

## EXPLANATORY STATEMENT

### *Private Health Insurance Act 2007*

#### *Private Health Insurance (Prostheses) Amendment Rules 2017 (No. 1)*

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make Private Health Insurance (Prostheses) 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.

The *Private Health Insurance (Prostheses) Amendment Rules 2017 (No. 1)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2016 (No. 4)* (the Principal Rules) to correct errors in the Principal Rules.

Item 4 of the table in subsection 72-1(2) of Part 3-3 of the Act provides for requirements that a complying health insurance policy that covers hospital treatment must meet. There must be a benefit for the provision of a prosthesis, of a kind listed in the Principal Rules (i.e. a listed prosthesis), in specified circumstances and under any specified conditions. The specified circumstances are that the listed prosthesis is provided in circumstances in which a Medicare benefit is payable or those other circumstances which are set out in the Principal Rules.

If the complying health insurance policy also covers hospital-substitute treatment, the same requirements apply.

Listed prostheses are currently set out in the Schedule to the Principal Rules.

The Amendment Rules vary the Principal Rules, correcting errors to billing codes and their listing details made where benefit reductions for 2,439 devices were auto generated and listed in the *Private Health Insurance (Prostheses) Amendment Rules 2016 (No. 4)* (2016 Amendment Rules). The undiscovered system error reverted some billing codes back to their original name, description, size or changed their suffix. In total, 391 billing codes require correction.

These errors are corrected by the Amendment Rules to ensure that the benefit reductions as listed in the 2016 Amendment Rules take effect and that these devices remain eligible for benefits from insurers. The correction to the 391 billing codes is to be published as soon as possible to enable hospitals and insurers to update their systems before the date of commencement.

The Amendment Rules commence immediately after the commencement of the *Private Health Insurance (Prostheses) Amendment Rules 2016 (No. 4)*.

## **Consultation**

In accordance with section 17 of the *Legislation Act 2003*, the Department and Government consulted widely with the sponsors and other affected stakeholders regarding prostheses benefits, including holding an Industry Working Group on Private Health Insurance Prostheses Reform (the Industry Working Group) in relation to the 2016 Amendment Rules.

As the Amendment Rules correct errors contained in the 2016 Amendment Rules, no further consultation was undertaken.

The Department has received a standing Regulatory Impact Statement exemption from the Department of Finance and Deregulation.

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

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Private Health Insurance (Prostheses) Amendment Rules 2017 (No. 1)***

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**

The *Private Health Insurance (Prostheses) Amendment Rules 2017 (No. 1)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2016 (No. 4)* (the Principal Rules) to correct errors in the Principal Rules as a result of the changes made by the *Private Health Insurance (Prostheses) Amendment Rules 2016 (No. 4)* (2016 Amendment Rules).

Item 4 of the table in subsection 72-1(2) of Part 3-3 of the *Private Health Insurance Act 2007* provides for requirements that a complying health insurance policy that covers hospital treatment must meet. There must be a benefit for the provision of a prosthesis, of a kind listed in the Principal Rules (i.e. a listed prosthesis), in specified circumstances and under any specified conditions. The specified circumstances are that the listed prosthesis is provided in circumstances in which a Medicare benefit is payable or those other circumstances which are set out in the Principal Rules.

If the complying health insurance policy also covers hospital-substitute treatment, the same requirements apply.

Listed prostheses, identified by billing code, are currently set out in the Schedule to the Principal Rules.

The Amendment Rules amend the Principal Rules by replacing Part A of the Schedule with a new Part A and correct the listing details of 391 billing codes that were incorrectly listed in the 2016 Amendment Rules.

### **Human rights implications**

The Amendment Rules engage the following human rights:

#### *Right to Health*

The right to health – the right to the enjoyment of the highest attainable standard of physical and mental health – is contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR). Whilst the UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not to be understood as a right to be healthy, it does entail a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Amendment Rules correct the billing code of 391 prostheses. Each of these changes has a beneficial impact on the right to health in Australia, ensuring that minimum benefits, or higher minimum benefits, are required to be paid for the provision of these prostheses under private health insurance policies covering hospital treatment, where relevant conditions are met.

### **Conclusion**

The Amendment Rules are compatible with human rights because they advance the protection of human rights, specifically the right to health.

Tracey Duffy  
Assistant Secretary  
Private Health Insurance Branch  
Medical Benefits Division  
Department of Health