

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 2008 (No.1)

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 (No.2)* (the Previous Rules) commenced on 14 July 2007.

The *Private Health Insurance (Prostheses Application and Listing Fee) Rules 2008 (No.1)* (the Rules) revoke and replace the Previous Rules.

The Rules differ from the Previous Rules in that they clarify the application fee, initial listing fee and ongoing listing fee(s) payable in respect of an application under section 72-10 of the PHI Act that will involve, if granted, a 'revocation and relisting' or a 'duplicate listing'.

The Rules specify that an application involving a 'revocation and relisting' or a 'duplicate listing' will attract an application fee of nil amount and if granted, will attract

an initial listing fee of nil amount. The Rules also clarify that an application involving a 'revocation and relisting' or a 'duplicate listing' will attract an ongoing listing fee on the ongoing listing fee imposition day immediately following the granting of the application.

These new rules are minor and machinery in nature and do not substantially alter existing arrangements. 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.

A preliminary assessment on the regulatory impact of these amendments was conducted. The impact of these amendments on the private health insurance industry and the economy were assessed as nil and therefore no further regulatory analysis is required.

Draft versions of the *Private Health Insurance (Prostheses Application and Listing Fee) Rules 2007* 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 those 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 commence on the day after registration.

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 2008 (No.1)*

1. Name of Rules

Rule 1 provides that the title of the Rules is the *Private Health Insurance (Prostheses Application and Listing Fee) Rules 2008 (No.1)*.

2. Commencement

Rule 2 provides that the Rules commence on the day after registration.

3. Revocation

Rule 3 provides that the Rules revoke the *Private Health Insurance (Application and Listing Fee) Rules 2007 (No.2)*.

4. Definitions

Rule 4 defines key terms used in the Rules.

5. Application Fees

Rule 5 specifies application fees for applications made to the Minister under subsection 72-10(2) of the *Private Health Insurance Act 2007*. Rule 5 specifies different application fees for different circumstances, as permitted by paragraph 5(1)(a) of the *Private Health Insurance (Prostheses Application and Listing Fees) Act 2007*.

Subrule 5(1)

Paragraph 5(1)(a) provides that the application fee for an application made in relation to a human tissue prosthesis is nil. Paragraph 5(1)(b) provides that the application fee for an application made in relation to any other prosthesis, except where subrule 5(2) applies, is \$400.

Subrule 5(2)

Subrule 5(2) specifies an additional application fee of nil amount. This subrule operates as an exception to paragraph 5(1)(b).

Subrule 5(2) provides that if an application under subsection 72-10(2) of the *Private Health Insurance Act 2007* to list a prosthesis would result in, if granted:

- a ***revocation and relisting***; or
- a ***duplicate listing***;

the application fee is, and is taken always to have been, nil.

The specific circumstances in which an application will, if granted, result in a **revocation and relisting** are described in subrule 5(4). The specific circumstance in which an application will, if granted, result in a **duplicate listing** is described in subrule 5(5).

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. This is because it was not apparent at the time that the *Private Health Insurance (Prostheses Application and Listing Fee) Rules 2007* were made that applications for a 'revocation and relisting' or a 'duplicate listing' were a distinct category of applications under section 72-10 of the *Private Health Insurance Act 2007* that should be the subject of distinct fee charging arrangements.

Subrule 5(2) of the Rules specifies a fee of nil to reflect the Government's policy with respect to the application fee that should apply to applications under section 72-10 of the *Private Health Insurance Act 2007* that involve a 'revocation and relisting' or a 'duplicate listing'. Applicants lodging applications of this nature have not been charged application fees to date.

The retrospective operation of subrule 5(2) of the Rules will not infringe subsection 12(2) of the *Legislative Instruments Act 2003* because subrule 5(2) is beneficial in nature, and will not affect the rights of another person (other than the Commonwealth) as at the date of registration of the Rules so as to disadvantage that person. In addition, subrule 5(2) 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 subrule 5(2) is to retrospectively reduce to nil the amount of the application fee that might otherwise have been imposed on an applicant who lodges an application involving a 'revocation and relisting' or a 'duplicate listing'.

Subrule 5(3)

Subrule 5(3) clarifies that if the approved form for an application permits more than one application for the listing of a kind of prosthesis to be made on the same form, the application for each kind of prosthesis is a separate application and each listing, if granted, is a separate listing.

Subrule 5(4)

Subrule 5(4) describes the 5 circumstances when an application will result in a **revocation and relisting**.

Sub subparagraph 5(4)(a)(ii)(A) describes the circumstance where an application:

- if granted, would involve revoking an existing listing of a prosthesis; and
- is for the listing of exactly the same prosthesis for the new applicant

Sub subparagraph 5(4)(a)(ii)(B) describes the circumstance where an application:

- if granted, would involve the revocation of an existing listing of a prosthesis; and
- is for the listing of the same kind of prostheses which are different only in size or materials, or both, but have the same action, function and clinical outcomes.

Paragraph 5(4)(b) describes the circumstance where an application:

- if granted, would involve the revocation of the listing of a prosthesis which has component items but is listed as one prosthesis (a ***prosthesis system***); and
- is for the listing of a component of that prosthesis system as a separate component.

Paragraph 5(4)(c) describes the circumstance where an application:

- if granted, would involve the revocation of the listing of two or more prostheses (***items***) all of which have the same form (but may be of different sizes, action, function and clinical outcomes); and
- is for the listing of exactly the same items together as one kind of prosthesis.

Paragraph 5(4)(d) describes the circumstance where an application:

- if granted, would involve the revocation of the listing of two or more prostheses which are components of a kind of prosthesis that is a system or set, which can be used only as a system or set (***system***), and the system is not a knee or hip replacement prosthesis; and
- is for the listing of exactly the same system as one kind of prosthesis.

Subrule 5(5)

Subrule 5(5) describes the circumstance where an application will result in a ***duplicate listing***. Subrule 5(5) provides that an application will result in a duplicate listing only where the application is for the listing of a kind of prosthesis by an applicant and exactly the same kind of prosthesis is already listed following an application by a different applicant.

6. Initial listing fee

Rule 6 specifies the initial listing fees imposed for the purposes of subsection 72-10(5) of the *Private Health Insurance Act 2007*. Rule 6 specifies different initial listing fees for different circumstances, as permitted by paragraph 5(1)(b) of the *Private Health Insurance (Prostheses Application and Listing Fees) Act 2007*.

Subrule 6(1)

Paragraph 6(1)(a) provides that the initial listing fee for a human tissue prosthesis is nil. Paragraph 6(1)(b) provides that the initial listing fee for any other prosthesis, except where subrule 6(2) or rule 8 applies, is \$110.

Subrule 6(2) concerns applications that involve a revocation and relisting or a duplicate listing and is explained below. Rule 8 concerns 'transitioned applications' and is also explained below.

Subrule 6(2)

Subrule 6(2) specifies an additional initial listing fee of nil amount. This subrule operates as an exception to paragraph 6(1)(b).

Subrule 6(2) provides that if an application under subsection 72-10(2) of the *Private Health Insurance Act 2007* to list a prosthesis would result in, if granted:

- a **revocation and relisting**; or
- a **duplicate listing**;

the initial listing fee is, and is taken always to have been, nil.

The specific circumstances in which an application will, if granted, result in a **revocation and relisting** are described in subrule 5(4). The specific circumstance in which an application will, if granted, result in a **duplicate listing** is described in subrule 5(5).

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. This is because it was not apparent at the time that the *Private Health Insurance (Prostheses Application and Listing Fee) Rules 2007* were made that applications for a ‘revocation and relisting’ or a ‘duplicate listing’ were a distinct category of applications under section 72-10 of the *Private Health Insurance Act 2007* that should be the subject of distinct fee charging arrangements.

Subrule 6(2) of the Rules specifies a fee of nil to reflect the Government’s policy with respect to the initial listing fee that should apply to applications under section 72-10 of the *Private Health Insurance Act 2007* that involve a ‘revocation and relisting’ or a ‘duplicate listing’. To date, applicants that have lodged applications of this nature and had those applications granted have not been charged initial listing fees in respect of those applications.

The retrospective operation of subrule 6(2) of the Rules will not infringe subsection 12(2) of the *Legislative Instruments Act 2003* because subrule 6(2) is beneficial in nature, and will not affect the rights of another person (other than the Commonwealth) as at the date of registration of the Rules so as to disadvantage that person. In addition, subrule 6(2) 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 subrule 6(2) is to retrospectively reduce to nil the amount of the initial listing fee that might otherwise have been imposed on an applicant who lodges an application involving a ‘revocation and relisting’ or a ‘duplicate listing’.

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. The ongoing listing fee for any other prosthesis, except where rule 9 applies, is \$110.

Rule 9 operates as an exception to rule 7. Pursuant to rule 9, the ongoing listing fee imposed on the “ongoing listing fee imposition day” immediately following the granting of an application (other than an application for a ‘revocation and relisting’ or a ‘duplicate listing’) is nil.

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* (the Transition Rules) applies to an application, the initial listing fee is, and is taken always to have been, nil.

Rule 7 of 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, other than an application for a ‘revocation and relisting’ or a ‘duplicate listing’, is nil.

The Note following rule 9 clarifies that an application involving a ‘revocation and relisting’ or a ‘duplicate listing’ is not free from the first ongoing listing fee following the granting of the 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.