

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health

*Private Health Insurance Act 2007*

*Private Health Insurance (Prostheses) Amendment Rules 2018 (No.3)*

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.3)* (Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2018 (No.2)* (the Principal Rules) to correct errors and omissions in Part A and Part B of the Schedule to the Principal Rules that occurred as a result of administrative errors and processing issues in updating the prosthesis list database on which the Schedules to the Principal Rules are based.

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 to implement the most recent listing decision made in relation to these specified products by:

- adding the following two billing codes and their listed benefits to Part A of the Schedule to the Principal Rules:
  - OH642 KLS Martin – Radial Plating System
  - MI291 CD Horizon
- changing the sizing information for billing code GT261 in Part A of the Schedule to the Principal Rules;
- changing the billing codes for two human tissues in Part B of the Schedule to the Principal Rules; and
- changing the minimum benefits for 17 billing codes in Part B of the Schedule to the Principal Rules.

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

The details set out in the Amendment Rules should have been included in the Principal Rules, which was made on 28 August 2018. The Amendment Rules commence immediately after the commencement of the Principal Rules on 14 September 2018. The Amendment Rules will

have the effect of listing the prostheses and human tissues in accordance with the most recent listing decision. Therefore, no person or entity will be negatively affected by the Amendment Rules or the administrative and system errors.

### **Consultation**

The affected sponsors and human tissue institutes alerted the Department of Health of the errors and omissions following publication of the Principal Rules. The errors and omissions would negatively affect the sponsors and human tissue institutes 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.3)***

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.3)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2018 (No.2)* (the Principal Rules) to correct errors and omissions in Part A and Part B of the Schedule to the Principal Rules that occurred as a result of administrative errors and processing issues relating in updating the prosthesis list database on which the Schedules to the Principal Rules are based.

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 to implement the most recent listing decision made in relation to these specified products by:

- adding the following two billing codes and their listed benefits to Part A of the Schedule to the Principal Rules:
  - OH642 KLS Martin – Radial Plating System
  - MI291 CD Horizon
- changing the sizing information for billing code GT261 in Part A of the Schedule to the Principal Rules;
- changing the billing codes for two human tissues in Part B of the Scheduled to the Principal Rules; and
- changing the minimum benefits for 17 billing codes in Part B of the Schedule to the Principal Rules.

The details set out in the Amendment Rules should have been included in the Principal Rules, which was made on 28 August 2018. The Amendment Rules commence immediately after the commencement of the Principal Rules on 14 September 2018. The Amendment Rules will have the effect of listing the prostheses and human tissues in accordance with the most recent

listing decision. Therefore, no person or entity will be negatively affected by the Amendment Rules or the administrative and system errors.

### **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 addition of the two prostheses to the Schedule of the Rules as no gap prostheses or gap permitted prostheses and the change to the size information of one prosthesis will ensure that an insured person with appropriate cover will receive a minimum benefit for the provision of the prostheses 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.

Harry Rothenfluh  
Assistant Secretary  
Technology Assessment and Access Division  
Department of Health