

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 139**

#### *Health Insurance Act 1973*

#### *Health Insurance (General Medical Services Table) Amendment Regulation 2012 (No. 2)*

Subsection 133(1) of the *Health Insurance Act 1973* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Part II of the Act provides for the payment of Medicare benefits for professional services rendered to eligible persons. The effect of section 9 of the Act is that Medicare benefits are calculated with reference to the fees for medical services set out in prescribed tables.

Subsection 4(1) of the Act provides that the Regulations may prescribe a table of medical services (other than diagnostic imaging services and pathology services), which sets out items of medical services, the fees applicable for each item, and rules for interpreting the table. The *Health Insurance (General Medical Services Table) Regulations 2011* (the Principal Regulations) currently prescribe such a table.

The regulation amends the Principal Regulations to ensure that the medical services funded through the Medical Benefit Schedule continue to be up-to-date and representative of best medical practice.

There are two elements to the regulation amendment which are outlined below.

Schedule 1 of the regulation amends the Principal Regulations to reintroduce four rules and 25 items that existed under the Principal Regulations up to 31 October 2011. This is to reverse a number of minor amendments made in the *Health Insurance (General Medical Services Table) Regulations 2011* which, instead of improving consistency in the regulations as intended, may have created ambiguity. To ensure there is no ambiguity, these amendments will apply retrospectively from 1 November 2011.

A number of these changes relate to the definition of ‘general practitioner’ and the most significant change relates to an amendment which was incorrectly made to all Group A2 items. This amendment had the effect of limiting access to all Group A2 attendances to only a small group of providers rather than the intended group which comprised mainly non vocationally registered general practitioners.

Schedule 2 of the regulation makes a number of minor changes to implement Government policies in relation to Medicare. These changes include the removal of Group A25 and the items and rules within this group; amendments to four item descriptors and two rules; and, amendments to reflect that from 1 July 2012 ‘Aboriginal and Torres Strait Islander health practitioner’ be a recognised profession under the National Registration and Accreditation Scheme. This necessitated the amendment of the term ‘Aboriginal health worker’ to

‘Aboriginal and Torres Strait Islander health practitioner’ where it appears in the Principal Regulations.

Details of the regulation are set out in the Attachment.

## **Consultation**

### *Schedule 1 amendments*

No specific consultation was undertaken in relation to items 1 to 8 in Schedule 1 as these amendments are designed to reinforce the original policy intent for these items and remove any potential ambiguity about their operation and hence the lawfulness of payments made by Medicare for services covered by these items.

### *Outer Metropolitan Specialist Trainees*

No specific consultation was undertaken in relation to the removal of items 2, 7 and 23 in Schedule 2. However, consultation was undertaken with the Enhanced Medical Education Advisory Committee (which includes representatives of specialist colleges, trainee doctors and jurisdictions) as part of the development of the Specialist Training Program (STP), leading into the consolidation of specialist training initiatives during the 2009-10 Budget process. Following the 2009-10 Budget all former specialist training initiatives were absorbed within the STP, including the Outer Metropolitan Specialist Training Program, which rendered the Group A25 items redundant.

### *Assisted Reproductive Technology*

Consultation in relation to item 15 in Schedule 2 involved the Urological Society of Australia and New Zealand and the Australian Medical Association.

### *Central Catheter Lines*

Consultation in relation to items 16, 17 and 20 in Schedule 2 involved the Australian Society of Anaesthetists, the Australian Medical Association, the Australian and New Zealand Intensive Care Society, the Royal Australian and New Zealand College of Radiologists and the Australian Diagnostic Imaging Association.

### *Transperineal ultrasound guided prostate biopsy*

No consultation was undertaken in relation to item 21 in Schedule 2. This was a minor change to ensure the item aligns with currently accepted clinical practice for prostate cancer treatment.

### *National Registration and Accreditation Scheme*

No specific consultation was undertaken in relation to these elements (items 1, 3-5, 8-14, 18-19, 22 and 24 in Schedule 2). The recognition of Aboriginal and Torres Strait Islander health practitioners as registered practitioners within the National Registration and Accreditation Scheme from 1 July 2012 requires a number of minor consequential amendments.

### *Mental Health*

No specific consultation was undertaken in relation to item 6 in Schedule 2. The removal of an unintended 12 month restriction applying to item 2712 is required as a result of a decision in the Mid-year Economic and Fiscal Outlook 2011-12 Budget to increase the accessibility of Mental Health items.

The Act specifies no conditions which need to be met before the power to make the regulation may be exercised.

The regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedule 1 of the regulation is taken to have commenced on 1 November 2011. The retrospective nature of the amendments do not disadvantage any person or impose a liability on any person other than the Commonwealth. Subsection 12(2) of the *Legislative Instruments Act 2003* does not therefore operate to prevent the retrospective amendments from taking effect.

Section 4 and Schedule 2 of the regulation is taken to commence on 1 July 2012.

Authority: Subsection 133(1) of the  
*Health Insurance Act 1973*

**ATTACHMENT****Details of the *Health Insurance (General Medical Services Table) Amendment Regulation 2012 (No. 2)*****Section 1 – Name of Regulation**

This section provides that the title of the regulation is the *Health Insurance (General Medical Services Table) Amendment Regulation 2012 (No. 2)*.

**Section 2 – Commencement**

This section provides for the regulation to have commenced or to commence as follows:

- (a) 1 November 2011—sections 1 to 3 and Schedule 1; and
- (b) 1 July 2012—section 4 and Schedule 2.

**Section 3 – Amendment of the *Health Insurance (General Medical Services Table) Regulations 2011 – Schedule 1***

This section provides that Schedule 1 amends the *Health Insurance (General Medical Services Table) Regulations 2011*.

**Section 4 – Amendment of the *Health Insurance (General Medical Services Table) Regulations 2011 – Schedule 2***

This section provides that Schedule 2 amends the *Health Insurance (General Medical Services Table) Regulations 2011*.

**Schedule 1 – Amendments****Item [1] – Schedule 1, subclause 1.2.2 (2)**

This item allows for an attendance by a specialist or consultant physician if the patient declares that a written referral of the patient was completed by a medical practitioner or if, in an emergency, the specialist or consultant physician decides that a service can be provided without a referral.

**Item [2] – Schedule 1, subclause 1.2.3 (2)**

This item clarifies the services that can be included in a professional attendance.

**Item [3] – Schedule 1, subclause 2.3.1 (1)**

This item clarifies that subclause 2.3.1 applies to general practitioners provided the conditions specified in the subclause are met.

**Item [4] – Schedule 1, clause 2.3.1, Group A2 table**

This item allows general practitioners to whom clause 2.3.1 applies to claim items in Group A2. Group A2 covers non-referred attendances to which no other item applies.

**Item [5] – Schedule 1, clause 2.17.11, Group A15 table**

This item allows medical practitioners including general practitioners but not including a specialist or consultant physicians to claim items 721 to 732 inclusive.

**Item [6] – Schedule 1, clause 2.17.18, Group A15 table, items 735 to 758**

This item reintroduces items 735 to 758 as they existed under the Principal Regulations until 31 October 2011. Items 735 to 758 are for organising or participating in a case conference.

**Item [7] – Schedule 1, clause 2.40.1**

This item reinstates the 31 October 2011 definition of ‘midwife’, ‘nurse’ and ‘practice location’ in item 16400 to clarify the requirements that must be met before the item could be validly claimed.

**Item [8] – Schedule 1, paragraph 2.40.5 (1) (a)**

This item includes midwife in this paragraph.

Schedule 2 – Amendments

**Item [1] – Schedule 1, subclause 1.1.3 (2), examples**

This item omits the word ‘care’ from Aboriginal health care workers.

**Item [2] – Schedule 1, Division 2.1, heading, note**

This item omits A25. The Group A25 was introduced to support the Outer Metropolitan Specialist Training Program. This program was then absorbed into the Specialist Training Program thereby making the Group A25 items redundant.

**Items [3], [4] and [5]**

These items omit a registered Aboriginal Health Worker and insert an Aboriginal and Torres Strait Islander health practitioner from paragraph 2.16.4(2)(b), subclause 2.16.4(3), and subclause 2.16.14(4). This is in recognition of the fact that ‘Aboriginal and Torres Strait Islander health practitioner’ will be recognised as a profession under the National Registration and Accreditation Scheme from 1 July 2012.

**Item [6] – Schedule 1, subclause 2.20.6 (4)**

Item 2712 provides for a review of a General Practitioner Mental Health Plan and the removal of this restriction allows more reviews to be undertaken in a 12 month period where appropriate.

**Item [7] – Schedule 1, Division 2.25**

This item removes Division 2.25. The Group A25 was introduced to support the Outer Metropolitan Specialist Training Program. This program was then absorbed into the Specialist Training Program thereby making the Group A25 items redundant.

**Item [8] – Schedule 1, Division 2.30, heading**

This item includes Aboriginal and Torres Strait Islander health practitioners in the heading for Group M12. Group M12 is for services provided by a practice nurse, an Aboriginal health worker or an Aboriginal and Torres Strait Islander health practitioner on behalf of a medical practitioner.

**Items [9], [10], [11] and [12]**

These items omit a registered Aboriginal Health Worker and insert an Aboriginal and Torres Strait Islander health practitioner from paragraph 2.30.2(2)(a), subclause 2.30.4(1), paragraph 2.30.4(1)(a), and subclause 2.30.5.

**Item [13] – Schedule 1, paragraphs 2.30.5 (a) to (c)**

This item omits each mention of health worker and inserts health practitioner in recognition of the fact that ‘Aboriginal and Torres Strait Islander health practitioner’ is recognised as a profession under the National Registration and Accreditation Scheme from 1 July 2012.

**Item [14] – Schedule 1, clause 2.30.5, Group M12 table**

This item includes Aboriginal and Torres Strait Islander health practitioners as a practitioners who can perform the service for all seven items (from item 10983 to item 10997) in Group M12. Group M12 is for Services provided by a practice nurse, an Aboriginal health worker or an Aboriginal and Torres Strait Islander health practitioner on behalf of a medical practitioner.

**Item [15] – Schedule 1, clause 2.37.3**

This item amends the meaning of a ‘treatment cycle’ to include item 13212. Item 13212 is for Oocyte (or egg cell) retrieval and is part of the assisted reproductive technology treatment cycle.

**Items [16], [17] and [20] – Schedule 1, clause 2.37.9, Group T1 table, item 13315, 13318 and Schedule 1, clause 2.43.9, Group T10 table, item 22020**

The regulation amends three items (13318, 13815 and 22020) to clarify that they may be used for peripherally inserted central catheter line insertions.

**Items [18] and [19] – Schedule 1, subclause 2.40.5 (1)**

These items omit a registered Aboriginal Health Worker and insert an Aboriginal and Torres Strait Islander health practitioner from subclause 2.40.5(1) and clause 2.40.6, Group T4 table, item 16400 in recognition of the fact that ‘Aboriginal and Torres Strait Islander health practitioner’ is recognised as a profession under the National Registration and Accreditation Scheme from 1 July 2012.

**Item [21] – Schedule 1, clause 2.44.17, Group T8 table, item 37219**

Item 37219 for ultrasound guided prostate biopsy currently only covers the transrectal route. Prostate biopsy is also conducted via the transperineal pathway. This item amends item 37219 to allow for the procedure to be conducted by any route (i.e. transrectal or transperineal) in keeping with currently accepted clinical practice for prostate cancer treatment.

**Item [22] – Dictionary, definition of *Aboriginal and Torres Strait Islander health practitioner***

This item adds ‘Aboriginal and Torres Strait Islander health practitioner’ to the dictionary and defines the registration requirements and employment status of this type of practitioner.

**Item [23] – Dictionary, definition of *outer metropolitan specialist trainee***

This item omits the definition for an ‘outer metropolitan specialist trainee’ as this term no longer be used.

**Item [24] – Dictionary, definition of *registered Aboriginal health worker***

This item omits the definition for a ‘registered Aboriginal health worker’ as this term no longer be used.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Health Insurance (General Medical Services Table) Amendment Regulation 2012 (No. 2)***

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 Bill/Legislative Instrument**

The instrument amends the *Health Insurance (General Medical Services Table) Regulations 2011* to ensure that the medical services funded through the Medical Benefits Schedule continue to be up-to-date and representative of best medical practice.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Richard Bartlett  
First Assistant Secretary  
Medical Benefits Division  
Department of Health and Ageing**