (No. 2)* (the Rules) revoke and replace the Previous Rules.

The Rules differ from the Previous Rules in that they specify an additional initial listing fee and an additional ongoing listing fee for specific circumstances. These additional fees are fees of nil amount.

These two new rules are minor and machinery in nature and as such, it was not considered necessary to engage in further consultation with the private health insurance

industry in relation to the making of these Rules.

Draft versions of the Previous 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 Previous Rules.

Details of the Rules are set out in the Attachment.

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

The Rules commenced on 14 July 2007.

Authority: Section 8 of the *Private
Health Insurance
(Prostheses Application
and Listing Fees) Act
2007*

ATTACHMENT

DETAILS OF THE *PRIVATE HEALTH INSURANCE (PROSTHESES APPLICATION AND LISTING FEE) RULES 2007 (No.2)*

1. Name of Rules

Rule 1 provides that the title of the Rules is the *Private Health Insurance (Prostheses Application and Listing Fee) Rules 2007 (No. 2)*.

2. Commencement

Rule 2 provides that the Rules commence on 14 July 2007.

This means that the Rules will have retrospective effect.

The Rules differ from the Previous Rules (the *Private Health Insurance (Prostheses Application and Listing Fee) Rules 2007*) in that they specify an additional initial listing fee (see rule 8) and an additional ongoing listing fee (see rule 9) for specific circumstances. These additional fees are fees of nil amount.

The paragraphs set out below concerning rules 8 and 9 explain why the retrospective operation of rules 8 and 9 will not infringe subsection 12(2) of the *Legislative Instruments Act 2003*.

3. Revocation

Rule 3 provides that the Rules revoke the *Private Health Insurance (Application and Listing Fee) Rules 2007*.

4. Definitions

Rule 4 provides a definition of **human tissue prosthesis** and clarifies that the **Act** means the *Private Health Insurance (Prostheses Application and Listing Fee) Act 2007*.

5. Application fees

Rule 5 specifies the application fee for an application made to the Minister under subsection 72-10(2) of the *Private Health Insurance Act 2007*. The application fee for a human tissue prosthesis is nil, and for any other prosthesis is \$400.

6. Initial listing fee

Rule 6 specifies the initial listing fee imposed if the Minister grants an application made under subsection 72-10(2) of the *Private Health Insurance Act 2007*. The initial listing

fee for a human tissue prosthesis is nil, and for any other prosthesis is \$110.

7. Ongoing listing fee

Rule 7 specifies the ongoing listing fee for the purposes of section 72-15 of the *Private Health Insurance Act 2007*. The ongoing listing fee for a human tissue prosthesis is nil, and for any other prosthesis is \$110.

8. Transitioned applications

Rule 8 specifies an additional initial listing fee of nil amount. This rule operates as an exception to rule 6.

Rule 8 provides that despite rule 6, if rule 7 of the *Private Health Insurance (Transition) Rules 2007* applies to an application, the initial listing fee is, and is taken always to have been, nil.

Rule 7 of the *Private Health Insurance (Transition) Rules 2007* (the Transition Rules) concerns the transitional arrangements for applications that were made prior to the commencement of the *Private Health Insurance Act 2007* (1 April 2007) for a determination under subsections 73AAG(6) or (7) of the *National Health Act 1953* that a prosthesis is a gap prosthesis or no gap prosthesis.

Rule 7 of the Transition Rules provides that if, as at 1 April 2007, such an application has not been decided, the application is taken to be an application to the Minister under subsection 72-10(2) of the *Private Health Insurance Act 2007*.

A fee of nil is permitted by subsection 5(4) of the *Private Health Insurance (Prostheses Application and Listing Fees) Act 2007*.

The fee of nil is being specified with retrospective effect. However, this retrospectivity will not infringe subsection 12(2) of the *Legislative Instruments Act 2003* because rule 8 is beneficial in nature, and will not affect the rights of a person (other than the Commonwealth) as at the date of registration of the Rules so as to disadvantage that person. In addition, rule 8 does not impose any liabilities on any person (other than the Commonwealth) in respect of anything done or omitted to be done before the date of registration of the Rules. The effect of rule 8 is to retrospectively reduce to nil the amount of the initial listing fee that might otherwise have been imposed on applicants to whom rule 7 of the Transition Rules applies.

9. First ongoing listing fee following grant of application

Rule 9 specifies an additional ongoing listing fee of nil amount. This rule operates as an exception to rule 7.

Rule 9 provides that despite rule 7, the ongoing listing fee imposed on the “ongoing

listing fee imposition day” immediately following the granting of an application made under subsection 72-10(2) is nil.

The fee of nil is being specified with retrospective effect. However, this retrospectivity will not infringe subsection 12(2) of the *Legislative Instruments Act 2003* because rule 9 is beneficial in nature, and will not affect the rights of a person (other than the Commonwealth) as at the date of registration of the Rules so as to disadvantage that person. In addition, rule 9 does not impose any liabilities on any person (other than the Commonwealth) in respect of anything done or omitted to be done before the date of registration of the Rules. The effect of rule 9 is to retrospectively reduce to nil the amount of the first ongoing listing fee that might otherwise have been imposed on applicants to whom section 72-15 of the *Private Health Insurance Act 2007* applies, following the grant of their application.

10. Ongoing listing fee imposition day

Rule 10 specifies 15 January and 15 July as “ongoing listing fee imposition days”.

The ongoing listing fee is imposed as a tax on each day specified in the Rules as an ongoing listing fee day. Accordingly, ongoing listing fees are imposed on 15 January and 15 July each year. Subsection 72-15(2) of the *Private Health Insurance Act 2007* provides that the ongoing listing fee must be paid within 28 days of each ongoing listing fee imposition day.