

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health

*Private Health Insurance Act 2007*

*Private Health Insurance (Prostheses) Amendment Rules 2018 (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 2018 (No.1)* (Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2018 (No.1)* (the Principal Rules) to include two billing codes to Part B of the Schedule to the Principal Rules that had been omitted due to an IT database error.

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 in circumstances which are set out in Private Health Insurance (Prostheses) Rules. The specified conditions are those that 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 amend the Principal Rules by adding the following two billing codes and their listed benefits to Part B of the Schedule to the Principal Rules:

- QHV13 – Engineered Cancellous Bone
- QHV14 - 1g Demineralised Bone Matrix

The billing code is a reference code allocated to a listed prosthesis. The billing code facilitates hospital invoicing procedures and the payment of benefits by insurers.

In the Delegated Instruments Monitor No. 1 (2018) the Senate Regulations and Ordinances Committee raised concerns that errors in the listing of benefits on the Schedule to the Principal Rules could have the effect of increasing out-of-pocket expenses for some individuals. The effective date of the Principal Rules is 14 March 2018. These Amendment Rules insert the two billing codes prior to the commencement of the Principal Rules. Therefore, no person or entity will be negatively affected by the Amendment Rules, or the IT database error.

### **Consultation**

The affected Sponsor raised the matter following publication of the Principal Rules. The error would negatively affect the Sponsor if not corrected prior to the commencement of the Principal Rules.

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

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

## 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 2018 (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 2018 (No.1)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2018 (No.1)* (the Principal Rules) to include two billing codes to Part B of the Schedule to the Principal Rules that had been omitted due to an IT database error.

Item 4 of the table in subsection 72-1(2) of Part 3-3 of the *Private Health Insurance Act 2007* (the Act) provides for benefit 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 adding the following two billing codes and their listed benefits:

- QHV13
- QHV14

#### **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 inclusion of the two items to the Schedule of the Rules as no gap prostheses or gap permitted prostheses will ensure that an insured person with appropriate cover will receive a minimum benefit for the provision of the prosthesis as hospital treatment or, where applicable hospital-substitute treatment, and:

- the prosthesis is provided in circumstances where a medicare benefit is payable and any relevant conditions in the Rules are met; or
- the prosthesis is provided in other circumstances specified in the Rules and any relevant conditions are met.

### Analysis

The Rules will maintain the existing rights to health and social security by ensuring access to publicly subsidised health services which are clinically effective and cost-effective.

### **Conclusion**

The Rules are compatible with human rights because they advance the protection of human rights.

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