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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**PRIVATE HEALTH INSURANCE (NATIONAL JOINT REPLACEMENT
REGISTER LEVY) BILL 2009**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health and Ageing,
the Honourable Nicola Roxon MP)

PRIVATE HEALTH INSURANCE (NATIONAL JOINT REPLACEMENT REGISTER LEVY) BILL 2009

OUTLINE

This Bill creates a new Act, the *Private Health Insurance (National Joint Replacement Register Levy) Act 2009*, for the purpose of establishing the National Joint Replacement Register Levy, for funding the National Joint Replacement Registry (NJRR).

The NJRR, which was established by the Australian Orthopaedic Association in 1998, collects data on the implantation of prosthetic joint replacement devices and reports revision rates, complications and other outcomes. The NJRR also monitors mortality rates. Its purpose is to define, improve and maintain the quality of care of patients receiving joint replacement surgery. The information collected provides an accurate measure of the success or otherwise of a procedure. This information is then used to inform surgeons, other health care professionals, governments, sponsors of joint replacement products and patients.

The NJRR provides post-market surveillance of joint replacement prostheses, and this monitoring of the safety and quality of devices provides considerable benefit to the industry by improving consumer confidence in the safety and efficacy of joint replacement devices. Any devices showing high failure rates can be identified quickly and promptly removed from the market.

The data produced by the Registry also assists the industry by informing the development of new prostheses, allowing manufacturers to draw on reliable performance information for existing products and designs.

The cost recovery arrangements contained in the Bill will ensure continuing funding for the Registry, while preserving the independence of the Registry. As levies will be imposed under legislation, and collected by the Government on behalf of the Registry, there will be no possibility of funding being withdrawn from the Registry by medical devices sponsors.

Sections 1 and 2 of the Bill will commence on the day on which the Act receives Royal Assent. Sections 3 to 9 of the Bill will commence on 1 July 2009 or on the date of Royal Assent, whichever occurs later.

The Bill will enable the costs of operating the NJRR to be recovered by means of a levy imposed on each joint replacement prostheses sponsor, on each day specified in the Private Health Insurance (National Joint Replacement Register Levy) Rules as a national joint replacement register levy day, and on each day (if any) determined by the Minister for Health and Ageing, by legislative instrument, as a supplementary national joint replacement register levy day. There can be no more than four levy days in a financial year and the Minister cannot specify more than two supplementary levy days in a financial year.

A person is a joint replacement prostheses sponsor if a joint replacement prostheses is currently listed in the Private Health Insurance (Prostheses) Rules (commonly referred

to as the Commonwealth Protheses List) either as a result of an application made by the person under subsection 72-10(2) of the *Private Health Insurance Act 2007*, or is listed in accordance with section 12 of the *Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007* and the person was the sponsor of that prosthesis for the purposes of the *National Health Act 1953*.

Sponsors will be levied according to the number of joint replacement prostheses they sponsor, and the levies will be used to fund the operating costs of the Registry. The Bill provides that there may be different rates set for different kinds of joint replacement prostheses, that the rate may be set at zero, and that there will be a maximum rate of \$5,000.

There is a wide range of prosthetic devices used in joint replacement surgery. These correspond with a great variation in benefits for different kinds of joint replacement prostheses listed on the Commonwealth Protheses List. Benefits for some joint replacement prosthetic devices are set at less than \$50.00, while others receive benefits as high as \$67,000 per product. The Private Health Insurance (National Joint Replacement Register Levy) Rules may specify that different kinds of joint replacement prostheses may have different levies. Given the variation in benefits for different kinds of joint replacement prostheses, a maximum rate of levy of \$5,000 for a financial year is considered reasonable.

Financial Impact Statement

The costs of the NJRR have been funded by the Commonwealth since 1998. The introduction of cost recovery arrangements will result in estimated budget savings of \$5 million over four years.

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NOTES ON CLAUSES

Clause 1 – Short Title

This clause provides that the Bill, once enacted, may be cited as the *Private Health Insurance (National Joint Replacement Register Levy) Act 2009*.

Clause 2 – Commencement

This clause provides that Sections 1 and 2 of the Bill will commence on the day on which the Act receives Royal Assent. Sections 3 to 9 of the Bill, once enacted, will commence on 1 July 2009 or on the date of Royal Assent, whichever occurs first.

Clause 3 – Crown to be bound

This clause provides that the Bill binds the Crown in each of its capacities. This means that the Crown, including the executive government of the Commonwealth, States and Territories, is not immune from the operation of the Bill, once enacted.

Clause 4 – Extension of Act to external Territories

This clause states that the Bill extends in its application to the Territory of Cocos (Keeling) Islands and to the Territory of Christmas Island.

Clause 5 – Definitions

This clause defines the terms used in the Bill. In particular, a person is a *sponsor* for joint replacement prostheses if a joint replacement prosthesis is currently listed in the Private Health Insurance (Prostheses) Rules (commonly referred to as the Commonwealth Prostheses List) either as a result of an application made by the person under subsection 72-10(2) of the *Private Health Insurance Act 2007*, or is listed in accordance with section 12 of the *Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007* and the person was the sponsor of that prosthesis for the purposes of the *National Health Act 1953*.

Subclause (3) provides that the Private Health Insurance (National Joint Replacement Register Levy) Rules (clause 9 refers) may be used for the purpose of further defining a *joint replacement prosthesis*. This is to provide flexibility.

Clause 6 – Imposition of national joint replacement register levy

This clause sets out when the national joint replacement register levy is imposed on each sponsor for joint replacement prostheses.

Subclause (1) provides that the levy is imposed on:

- each day specified in the Private Health Insurance (National Joint Replacement Register Levy) Rules (the Rules) as a national joint replacement register levy day for a financial year; and
- each day (if any) determined by the Minister, by legislative instrument, as a supplementary national joint replacement register levy day for a financial year.

Subclause (2) provides that the Rules must not specify more than 4 levy days for a financial year.

Subclause (3) provides that the determination by the Minister must not specify more than 2 supplementary levy days for a financial year.

Clause 7 – Rate of national joint replacement register levy

This clause sets out how the rate of national joint replacement register levy is to be determined.

Subclause (1) This clause sets out that the rate of levy imposed on a national joint replacement register levy day is the rate specified in the Rules and applies on that day, and that the rate of levy imposed on a supplementary national joint replacement register levy day is the rate that is determined by the Minister and applies on that day.

Subclause (2) provides that the rate must be based on the number of joint replacement prostheses that each sponsor has listed on the Prostheses List on the national joint replacement register census day or supplementary national joint replacement register census day. The rate may differ for the different kinds of joint replacement prostheses sponsored. The rate may be set at zero for one or more kinds of joint replacement prostheses, and the maximum rate must not exceed \$5,000.00 for a financial year with respect to any one joint replacement prosthesis sponsored.

Clause 8 – Private Health Insurance (National Joint Replacement Register Levy) Rules

This clause provides for the Minister to make Private Health Insurance (National Joint Replacement Register Levy) Rules providing for matters required or permitted by the Bill to be provided, or necessary or convenient to be provided in order to carry out or give effect to the Bill.

As described in clause 5, the Rules may provide that one or more kinds of prostheses are taken, or are taken not, to be joint replacement prostheses for the purposes of the definition of *joint replacement prosthesis*.

Clause 9 – Regulations

This clause provides that the Governor-General may make regulations prescribing matters required or permitted by the Bill to be prescribed, or necessary or convenient to be prescribed in order to carry out or give effect to the Bill.