

EXPLANATORY STATEMENT

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules 2019

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.

In addition to the power to make this instrument under section 333-20 of the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The table in subsection 72-1(2) of Part 3-3 of the Act provides for benefit requirements that a complying health insurance policy that covers hospital treatment must meet. Under item 4 of that table there must be a benefit for the provision of a prosthesis, of a kind listed in Private Health Insurance (Prostheses) 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 other circumstances which may be set out in Private Health Insurance (Prostheses) Rules. The specified conditions are any that may be set out in Private Health Insurance (Prostheses) Rules.

If the complying health insurance policy also covers hospital-substitute treatment, under item 4 of the table in subsection 72-1(2) of Part 3-3 of the Act the same requirements apply.

The *Private Health Insurance (Prostheses) Rules 2018 (No. 2)* (Prostheses Rules) were created for the purposes of section 333-20 of the Act. Listed prostheses and their minimum benefits are set out in the Schedule to the Rules. The list of prostheses in the Schedule is commonly referred to as the Prostheses List.

Purpose

The purpose of the *Private Health Insurance (Prostheses) Amendment Rules 2019* (the Amending Rules) is to update the list of the kinds of prostheses in Part C of the Schedule to the Prostheses Rules.

The Schedule to the Prostheses Rules has three parts:

- Part A – Prostheses List;
- Part B – Human Tissue List; and
- Part C – Other Prostheses.

Rule 13 lists the kinds of prostheses that are in Part C of the Schedule. The list currently includes insulin infusion pumps, implantable cardiac event recorders and cardiac/remote monitoring systems.

The purpose of the Amending Rules is to add cardiac ablation catheters, mapping catheters for cardiac ablation or patches for cardiac ablation to this list.

Consultation

The Government made an agreement with the Medical Technology Association of Australia (MTAA) in October 2017 to promote the sustainability of privately insured healthcare and to support a viable, innovative and diverse medical technology sector in Australia. The agreement includes a commitment to review, through the Prosthesis List Advisory Committee (PLAC), ways of listing new targeted medical devices on the Prosthesis List that do not meet the current criteria for listing but are safe, clinically effective and cost effective, including, but not limited to, cardiac ablation catheters for atrial fibrillation.

The Minister for Health wrote to the Chair of the PLAC on 10 October 2017, asking to receive advice by 31 December 2018 regarding the inclusion of cardiac ablation catheters on the Prosthesis List, including an assessment of comparative clinical and cost effectiveness.

The PLAC is the ministerially appointed committee made up of experts in the health sector and advisory members nominated by the major stakeholder organisations, representing the interests of private health insurers, private hospitals and day hospitals, medical device sponsors, clinicians and the Department of Veterans' Affairs.

Following advice from the Medical Services Advisory Committee that cardiac ablation is a clinically effective and cost effective treatment for atrial fibrillation, the PLAC agreed in principle on 4 February 2019 to recommend that the Minister list cardiac ablation catheters, mapping catheters for cardiac ablation and patches for cardiac ablation on Part C of the Prosthesis List.

Details of the Amending Instrument are set out in the [Attachment](#).

The Amending Instrument commences the day after registration.

The Amending Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Private Health Insurance (Prostheses) Amendment Rules 2019

Rule 1 – Name

Rule 1 provides for the Amending Rules to be referred to as the *Private Health Insurance (Prostheses) Amendment Rules 2019*.

Rule 2 – Commencement

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

Rule 3 – Authority

Rule 3 provides that the Amending Rules is made under item 4 of the table in section 333-20 of the *Private Health Insurance Act 2007*.

Rule 4 – Schedules

Rule 4 provides that that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Private Health Insurance (Prostheses) Rules 2018 (No. 2)

Item 1 – Rule 13

Item 1 repeals the current rule 13 and replaces it with the same text and additional paragraphs for cardiac ablation catheters, mapping catheters for cardiac ablation and patches for cardiac ablation.

This item enables the Minister to include prostheses falling with the description in paragraphs (iv) to (vi) of rule 13 in Part C of the Schedule.

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 2019

This 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 instrument

The *Private Health Insurance (Prostheses) Amendment Rules 2019* amend rule 13 of the *Private Health Insurance (Prostheses) Rules 2018 (No. 2)* to include additional kinds of prostheses that may be included in Part C of the Schedule to the *Private Health Insurance (Prostheses) Rules 2018 (No. 2)*. The additional kinds of prostheses are cardiac ablation catheters, mapping catheters for cardiac ablation or patches for cardiac ablation. This will enable the Minister to include that kind of prosthesis in Part C of the Schedule if the Minister decides to grant an application for the listing of that kind of prosthesis, so an insured person with appropriate cover will receive a minimum benefit for the provision of the prosthesis (within the requirements of the legislation).

Human rights implications

This instrument engages articles 9 and 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the rights to health and social security.

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 ICESCR. Whilst the UN Committee on Economic Social and Cultural Rights 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.

Analysis

This instrument enables the Minister to include additional items in Part C of the Schedule if the Minister decides to do so. The addition of these items will ensure that an insured person with appropriate cover will receive a minimum benefit for the provision of the prosthesis (if other requirements are met). The addition of new items will increase the amount of choice an insured person has in relation to the type of prostheses for which they must receive a minimum private health insurance benefit. This will impact positively on the right to health of insured persons.

Conclusion

The instrument is compatible with human rights because it enables advances in the protection of human rights.

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