

## EXPLANATORY STATEMENT

### *Private Health Insurance Act 2007*

#### *Private Health Insurance (Prostheses) Amendment Rules (No. 3) 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 2019 (No. 1)* (Prostheses Rules) were made 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 (No. 3) 2019* (the Amending Rules) is to correct errors in the listing and the minimum benefit for one prosthesis in Part C of Schedule 1 to the Prostheses Rules.

The errors were contained in the *Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2019* that implement the listing of this prosthesis on the Prostheses List, among other amendments to the Prostheses Rules.

### **Consultation**

The sponsor of the prosthesis affected was consulted on this correction.

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

The Amending Instrument commences immediately following the commencement of the *Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2019*.

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

## **Details of the Private *Health Insurance (Prostheses) Amendment Rules (No. 3) 2019***

### Section 1 - Name

Section 1 provides for the Amending Rules to be referred to as the Private Health Insurance (Prostheses) Amendment Rules (No. 3) 2019.

### Section 2 - Commencement

Section 2 provides that the Amending Rules commences immediately after the commencement of the *Private Health Insurance (Prostheses) Rules (No. 2) 2019*. The *Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2019* commence immediately after the commencement of the *Private Health Insurance (Prostheses) Rules 2019 (No. 1)* on 1 March 2019.

### Section 3 - Authority

Section 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*.

### Section 4 - Schedules

Section 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 2019 (No. 1)***

##### **Item 1 – Schedule 1, Part C, Billing Code BS359**

Item 1 repeals the listing of this prosthesis under the incorrect subheading in Part C of Schedule 1 to the Prostheses Rules.

##### **Item 2 – Schedule 1, Part C, Billing Code BS359**

Item 2 inserts the listing of this prosthesis under the correct subheading and lists the correct minimum benefit in Part C of Schedule 1 to the Prostheses Rules.

## **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 (No. 3) 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 purpose of the *Private Health Insurance (Prostheses) Amendment Rules (No. 3) 2019* (the Amending Rules) is to correct errors in the listing and the minimum benefit for one prosthesis in Part C of Schedule 1 to the *Private Health Insurance (Prostheses) Rules 2019 (No. 1)* (the Prostheses Rules).

The errors were contained in the *Private Health Insurance (Prostheses) Amendment Rules (No. 2) 2019* that implement the listing of this prosthesis on the Prostheses List, among other amendments to the Prostheses Rules.

#### **Human rights implications**

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

##### *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 will ensure that the appropriate private health insurance benefit is paid in respect of this prosthesis on the Prostheses List. 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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