

EXPLANATORY STATEMENT**Select Legislative Instrument No. 1, 2015***Health Insurance Act 1973**Health Insurance (General Medical Services Table) Repeal (Duration of Attendance) Regulation 2015*

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. Section 9 of the Act provides that Medicare benefits be calculated by 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 which set out items of medical services, the fees applicable for each item, and rules for interpreting the table. The *Health Insurance (General Medical Services Table) Regulation 2014* (GMST) currently prescribes such a table.

The *Health Insurance (General Medical Services Table) Repeal (Duration of Attendance) Regulation 2015* (the Regulation) repeals the *Health Insurance (General Medical Services Table) Amendment (Duration of Attendance) Regulation 2014* and the *Health Insurance (General Medical Services Table) Amendment (Duration of Attendance) Regulation 2014 (No.2)*.

Consultation

In accordance with Section 18 of the *Legislative Instruments Act 2003*, the nature of the Regulation is such that it was inappropriate to consult. The original decision to alter entitlement to Medicare benefits was taken as part of Government's Mid-Year Economic and Financial Outlook 2014-15. The decision to repeal the *Health Insurance (General Medical Services Table) Amendment (Duration of Attendance) Regulation 2014* and the *Health Insurance (General Medical Services Table) Amendment (Duration of Attendance) Regulation 2014 (No.2)* ensures that the amendments provided for in those regulations do not take effect.

Details of the Regulation are set out in the Attachment.

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*.

The Regulation commences on 18 January 2015.

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

Details of the *Health Insurance (General Medical Services Table) Repeal (Duration of Attendance) Regulation 2015*

Regulation 1 – Name

This regulation provides for the Regulation to be referred to as the *Health Insurance (General Medical Services Table) Repeal (Duration of Attendance) Regulation 2015*.

Regulation 2 – Commencement

This regulation provides for the Regulation to commence on 18 January 2015.

Regulation 3 – Authority

This regulation provides that the Regulation is made under the *Health Insurance Act 1973*.

Regulation 4 – Schedules

This regulation provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 – Repeals

Item [1] – Repeal of Regulations

This item repeals the following Regulations:

Health Insurance (General Medical Services Table) Amendment (Duration of Attendance) Regulation 2014

Health Insurance (General Medical Services Table) Amendment (Duration of Attendance) Regulation 2014 (No. 2)

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) Repeal (Duration of Attendance) Regulation 2015

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

In accordance with section 4(1) of the *Health Insurance Act 1973* (the Act), the *Health Insurance (General Medical Services Table) Regulation 2014* (GMST) prescribes a table of medical services containing items of medical services, the amounts of fees applicable for each item, and rules for interpretation.

The *Health Insurance (General Medical Services Table) Repeal (Duration of Attendance) Regulation 2015* (the Regulation) revokes the *Health Insurance (General Medical Services Table) Amendment (Duration of Attendance) Regulation 2014* and the *Health Insurance (General Medical Services Table) Amendment (Duration of Attendance) Regulation 2014 (No.2)*. The decision to repeal the regulations ensures that the amendments provided for in those regulations do not take effect

Human Rights Implications

The Regulations engage Articles 2, 9, and 12 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 reports that the '*highest attainable standard of health*' takes into account the country's available resources. This 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

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 reports 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

The revocation of these regulations does not raise any human rights issues as it ensures the amendments which were to commence on 19 January 2014 do not take effect.

Conclusion

The Legislative Instrument is compatible with human rights because it maintains the protection of human rights

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