

EXPLANATORY STATEMENT

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules 2014 (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 2014 (No. 1)* (the Amendment Rules) amend the *Private Health Insurance (Prostheses) Rules 2014 (No. 1)* (the Principal Rules) to correct drafting errors in the Principal Rules.

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 *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 those other circumstances which are set out in the *Private Health Insurance (Prostheses) 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 will vary the Principal Rules as follows:

- deleting 12 products, BX296, BX297, BX298, BX299, BX300, BX301, BX302, BX303, BX304, BX305, BX306, BX307 and OE029, due to an administrative error;
- removing two (2) products from Part A and inserting them in Part C, BT153 and MI141; and
- adding three (3) new products to Part A, TO149, SO049 and SO050.

The Amendment Rules commence 28 February 2014.

Consultation

In accordance with section 17 of the *Legislative Instruments Act 2003*, the Department consulted with the sponsor of each prosthesis affected by these amendments. There are no objections to the amendments. The Department has received a standing Regulatory Impact Statement exemption from the Department of Finance and Deregulation.

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

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 2014 (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 2014 (No. 1) (the Rules) amend the *Private Health Insurance (Prostheses) Rules 2014 (No. 1)* (the Principal Rules) to correct drafting errors in the Principal Rules.

Item 4 of the table in subsection 72-1(2) of Part 3-3 of the *Private Health Insurance Act 2007* 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 *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 those other circumstances which are set out in the *Private Health Insurance (Prostheses) 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 Rules amend the Principal Rules by:

- deleting 12 products, BX296, BX297, BX298, BX299, BX300, BX301, BX302, BX303, BX304, BX305, BX306, BX307 and OE029, due to an administrative error;
- removing two (2) products from Part A and inserting them in Part C, BT153 and MI141; and
- adding three (3) new products to Part A, TO149, SO049 and SO050.

Human rights implications

The 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 Rules remove entries for 12 prostheses at the request of the sponsors of these prostheses. These prostheses are currently part of a grouping and benefit review and were incorrectly listed.

Generally the prostheses removed from the Rules have been replaced by newer models due to upgraded technologies or advancements in surgical procedures.

Conclusion

The Rules are compatible with human rights because they advance the protection of human rights, specifically the right to health [*and, to the extent that right is limited the limitation is reasonable, necessary and proportionate*]

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