

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 250, 2013**

#### *Health Insurance Act 1973*

#### *Health Insurance Legislation Amendment (Various Measures) Regulation 2013*

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.

The Regulation makes minor amendments to the *Health Insurance Regulations 1975* (HI Regulations), the *Health Insurance (Diagnostic Imaging Services Table) Regulation 2013* (2013 DIST), the *Health Insurance (General Medical Services Table) Regulation 2013* (2013 GMST) and the *Health Insurance (Pathology Services Table) Regulation 2013* (2013 PST).

#### *Amendments to the HI Regulations*

All diagnostic imaging services, with the exception of positron emission tomography (PET) and some angiography services are subject to ‘capital sensitivity’. Under the capital sensitivity measure, diagnostic imaging services provided on equipment that has not been upgraded to the equivalent of new equipment, triggers a 50 per cent reduction in the Medicare rebates. Items applying to services provided on depreciated equipment are referred to as (NK) items.

Capital sensitivity arrangements for diagnostic imaging services other than CT and angiography are currently applied through the *Health Insurance (Diagnostic Imaging Capital Sensitivity) Determination 2011* (the CS Determination). The CS Determination created 351 reduced fee (NK) items.

All (NK) items currently listed in the CS Determination are transferred into the 2013 DIST. This transfer also requires consequential amendments to the HI Regulations, which are made by the Regulation.

#### *Amendments to the Health Insurance (Diagnostic Imaging Services Table) Regulation 2013 (2013 DIST)*

The Regulation amends the item descriptors for four pelvis ultrasound and four Magnetic Resonance Imaging (MRI) items to remove gender specific terminology. These amendments ensure that the items adhere to the *Australian Government Guidelines on the Recognition of Sex and Gender* (the Guidelines) which were developed by the Attorney-General’s Department. The overarching goal of the Guidelines is to ensure that no person is denied access to necessary medical services as a result of their sex or gender.

#### *Amendments to the Health Insurance (General Medical Services Table) Regulation 2013 (2013 GMST)*

Seven items are amended to remove gender specific terminology or wording to ensure the items are consistent with the Guidelines. Minor amendments to 21 items are also made to ensure the item descriptors reflect current clinical practice.

*Amendments to the Health Insurance (Pathology Services Table) Regulation 2013 (2013 PST)*

The Regulation includes amendments to the item descriptors of five cytology items 73059, 73060, 73061, 73064 and 73065, to include references to the fine needle aspiration items 73066 and 73067. These references were omitted in error from other item descriptors in cytology. The fee for item 73065 is also reduced to reflect the correct amount for the item, as the fee was incorrectly listed in the *Diagnostic Imaging Services Table Regulations* when the item was created.

The Act specifies no conditions that 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*.

The amendments to the HI Regulations take effect the day after registration on the Federal Register of Legislative Instruments to align with the DIST remake which starts at the same time. All other amendments provided for in the Regulation take effect on 1 January 2014.

A 1 January 2014 commencement date allows time to communicate these changes to stakeholders.

Consultation

The diagnostic imaging sector, through the Diagnostic Imaging Advisory Committee, was consulted with regard to the changes to the legislative arrangements for the NK items. No consultation was undertaken with regard to the changes to the HI Regulations as they are technical changes, consequential to the transfer of (NK) items previously in the CS Determination to the 2013 DIST Regulation. These changes do not change the operation of the capital sensitivity arrangements or the application of the associated items.

The broader stakeholder community including the National Lesbian, Gay, Bisexual, Transgender and Intersex Health Alliance and the Australian Medical Association was consulted regarding changes to the DIST and GMST. No specific consultation however was undertaken with regard to the amendments to the PST, as they are minor and machinery in nature. Stakeholders have been notified of the changes. The reduced fee to item 73065 was made to reflect the correct fee, as it was incorrectly listed (at the higher rate) in the regulations on 1 May 2009.

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

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

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

### ***Health Insurance Legislation Amendment (Various Measures) Regulation 2013***

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 instrument amends the *Health Insurance Regulations 1975* (HI Regulations), the *Health Insurance (Diagnostic Imaging Services Table) Regulation 2013* (2013 DIST), the *Health Insurance (General Medical Services Table) Regulation 2013* (2013 GMST) and the *Health Insurance (Pathology Services Table) Regulation 2013* (2013 PST) to ensure that the medical services funded through the Medicare Benefits Schedule continue to be up-to-date and representative of best medical practice.

In accordance with section 4 of the *Health Insurance Act 1973*, the 2013 DIST, 2013 GMST and the 2013 PST prescribes the tables of medical services containing: items of medical services; the amount of fees applicable for each item; and rules for the interpretation of the table.

The 2013 DIST includes the transfer of 351 Capital Sensitivity items from the *Health Insurance (Diagnostic Imaging Capital Sensitivity) Determination 2013* (CS Determination). The Various Measures Regulation includes the consequential amendments to the HI Regulation which are technical changes. The Various Measures Regulation also includes amendments to the 2013 DIST and the 2013 GMST to remove gender specific language to ensure that no person is denied access to medical services as a result of their sex or gender. The 2013 PST has also been amended to include changes to the item descriptors of five cytology items to include references to two fine needle aspiration items. Item 73065 has also had its fee reduced to reflect the correct amount for the item as it was incorrectly listed in the DIST regulation on 1 May 2009.

#### **Human Rights Implications**

The regulation engages Articles 2, 9 and 12 and of the International Covenant on Economic, Social and Cultural Rights (ICESCR), specifically the rights to health and social security.

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. The UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not a right for each individual to be healthy, but is a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Committee has also stated that the ‘highest attainable standard of health’ takes into account the country’s available resources. The right may be understood as a right of access to a variety of public health and health care facilities, goods, services, programs and conditions necessary for the realisation of the highest attainable standard of health.

The right to social security is contained in article 9 of the ICESCR. It requires that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable

them to acquire at least essential health care. Countries are obliged to demonstrate that every effort has been made to use all resources that are at their disposal in an effort to satisfy, as a matter of priority, this minimum obligation.

The Committee has stated that there is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under ICESCR. In this context, a retrogressive measure would be one taken without adequate justification that had the effect of reducing existing levels of social security benefits, or of denying benefits to persons or groups previously entitled to them.

However, it is legitimate for a Government to re-direct its limited resources in ways that it considers to be more effective at meeting the general health needs of all society, particularly the needs of the more disadvantaged members of society.

### Analysis

All of the amendments included will advance the human rights to health and social security by assisting private patients with financial costs associated with these medical services, where clinically relevant. In particular the amendments to remove gender specific language will ensure that no person is denied access to necessary medical treatment based on their sex or gender. These changes ensure that the Medicare Benefits Schedule items adhere to the *Australian Government Guidelines on the Recognition of Sex and Gender*.

**The Hon. Peter Dutton MP**  
**Minister for Health**