



**Australian Government**  
**Department of Health**

**Ministerial Information Request**  
**MB22-001657**  
**Version (1)**  
**Date sent to MO: 20/06/2022**

**To: Minister Butler**

**Subject/Issue: MIR: Prostheses List Reforms: Memorandum of Understanding between previous Minister and the Medical Technology Association of Australia (MTAA)**

Comments:			
Contact Officer:	Elizabeth Flynn	Assistant Secretary, Prostheses List Reform Taskforce, Technology Assessment and Access Division	Ph: (02) 6289 <sup>s22</sup> Mobile: <sup>s22</sup>
Clearance Officer:	Dr Brendan Murphy	Secretary	Ph: (02) 6289 <sup>s22</sup> Mobile: <sup>s22</sup>

**Response:**

- The Prostheses List – delegated legislation that sets out mandatory benefits that insurers must pay where a medical device is surgically implanted into a patient as part of an insured episode of hospital treatment – is currently being reformed with the aim of reducing prices for medical devices, to more closely align with prices paid in the public system and, in the absence of a public price, comparable international markets.
- The Prostheses List reforms (PL Reforms) are being implemented by the Department in partnership with the Independent Hospital Pricing Authority (IHPA). The aim is to make private health insurance premiums more affordable for consumers. Further information on the PL Reforms is provided in *Background* below.
- Key stakeholder groups include the Medical Technology Association of Australia (MTAA), Consumers Health Forum, the Australian Medical Association, the private (including not-for-profit such as Catholic Health) hospital sector and the private health insurers. Most have conflicting views and financial interests, and there is constant lobbying by different stakeholders to change, not proceed or go harder on the PL Reforms.
- On 14 June 2022, Dr Rachel David, Chief Executive Officer of PHA wrote to the Treasurer, the Hon Dr Jim Chalmers MP and the Minister for Finance, Senator the Hon Katy Gallagher to express the organisation's concerns regarding the MoU between the former Minister for Health and the MTAA (**Attachment A**).

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*Memorandum of Understanding (MoU) with the MTAA*

- On 14 March 2022, the former Minister and the MTAA entered a MoU to finalise policy parameters for the Reforms, as a result of ongoing pushback from the medical devices industry (a copy of the MoU is provided at **Attachment B**).
- The MoU was not drafted or negotiated by the Department, although the Department provided advice on whether or not it would be legally binding and whether its terms were inconsistent with the government's announced PL Reforms and would require further policy authority.
- The MoU included the following modifications to previously announced PL Reforms:
  - where device prices are less than 7% higher on the PL compared to the weighted average price in public hospitals, no reduction will be made to the PL benefit;
  - no further reduction in year four of the announced reforms (locking in on an ongoing basis that 20% of the current differential between public and private prices would remain); and
  - benefit reduction of general use (consumable) items for two years rather than removal of ineligible consumable products in the first year (60% differential reduction on 1 July 2022 and 40% on 1 March 2023 before removal from the PL on 1 July 2023 when bundling arrangements are implemented).
- Legal advice obtained by the Department at the time of drafting indicated the MoU was between the former Minister and MTAA and would not bind (legally) or impose a good faith requirement (ethically/morally) on the next Minister or Government.
- In entering the MoU, the then Minister understood that the changes agreed to in the MoU would increase savings from the originally forecast \$700-800 million arising from the PL Reforms (that was advised to insurers ahead of the 2022 premium setting process) to a revised estimate of \$900 million. These estimates were calculated based on the following assumptions (which have not been shared publicly and some of the assumptions may be disputed by stakeholders such as PHA):
  - 7% floor on all PL items;
  - 0/40/20/20% reduction of the public/private price differential over four years on Cardiac Implantable Electronic Devices (CIEDs - noting that the reduction on CIEDs has been delayed by 12 months under the MoU and will commence 1 July 2023);
  - 60/40% reduction of price differential over two years for general use (consumable) items ahead of removal from the PL;
  - 40/20/20% reduction of price differential over three years on all other PL items; and
  - 5% annual growth on utilisation of the PL over the next four years.

The table below shows the estimated savings comparison each year, dependent on utilisation growth over the next four years:

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*Options for PL Reforms*

- Given the ongoing disagreement among stakeholders regarding the PL Reforms and in particular the controversy surrounding the MoU with the MTAA, you may wish to consider other options.
- There is no option that will be supported by all stakeholders, and any change in approach will lead to criticism by some stakeholders (some indication of views set out below).
- The Department notes that the MTAA has been advising it was given a commitment that Labor would honour its MoU, but the Department has no further information about this.

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## Further information

### *Stakeholder information*

- Private Healthcare Australia (PHA) is the Australian private health insurance industry's peak representative body that currently has 22 registered health funds throughout Australia as members, collectively representing 97% of people covered by private health insurance. PHA member funds provide healthcare benefits for over 13.6 million Australians.
- PHA expressed deep frustration and disappointment about having not been consulted on the revised implementation approach in the MoU prior to negotiations with the MTAA and approval by the previous government.
- PHA strongly opposes the MoU and characterises both the 7% floor and the 20% gap remaining in year four as a surcharge on privately insured consumers.

### *Current Funding*

- In the 2021-22 Budget, the Department and IHPA received \$22 million over four years to implement reforms to reduce the cost of medical devices used in the privately insured hospital treatment, to improve the affordability and value of private health insurance.

### *Background*

The Private Health Insurance (Prostheses) Rules is a legislative instrument made under the *Private Health Insurance Act 2007*. The Schedule of the Private Health Insurance (Prostheses) Rules is known as the Prostheses List (PL). Private health insurers are required to pay the regulated PL price for a product if it is listed on the PL and provided as part of an insured episode of hospital treatment.

The PL Reforms include:

- reducing the gap between prices paid in public hospitals and the PL benefit based on reference pricing conducted by the IHPA (where prices on the PL are more than 7% higher than those paid in public hospitals, the gap will be reduced by 40% on 1 July 2022, 20% on 1 July 2023 and 20% on 1 July 2024);
- streamlining processes for listing new devices (including governance structures);
- consolidating the existing grouping structure so that devices with similar intended use and/or health outcomes are grouped together with a similar listed price;
- an inquiry led by the Australian Competition and Consumer Commission into the competition concerns identified by insurers and some hospitals including the influence of financial relationships between private sector clinicians, private hospitals and medical device suppliers;
- amending primary and subordinate legislation to include an update to the PL definition, a pricing framework, cost recovery and compliance provisions to create fit-for-purpose legislation that ensures the PL is maintained and administered in the most effective way possible. This will include a new requirement for applicants to disclose the prices at which they supply their devices to public hospitals and in comparable international markets, and PL benefits to reflect public prices for all newly listed devices going forward; and
- reviewing the success of these reforms in the third year (2024–25).

### Progress on the Reforms to date

The first price reduction (40%) will occur on 1 July 2022 and has been communicated to PL sponsors. Of the 10,601 items on the PL, approximately 49% will be reduced on 1 July (without the 7% floor approximately 61% of items would have impacted by the reduction).

Products deemed to be ineligible for PL listing, as they do not meet the listing criteria, were to have been removed in batches from 1 March 2022 (these are products such as skin glues and other consumables which are clearly not implantable devices as specified under current listing criteria and have made their way onto the PL over the years in error).

However, this has been delayed following significant concerns raised by medical device companies and hospitals, for whom the PL provides a guaranteed, non-contracted mechanism to require insurers to pay a set price. This price may be higher than the actual price at which products are bought directly from the manufacturers, increasing hospitals' revenue.

Instead, these ineligible items are now scheduled to receive benefit reductions of 60% on 1 July 2022 and 40% on 1 March 2023 before removal from the PL on 1 July 2023, when they will be subject to bundling arrangements. Private hospitals continue to object to these changes and will likely approach you about keeping ineligible items on the PL for longer, or at least 'regulating' bundled prices through legislation, rather than allowing hospitals and insurers to negotiate reimbursement for the costs of consumables used in surgeries based on the IHPA recommendations.

### Sensitivities

The need for reform is not agreed by stakeholders. There have been significant delays to implementing the PL Reforms in the first 12 months, mostly as a result of a lack of consensus from key stakeholders and delays in the provision of information.

Significant delays to these Reforms have occurred as a result of the following:

- delay in delivery of industry data from the MTAA to the IHPA to support development of reference pricing resulted in a four-month delay to the start of work on the reference pricing activity to establish a benchmark price for items on the PL; and
- numerous revisions to the implementation approach for these Reforms, based on interventions by stakeholders with conflicting financial interests. The development of the MoU added complexity to the calculation of the benchmark prices and further delayed the IHPA's ability to finalise the benchmark prices for PL items by two months, further reducing the time available for the department to carry out the calculation of the first benefit reduction (less than one month).

### **Attachments**

**A:** PHA Letter to the Treasurer and Minister for Finance including following attachments:

**A1:** Prostheses List reform timeline and interactions with the Coalition Federal Government

**A2:** Summary of Minister Hunt's MOU

**A3:** Pre and post MOU impact vs comparable economies

**B:** Memorandum of Understanding (MoU) with the Medical Technology Association of Australia (MTAA)



**Australian Government**  
**Department of Health**

**Memorandum of Understanding for the policy  
parameters of the Prostheses List Reforms**

**The Honourable Greg Hunt MP, Minister for Health and Aged Care of the  
Commonwealth of Australia**

and

**Medical Technology Association of Australia Limited**

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# Memorandum of Understanding

**Dated** 14 March 2022

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## Parties

Name	<b>The Honourable Greg Hunt MP, Minister for Health and Aged Care of the Commonwealth of Australia</b>
Short name	Minister
Name	<b>Medical Technology Association of Australia Limited</b>
Short name	MTAA

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## Background

- A. On 20 May 2021, an investment of \$22 million over 4 years was announced as part of the *2021-22 Budget – Modernising and Improving the Private Health Insurance Prostheses List* to reduce the cost of medical devices used in the private health sector, improving affordability and value of private health insurance for Australians (**Measure**).
- B. The Measure aims to modernise and improve the Prostheses List, better aligning the level of benefit set for medical devices on the Prostheses List for private providers with the prices paid for the devices in the public hospital system. The Measure includes initiatives to realise savings for insurers, and ultimately consumers, as well as structural reforms to better focus the Prostheses List for the future on high cost and innovative medical devices.
- C. The parties have a shared commitment to adopt, to the greatest extent possible, the revised implementation approach for the Prostheses List reforms set out in this MoU and to further discuss in good faith specific matters, including:
- C.1 the Department's policy, set out in section 2.3.2, not to list comparable General Use Items; and
  - C.2 the Department's proposal, set out in section 2.7.2, regarding future pricing of prostheses.
- D. The changes to the multi-year reforms are anticipated to deliver total savings of around \$800-900 million, recognising a lesser amount will be delivered in the first year.

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## 1. Definitions

In this MoU, unless expressed or implied to the contrary:

**CIEDs** means Cardiac Implantable Electronic Devices.

**Department** means the Australian Government Department of Health.

**General Use Items** means the items that the Clinical Implementation Reference Group has endorsed for removal from the Prostheses List.

**Measure** has the meaning given in paragraph A of the Background to this MoU.

**MoU** means this Memorandum of Understanding between the Minister and the MTAA.

**MSAC** means the Medical Services Advisory Committee.

**Prostheses List** means the list of medical devices for which private health insurers are required to pay a benefit when a member has the relevant coverage, as provided for under the *Private Health Insurance Act 2007*. **Prostheses Listings** are medical devices included on the Prostheses List.

**Weighted Average Price** means the relevant benchmark price for prostheses in Australian public hospitals, as determined by the Independent Hospital Pricing Authority in accordance with the methodology set out in Schedule 1.

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## 2. Prostheses List reform implementation elements

The parties agree to the implementation elements to facilitate the Prostheses List reforms required to support the Measure as set out in this section 2 and, further, to discuss in good faith the Department's policy in section 2.3.2 (not to list comparable General Use Items) and the pricing proposal in section 2.7.2.

### 2.1 Schedule of price reductions

2.1.1 Prostheses Listings are to have their benefit levels referenced to the respective public prices from 1 July 2022 until 30 June 2026. Under this approach:

- (a) Prostheses List benefits for devices with a small gap between the Prostheses List benefit and Weighted Average Price, judged to be less than 7 percent above the Weighted Average Price, would not be reduced; and
- (b) Prostheses List benefits for devices with a gap of more than 7 percent above the Prostheses List benefit and the Weighted Average Price would not reduce below 7 percent above the Weighted Average Price. The 7 percent floor for all products is to remain for the period of the reforms specified in this section 2.1.1 and not to be contingent on any review.

2.1.2 The Prostheses List benefits for devices with a benefit level of more than 7 percent above the Weighted Average Price are to be reduced by:

- (a) 40 percent of the difference between the Prostheses List benefit and the Weighted Average Price on 1 July 2022;
- (b) 20 percent of the difference between the Prostheses List benefit and the Weighted Average Price on 1 July 2023; and

- (c) 20 percent of the difference between the Prostheses List benefit and the Weighted Average Price on 1 July 2024,

taking account of the 7 percent “floor” for all products.

- 2.1.3 This element set out in section 2.1 is conditional on implementing the reform elements specified in sections 2.2, 2.3.1, 2.3.3, 2.4, 2.5 and 2.6, and noting that the parties will hold good faith discussions in relation to the items referred to in sections 2.3.2 and 2.7.2.

## **2.2 Fourth year price reductions**

- 2.2.1 The parties agree that no reductions to Prostheses List benefits are to occur in year 4 of the reforms, between 1 July 2025 and 30 June 2026, effectively providing a 20 percent private adjustment factor on the initial gap between the Weighted Average Price and the Prostheses List benefit.
- 2.2.2 The element in section 2.2.1 above is not to be contingent on a review.
- 2.2.3 The element in section 2.2.1 does not relate to the CIED category, which is to be deferred by one year as per section 2.4. This category will receive the final benefit reduction of 20 per cent on 1 July 2025.

## **2.3 General Use Items**

- 2.3.1 General Use Items will receive a reduction of:
  - (a) 60 percent of the difference between the Weighted Average Price and the Prostheses List benefit from 1 July 2022 (this includes the eight topical skin adhesives which will no longer take a benefit reduction on 1 March 2022); and
  - (b) 40 percent from 1 March 2023,

before being removed from the Prostheses List on 1 July 2023 when bundling arrangements are intended to be implemented.
- 2.3.2 The parties note that applications for listing of comparable items to the items in section 2.3.1 are not being accepted in the interim, recognising that MTAA does not agree with that policy.
- 2.3.3 Applications for listing of comparable items to the items in 2.3.1 that have been considered and deferred by the Prostheses List Advisory Committee (**PLAC**) will be reconsidered by the PLAC specifically to assess the patient impact, if these items are not available in the private hospital system.

## **2.4 Cardiac Implantable Electronic Devices (CIEDs)**

- 2.4.1 To ensure continued access for patients for CIEDs, the commencement of all benefit reductions (40/20/20) for the CIED benefit structure on the Prostheses List is to be deferred by one year to 1 July 2023, to allow for MSAC deliberations on the value of the technical support services.
- 2.4.2 MTAA will take all reasonable steps to ensure that cardiac companies that produce CIEDs commit to engage with MSAC (expected no later than March 2022) and provide MSAC during its deliberations described in section 2.4.1 with company data relevant to the MSAC process.

## **2.5 Regrouping of Prostheses List**

The new grouping structure under the Measure is not to be an additional source of savings on top of the overall reference pricing savings described in this section 2.

## **2.6 Modernised pathways**

Principles for new Prostheses List listing pathways will be co-designed by MTAA and the Department, for approval by the Minister.

## **2.7 Pricing to hospitals**

2.7.1 The Government's intention is that, under the Measure, there would be no additional out-of-pocket costs for consumers on an ongoing basis.

2.7.2 Future consultations would discuss the proposed introduction, as a part of the Prostheses List application process, of a declaration by companies that there will not be extra charges for listed and necessary ancillary products beyond the Prostheses List benefit, with penalties for false declarations, to ensure no out-of-pocket expenses for consumers.

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## **3. Timeframes**

Subject always to the impact of matters beyond their reasonable control, it is the parties' intention to continue consultations in a timely manner and to use all reasonable efforts to achieve the reform implementation elements described in section 2 and to hold good faith discussions in relation to the other items referred to in sections 2.3.2 and 2.7.2.

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## **4. Status**

4.1 This MoU is not intended to create legal relations or constitute a legally binding contractual agreement between the parties.

4.2 Notwithstanding section 4.1, the parties will, to the greatest extent possible, comply with the terms of this MoU.

## Schedule 1 – Methodology for calculation of weighted average price and public price referencing under Prostheses List reforms 1 July 2022 to 30 June 2026

### Weighted Average Price (WAP)

The Weighted Average Price will be calculated by the Independent Hospital Pricing Authority using the most appropriate data, including sponsor-supplied data for financial year ended 30 June 2021 as the primary data source.

The Weighted Average Price will be calculated based on existing Benefit Groups on the Prostheses List (**PL**) defined as:

- *All billing codes sharing the same category, sub-category, product group, sub-group, suffix and benefit level on the PL*

The Weighted Average Price for a Benefit Group is calculated as follows:

- *Average public price for all devices included under the billing codes in the Benefit Group weighted by private volumes*

New listings of products joining an existing Benefit Group will receive the same benefit level as the other billing codes in that Benefit Group, regardless of the stage of reductions phasing, and incorporating the 7% floor.

Examples of application of the 7 percent floor and the 40:20:20 phasing and no reduction in year 4:

Weighted average public price = 100					
	Current	1 July 2022	1 July 2023	1 July 2024*	1 July 2025*
EG 1:					
PL	105	105	105	105	105
Differential	5%	5%	5%	5%	5%
EG 2:					
PL	115	109	107	107	107
Differential	15%	9%	7%	7%	7%
EG 3:					
PL	200	160	140	120	120
Differential	100%	60%	40%	20%	20%

\* **Note:** 1 July 2024 and 1 July 2025 would be subject to any changes that may result from the pricing review, as outlined below

### Pricing review

IHPA will conduct a pricing review during the 4-year reform period.

IHPA will recalculate the Weighted Average Price based on data for 1 July 2022 to 30 June 2023 (FY23 WAP).

IHPA will compare the recalculated FY23 WAP to the FY21 WAP (calculated using data for 1 July 2020 to 30 June 2021). Any change in the FY23 WAP will be capped to a 5 per cent movement up or down.

If the FY23 WAP differs from the FY21 WAP, the PL benefit reductions that apply on 1 July 2024 for Prostheses Listings will be in accordance with section 2.1 and 2.2 using a Revised WAP.

This Revised WAP will be:

- If the FY23 WAP differs from the FY21 WAP by 5 per cent or less, the Revised WAP will be the FY23 WAP;
- If the FY23 WAP is less than the FY21 WAP by more than 5 per cent, the Revised WAP will be the FY21 WAP reduced by 5 per cent
- If the FY23 WAP is greater than the FY21 WAP by more than 5 per cent, the Revised WAP will be the FY21 WAP increased by 5 per cent.

For clarity these reductions will be calculated as follows:

- IHPA will calculate the gap between PL benefits and FY23 WAP and determine the reductions to PL benefits that will apply on 1 July 2024, in accordance with section 2.1 and section 2.2;
- PL benefits for devices with a benefit level more than 7 percent above the FY21 WAP are to be reduced on 1 July 2024 by 20 percent of the difference between the Prostheses List benefit and the Revised WAP, provided the benefit is not reduced below the FY21 WAP plus 7 per cent, and devices with a gap between the PL benefit and the FY21 WAP of 7 percent or less will not be reduced;
- The PL benefits used to determine this gap will be the benefits applying on 30 June 2022;
- No reductions to PL benefits are to occur in year 4 of the reforms, between 1 July 2025 and 30 June 2026.

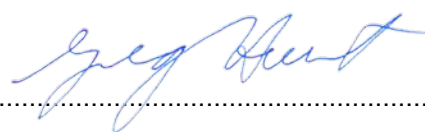
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## Signing Page

**Dated** 14 March 2022

**Signed by the Honourable Greg Hunt MP,  
Minister for Health and Aged Care**

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**Signed for and on behalf of Medical Technology  
Association of Australia Limited by Maurice Ben-  
Mayor, Chair**

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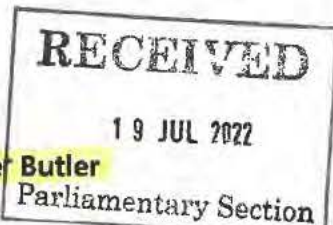
**Australian Government**  
**Department of Health**

**Ministerial Information Request**

**MB22-001657**

**Version (1)**

**Date sent to MO: 20/06/2022**







To: **Minister Butler**

Parliamentary Section

Subject/Issue: **MIR: Prostheses List Reforms: Memorandum of Understanding between previous Minister and the Medical Technology Association of Australia (MTAA)**

Comments:

*Please seek meet  
with Dept  
of Health to  
discuss next  
steps*  17/7

Contact Officer:	Elizabeth Flynn	Assistant Secretary, Prostheses List Reform Taskforce, Technology Assessment and Access Division	Ph: (02) 6289  Mobile: 
Clearance Officer:	Dr Brendan Murphy	Secretary	Ph: (02) 6289  Mobile: 



s22

**From:** s22  
**Sent:** Wednesday, 15 June 2022 2:16 PM  
**To:** Minister Butler DLO  
**Cc:** MPS; TAAD Inputs; MBDinputs  
**Subject:** FW: Letter from PHA regarding medical devices and previous government agreement [SEC=OFFICIAL]  
**Attachments:** 20220614 PHA David to Chalmers MP and Gallagher re medical devices and previous govt agreement.pdf; Attachment 1 - Prostheses List reform timeline and interactions with the Coalition Federal Government.pdf; Attachment 2 - Summary of Minister Hunt's MOU.pdf; Attachment 3 - Pre and post MOU impact vs comparable economies.pdf  
**Categories:** s22

This is one for TAAD.

Thank You

s22

Executive Officer to  
Travis Haslam  
A/g First Assistant Secretary

Medical Benefits Division  
Australian Government Department of Health  
T: 02 6289 s22 | E: s22 @health.gov.au  
s22

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**From:** HASLAM, Travis  
**Sent:** Wednesday, 15 June 2022 2:15 PM  
**To:** FLYNN, Elizabeth  
**Cc:** s22 ; KELLEHER, Brian  
**Subject:** FW: Letter from PHA regarding medical devices and previous government agreement [SEC=OFFICIAL]

Liz – one for you with input from Brian as needed?  
Thanks  
T

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**From:** Minister Butler DLO <[Minister.Butler.DLO@Health.gov.au](mailto:Minister.Butler.DLO@Health.gov.au)>  
**Sent:** Wednesday, 15 June 2022 1:58 PM  
**To:** HASLAM, Travis <[Travis.Haslam@health.gov.au](mailto:Travis.Haslam@health.gov.au)>; KELLEHER, Brian <[KELLEHERBrian@Health.gov.au](mailto:KELLEHERBrian@Health.gov.au)>  
**Cc:** MPS <s22 @health.gov.au>; s22 @health.gov.au  
**Subject:** FW: Letter from PHA regarding medical devices and previous government agreement [SEC=OFFICIAL]

Hi Travis and Brian,

Grateful if an urgent brief could please be prepared for the MO in relation to the attached correspondence. With apologies for the tight turnaround, it would be appreciated if this could be sent through by COB Monday 22 June 2022.

Mary Wood (Interim Senior Adviser to Minister Butler) or Caroline Turnour (Interim Adviser to Minister Butler) can be contacted to further discuss this matter ahead of the brief being prepared.

Many thanks in advance.

**MPS – grateful if you could register this brief in PDMS.**

Many thanks,

s22

s22

*Departmental Liaison Officer (A/g)*

Office of the Hon Mark Butler MP

Minister for Health and Aged Care

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----- Forwarded message -----

s22

[SEC=OFFICIAL]

s22

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**From:** s22  
**Sent:** Thursday, 16 June 2022 10:43 AM  
**To:** EADIE, Allyson; TAAD Inputs  
**Cc:** PLATONA, Adriana; MPS  
**Subject:** RE: Letter from PHA regarding medical devices and previous government agreement [SEC=OFFICIAL]

**Categories:** s22

Hi all,

Apologies – in my previous email, I listed the wrong due date.

Grateful if we could please receive this brief by **COB Monday 20 June 2022**.

Kind regards,

s22

**Vivien Tabe**  
*Departmental Liaison Officer (A/g)*

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