

## **EXPLANATORY STATEMENT**

### **Health Insurance Act 1973**

#### *Health Insurance (Bonded Medical Program) Rule 2020*

Part VD of the *Health Insurance Act 1973* (the Act) establishes the Bonded Medical Program, which is an Australian Government initiative designed to address the doctor shortage across regional, rural and remote areas. Participants receive a Commonwealth supported place in a medical course at an Australian university in return for completion of a return of service commitment to work in regional, rural and remote areas and areas of workforce shortage (referred to as the return of service obligation).

Under Part VD of the Act, the Minister has the power to make rules, known as the Bonded Medical Program rules, to ensure the Bonded Medical Program remains up-to-date, implements the objectives of the program and responds to workforce distribution requirements into the future. Subsection 124ZT(1) of the Act provides that the Minister may make rules about matters that are required or permitted to be dealt with under Part VD of the Act, or that are necessary or convenient for carrying out Part VD of the Act.

Subsection 124ZT(2)(a) of the Act provides that the Bonded Medical Program rules must prescribe certain areas for bonded participants to complete a return of service obligation (known as eligible locations). The Bonded Medical Program rules may also provide for a number of other matters, as set out in subsection 124ZT(3).

The purpose of the *Health Insurance (Bonded Medical Program) Rule 2020* (the Rule) is to provide the details necessary to support the operation of the Bonded Medical Program by prescribing:

- the period of time in which a bonded participant must complete their course of study in medicine;
- the requirements for completing a return of service obligation;
- the eligible locations in which a bonded participant must work as a medical practitioner to complete their return of service obligation;
- the circumstances in which a bonded participant may apply for an extension of time to complete their return of service obligation, including the evidential requirements for applying for an extension;
- the circumstances in which work which qualifies for completing a return of service obligation may be scaled;
- the events that a bonded participant must notify to evidence compliance with conditions of the Bonded Medical Program;

- the form in which, and the way in which, information or documents are to be provided to the Department; and
- the interest on the repayment of education costs, where a bonded participant has breached certain conditions or withdraws from the Bonded Medical Program.

## **Background**

Part VD of the Act provides for existing participants of the Bonded Medical Places (BMP) and Medical Rural Bonded Scholarship (MRBS) schemes to voluntarily opt in to the Bonded Medical Program. If the Secretary agrees to an existing participant opting in to the statutory scheme, the person is then subject to the provisions of the statutory scheme.

From 1 January 2020, new participants will be able to participate in the Bonded Medical Program. A new participant will enter the Bonded Medical Program as a first year student in a course of study in medicine at a participating Australian university.

To be eligible to participate, a person must have accepted a bonded Commonwealth supported place in a course of study in medicine at an Australian university, be an Australian citizen or permanent visa holder and agree to participate in the program using a web-portal maintained by the Department.

A participant is required to work as a medical practitioner in eligible locations for a total period of three (3) years. Former participants of the Bonded Medical Places (BMP) scheme who entered the scheme in the years 2016-2019 (inclusive) agreed to a 12 month return of service obligation. These participants will retain their 12 month return of service obligation under the Bonded Medical Program should they voluntarily opt in.

Under the Bonded Medical Program, the return of service obligation must be completed within 18 years from when the participant completes their course of study in medicine at an Australian university, but may be completed in a series of periods. The period of 18 years to complete the return of service obligation may be extended in limited circumstances only where the participant or a family member has a medical condition that prevents the participant from completing their return of service obligation within the 18 years provided.

A participant will be subject to a number of conditions including that they must complete their course of study in medicine at an Australian university; the return of service obligation must be completed in accordance with the Rule and the participant must give information or documents to the Department in particular circumstances.

Where a participant withdraws from their course of study in medicine after the census date of the second year of study, the participant will be liable to pay the Commonwealth the cost of the participant's course of study for the years or part year (semester) of study undertaken, plus interest.

Where a participant does not complete their return of service within 18 years from completion of their course of study (or an extended period), the person will be liable to pay the Commonwealth the cost of the person's course of study that was funded by the Commonwealth, less a pro-rata proportion of the return of service obligation completed, plus interest; or, the cost of the Commonwealth funded scholarship plus interest, as applicable.

Medicare benefits will not be payable to a MRBS participant who opts in to the Bonded Medical Program and does not complete their return of service within 18 years. Medicare benefits will not be payable for six (6) years from the day the breach occurs.

Under the Bonded Medical Program, a participant who fails to comply with a condition to provide the Department with information or documents may be liable for an administrative penalty of \$10,000. The participant will receive reminders and warnings over a reasonable period of time prior to the issuing of an administrative penalty.

A decision made under Part VD of the Act may be reviewed by the Secretary and certain specified decisions can be reviewed by the Administrative Appeals Tribunal.

### **Commencement**

The Rule will commence on 1 January 2020.

### **Consultation**

The Department consulted extensively with the Australian Medical Association, Australian Medical Students Association, National Rural Health Students Network and Rural Workforce Agencies on the development of new administrative arrangements, including the requirements to be prescribed under the Rule.

Implementation of the new administrative arrangements is informed by the program's Implementation Working Group which meets regularly to ensure that key stakeholders are consulted and fully briefed on the reform and implementation process.

Formal consultation with key stakeholders is well established and active engagement with stakeholder groups will continue and is supported by an extensive communication strategy.

The Rule is a legislative instrument for the purposes of the *Legislative Act 2003*. Details of this instrument are set out in Attachment A.

## **ATTACHMENT A**

### ***Health Insurance (Bonded Medical Program) Rule 2020***

#### **Part 1 Preliminary**

##### **Section 1      Name**

Section 1 provides that the name of the instrument is the *Health Insurance (Bonded Medical Program) Rule 2020* (the Rule).

##### **Section 2      Commencement**

Section 2 provides that the instrument commences on 1 January 2020.

##### **Section 3      Authority**

Section 3 provides that the instrument is made under subsection 124ZT(1) of the Act.

##### **Section 4      Definitions and interpretation**

Section 4 defines terms used in the instrument. A number of terms used in the instrument are defined in the Act (such as Bonded Medical Program, bonded participant and return of service obligation)

#### **Part 2 Return of service obligation**

##### **Division 1      Completing a return of service obligation**

##### **Section 5      Overview**

Section 5 provides that a bonded participant must complete their return of service obligation in accordance with the requirements set out in Part 2, Division 1 of the Rule.

##### **Section 6      Completion of course of study**

Subparagraph 124ZG(1)(a) of the Act provides that the bonded participant must complete their medical course within the period prescribed by the Bonded Medical Program rules.

Subsection 6(1) provides that the section applies to a person who enters the Bonded Medical Program from 1 January 2020 as a first year student in a medical course, or to a former participant of the BMP Scheme who voluntarily opts in to the Bonded Medical Program and who, at the time of opting-in, was still completing their medical course.

Subsection 6(2) aligns the period of time a participant has to complete their course of study with the period of time required by a participant's university. This subsection will enable a bonded participant to access options offered by the participant's university in regard to any

changes they may require or request to the period of time they take to complete their course of study.

Where a participant does not complete their course of study within the period of time set out in subsection 6(2) of the Rule, the participant will be in breach of the condition in 124ZG(1)(a) of the Act. The participant will be liable to pay the Commonwealth the cost of the person's course of study that was funded by the Commonwealth, plus interest (see section 124ZH of the Act). There is no liability where the bonded participant breaches the condition mentioned in paragraph 124G(1)(a) prior to the first census date for the second year of their medical course.

## **Section 7      Commencement of return of service obligation**

Paragraph 124ZT(3)(b) of the Act provides that the Bonded Medical Program rules may detail the requirements for completing a return of service obligation.

Section 7 sets out when a bonded participant is able to commence their return of service obligation for the purpose of paragraph 124ZT(3)(b) of the Act. A bonded participant is able to commence their return of service at any time after they have received provisional registration from the Australian Health Practitioner's Registration Authority (AHPRA) and from when they commence internship in eligible work.

## **Section 8      Requirements that apply to all bonded participants**

Paragraph 124ZT(3)(d) of the Act provides that the Bonded Medical Program rules may provide the circumstances in which work will qualify for completing a return of service obligation.

Subsection 8(1) describes the relevant requirements for completing a return of service obligation, including that the work is 'eligible work' and that details of the work have been registered in a return of service obligation plan and confirmed in accordance with subsection 16(1). Under subsection 16(1), a bonded participant is required to confirm they have completed work at an eligible location within three (3) months after completing the work, and must provide evidence to support completion of their work.

Subsection 8(2) provides that any work which does not comply with subsection 8(1) must not contribute to a bonded participant's return of service obligation. Bonded participants are required to report all eligible work which they wish to count towards their return of service obligation. Work must be registered in a return of service obligation plan and confirmed as being completed in accordance with subsection 16(1), otherwise it will not count towards the bonded participant's return of service obligation. This requirement is in place to ensure that administrative reminders and warnings on the Department's web-portal are accurate and timely, and that penalties are applied in appropriate circumstances.

Subsection 8(3) provides the definition of 'eligible work' and 'professional service'. These definitions support the intended outcomes of the Bonded Medical Program by ensuring that participants improve access to medical services in areas of need.

## **Section 9      Requirements that apply to certain bonded participants**

Paragraph 124ZT(3)(b) of the Act provides that the Bonded Medical Program rules may provide the requirements for completing a return of service obligation.

Section 9 provides the requirements for completing a return of service obligation in relation to different classes of bonded participants.

### *Bonded participants that have a 3 year return of service obligation*

Subsection 9(2) provides that the return of service obligation for a bonded participant who has a 3 year return of service obligation may be worked on a full-time, part-time or on a per-day (day by day) basis.

Bonded participants will be able to streamline their recording of work periods by registering the start and end dates of employment and whether they worked full time (minimum of 35 hours per week), part time (between 20 to 35 hours per week) or on a per-day basis (minimum of 7.5 hours per day).

Subsection 9(3) provides that a bonded participant with a 3 year return of service obligation may only complete a maximum of 18 months (50%) of their return of service obligation before the participant becomes a fellow, or in the first 12 years after the participant completes their medical course, whichever occurs first. A bonded participant must complete their remaining return of service obligations within the 18 year return of service timeframe.

### *Bonded participants that have a 12 month return of service obligation*

Subsection 9(4) provides that a bonded participant with a 12 month return of service obligation must complete their obligation on a full time basis (minimum of 35 hours per week). A return of service obligation may be completed in a 'series of periods', provided that each period is at least 10 consecutive weeks. This encourages doctors to do an internship in rural and regional locations. Early training placements in rural and regional areas have been shown to increase retention or return to non-metropolitan areas post training.

## **Section 10      Eligible locations**

Section 10 sets out the definition of 'eligible locations' which prescribes where different classes of bonded participant may complete their return of service obligation and the geographic or workforce distribution mechanism by which this is defined.

This section uses the ABS's geographic classification system (the Modified Monash Model (MMM)), in combination with the Secretary's classification of areas based on access to medical services, to define Distribution Priority Areas (DPAs) and Districts of Workforce Shortage (DWSs).

### *Bonded participants who have completed their course of study*

Subsection 10(2) specifies that a bonded participant may work in eligible locations as defined by categories 2-7 of the MMM from completion of their medical course up until admission to vocational training.

### *Bonded participants who are completing vocational training or have attained fellowship*

Subsection 10(3) provides for additional eligible locations to become available to a bonded participant who is completing their vocational training or who has attained their fellowship. In relation to a bonded participant who is a specialist in a speciality other than general practice, work completed in a location that is specified as a DWS for their speciality will count towards their return of service obligation.

In relation to a bonded participant who is a specialist in general practice, work completed in a location that is specified as a DPA will count towards their return of service obligation. Subsection 10(8), specifies that a bonded participant is unable to complete eligible work towards their return of service obligation in inner metropolitan areas; however, a bonded participant may complete eligible work in an outer metropolitan or a non-metropolitan area if classified as either a DWS or DPA as relevant to their specialisation and within 6 months prior to commencing work at that location.

Exclusion of inner metropolitan areas for completion of return of service obligations supports the Government's objectives to strengthen the targeting of the bonded medical workforce to regional, rural and remote areas of most need.

### *Eligible locations at different points in time*

Paragraph 10(4)(a) prescribes eligible locations for a bonded participant who entered the Bonded Medical Program under 124ZE(1), that is, as a new applicant to the program from 1 January 2020. These bonded participants will always be able to complete their return of service in locations that were prescribed as eligible locations at the time they entered the program.

For the purposes of the program administration, these locations are called a bonded participant's '*point of entry locations*' and will be retained until completion of all obligations. For new entrants, eligible locations are classified as MMM 2-7 locations. Retention of '*point of entry locations*' provides continuity and choice in where a bonded participant may complete work that counts towards their return of service obligation.

Paragraph 10(4)(b) specifies that a bonded participant will also be able to complete their return of service obligations in a location which is, or becomes, an eligible location within 6 months prior to the bonded participant commencing work at that location. This provision supports a bonded participant who has committed to work in a location up to 6 months ahead of time whilst enabling the program to target the bonded workforce to more recent eligible locations.

Paragraph 10(5)(a) prescribes eligible locations for a bonded participant who is a former participant of the BMP or MRBS scheme. These bonded participants will always be able to complete their return of service in locations that were prescribed as eligible locations at the time they entered the program. Similar to paragraph 10(4)(b), paragraph 10(5)(b) specifies

that a bonded participant will also be able to complete their return of service obligations in a location which is, or becomes, an eligible location within 6 months prior to the bonded participant commencing work at that location.

For a bonded participant who has opted in to the Bonded Medical Program, '*point of entry locations*' will include locations classified as MMM 2-7 at the time of entry, and also any additional locations which are eligible to a bonded participant due to undertaking vocational training or attaining their fellowship as specified under subsection 10(3).

*Location where a bonded participant has worked remains eligible for that participant*

Subsection 10(6) provides that any location in which a bonded participant has undertaken eligible work towards completion of their return of service obligation is retained as an eligible location for that bonded participant. For the purpose of program administration, these locations are called a bonded participant's '*quarantined locations*'. Retention of '*quarantined locations*' provides continuity in eligible locations and supports a bonded participant to return to work in an earlier location.

*Other eligible locations*

Subsection 10(7) provides that the Minister has the authority to prescribe any other location as an eligible location at any time. This provision enables the Bonded Medical Program to respond to urgent and new areas identified as having workforce shortages. It supports the Government's broader health workforce strategy to better distribute the medical workforce by targeting the Australian trained medical workforce to areas of most need.

*Definitions*

Subsection 10(8) defines the geographic and workforce classification systems applied under the Rule for the purposes of paragraph 124ZF(2) of the Act. The Health Workforce Locator shows which areas are classified as a DPA or DWS, and it also shows MMM classifications. The locator is published on the Department's website (available: <https://www.health.gov.au/resources/apps-and-tools/health-workforce-locator>).

## **Division 2 Variations to a return of service obligation**

### **Section 11 Applications for an extension of time**

Section 124ZF(2)(a) of the Act requires that a bonded participant must complete their return of service obligation within 18 years after the day on which they complete their medical course. Under section 124ZF(3), the bonded participant may apply to the Secretary of the Department for an extension of time.

The Secretary has the authority to grant an extension in response to a written application made by a bonded participant. Under section 11, the application must be made as soon as practicable after the time that the bonded participant becomes aware that an extension is required. For the purpose of program administration, the Secretary would not normally extend the 18 year return of service period by more than two (2) years.

This section aims to maximise the outcomes of the Bonded Medical Program by providing discretion for the Secretary to allow more time for a bonded participant to complete their



obligations due to a medical condition of the bonded participant or a family member. This section supports bonded participants under distress and works to maximise retention in the program and reduce the incidence of breach of conditions under section 124ZH of the Act.

## **Section 12 Member of a bonded participant's family**

Section 124ZT(3)(e)(i) of the Act provides that the Bonded Medical Program rules may provide who is a member of a bonded participant's family for the purposes of section 124ZF. Paragraph 12(1)(a) provides that a member of a bonded participant's family means a partner, child, grandchild, parent, grandparent or sibling of the participant. A member of a bonded participant's family also includes a person determined by the Secretary, on application by the bonded participant, to satisfy the criteria specified in subparagraph 12(1)(b).

## **Section 13 Evidential requirement for establishing a medical condition**

Section 13 provides the evidential requirements for establishing whether a bonded participant, or a member of the bonded participant's family, has a medical condition and the evidential requirements for establishing that such a medical condition prevents the bonded participant from completing their return of service obligation.

## **Section 14 Scaling – return of service obligation**

Paragraph 124ZT(3)(c) provides that the Bonded Medical Program rules may provide the circumstances in which work which qualifies for completing a return of service obligation may be scaled. Section 14 sets out the scaling requirements under paragraph 124ZT(3)(c) of the Act. For the purposes of program administration, scaling is known as the '*scaling benefit*'.

Subsection 14(1) provides that eligible work completed by a bonded participant which meets the requirements of the scaling rule may be scaled by counting each month of work actually completed as satisfying two months of their return of service obligation.

Subsection 14(2) specifies the bonded participants to whom the scaling rule will apply.

Subsection 14(3) specifies that scaling is not available to former participants of the BMP Scheme who entered the scheme in the years 2016-19 (inclusive) and who agreed to a 12 month return of service obligation.

Under paragraph 124ZV(2)(a) of the Act, former participants of the BMP Scheme may reduce their 3 year return of service obligation period by prior service that is completed in accordance with the provisions of the person's deed of agreement. Similarly, under paragraph 124ZW(2)(a), former participants of the MRBS Scheme may reduce their 3 year return of service obligation period by prior service that is completed in accordance with the provisions of the person's contract.

Subsection 14(4) provides that such prior service is to be ignored in determining whether a bonded participant is eligible for a scaling benefit. Subsection 14(4) excludes the counting of prior service for the purposes of applying the scaling benefit due to the other benefits a

bonded participant received as a result of opting in. These benefits include a reduction in the length of return of service of between 2-3 years and other reductions due to the scaling initiative in the bonded participant's former scheme.

## **Division 3    Reporting obligations**

### **Section 15    Notifiable events**

Section 15 sets out rules for the purposes of subparagraphs 124ZT(3)(a) and (g) of the Act regarding what events are considered a notifiable event and must be reported by a bonded participant, including whether any supporting evidence is required. This allows the Department to monitor each bonded participant's progression against the program's timeframes and milestones, to provide support to participants as needed, and determine compliance.

Subsection 15(1) provides that a bonded participant has six (6) months in which to report a notifiable event, including entering information and uploading any required evidence into a web-portal.

The web-portal is the Department's Bonded Return of Service System (BRoSS) which will be available to bonded participants from 1 January 2020 for self-management, planning and reporting of milestones and notifiable events under the Bonded Medical Program.

Levels of evidence required to be submitted reflect the nature of the notifiable event and include as relevant: personal identification and relevant registration numbers, identification of university, employers or specialist training colleges; submitted copies of documents providing evidence of reports made by a bonded participant.

The notifiable events are:

- 1        Name change
- 2        Change in primary or secondary contact details
- 3        Change in completion timeframe for course of study in medicine
- 4        Completion of medical course
- 5        Provisional registration with AHPRA
- 6        Commencement of internship
- 7        Completion of internship
- 8        General registration with AHPRA
- 9        Commencement of vocational training
- 10      Attainment of fellowship

Subsection 15(2) provides that, in the absence of satisfactory evidence, a bonded participant may submit a statutory declaration which specifies the reason why substantiating evidence cannot be provided and attests the relevant information.

A bonded participant who opted in to the Bonded Medical Program has six (6) months to report any information in relation to notifiable events that occurred prior to opting in to the Bonded Medical Program. Reporting includes reporting the outstanding notifiable event via the web-portal and submission of any evidence.

### **Section 16    Return of service obligation plan**

Section 16 provides reporting timeframes to register, update or confirm details relating to the bonded participant's return of service obligation plan via the Department's web portal,

BROSS. This plan will be the primary data source for a bonded participant to demonstrate their intention to meet their return of service obligations, and when completion of their obligations will occur. It will enable a bonded participant to plan, track and monitor compliance of their return of service obligations. In addition, the plan will be the primary data source which the Department will use to assess compliance, monitor attainment of key milestones and track completion of each bonded participant's return of service obligations.

Under subsection (1), information or evidence must be provided to the Department within the following timeframes:

1. By the completion date of the bonded participant's course of study in medicine (for a participant who entered the Bonded Medical Program from 1 January 2020) or 3 months from the date of opting in to the Bonded Medical Program (for a participant who opts in to the Bonded Medical Program)
2. No later than 3 months after the bonded participant has completed work at an eligible location
3. No later than 3 months after the bonded participant has changed the expected completion date of work at an eligible location
4. Every 6 months from the time the bonded participant has completed their course of study in medicine (for a participant who entered the Bonded Medical Program from 1 January 2020) or every 6 months from the time the bonded participant opted in to the Bonded Medical Program (for a participant who opts in to the Bonded Medical Program).

Subsection 16(2) provides that, in the absence of satisfactory evidence, a bonded participant may submit a statutory declaration which specifies the reason why substantiating documentary evidence cannot be provided and attests the relevant information.

### **Part 3 Repayment obligations**

#### **Section 17 Repayment of payments**

Subsection 17(1) sets out rules for the purposes of sections 124ZH and 124ZQ of the Act which specify how repayments are calculated due to a breach of conditions or withdrawal from the Bonded Medical Program. The Department's web-portal (BROSS) will provide a bonded participant in their first year of a medical course with an example of a repayment costing and how it is calculated. The example will be based on recent historical costings, given that costings for future years are unknown. After a participant has passed the census date of their second year of study, the participant will have the option to view in BROSS the repayment calculations available to them. This calculation will be based on actual costings relevant to their years of study or the amount of Commonwealth funded scholarship received.

#### *Bonded participants covered by subsection 124ZE(1) or (2) of the Act*

Subsection 17(2) applies to a bonded participant who entered the Bonded Medical Program from 1 January 2020 and former participants of the BMP scheme who opt in to the Bonded Medical Program.

Subsection 17(2) provides for repayments owing under paragraph 124ZH(1)(a) of the Act where a bonded participant has not completed their course of study in medicine at an

Australian university within the required timeframe of the university (as specified under section 6 of the Rule).

Subsection 17(2) also applies, under subparagraph 124ZH(1)(b) of the Act, to a bonded participant who has not completed their required return of service (either a 3 year or a 12 month return of service obligation) within the 18 year timeframe under paragraph 124ZF(2)(a) of the Act. Subsection 17(2) also applies, under subparagraph 124ZQ(1)(a) of the Act, to a bonded participant who withdraws from the Bonded Medical Program after the census date of the second year of the participant's medical course.

The amount owing is determined by the formula: the proportion of return of service not completed by a bonded participant multiplied by the total Commonwealth contribution amount for a place in medicine for each year or part year study, commenced but not completed.

The Commonwealth contribution amount has the meaning given in section 33-10 of the *Higher Education Support Act 2003*.

#### *Bonded participants covered by subsection 124ZE(3) of the Act*

Subsection 17(3) applies to a bonded participant who is a former participant of the MRBS scheme and who opted in to the Bonded Medical Program.

Subsection 17(3) also applies, under subparagraph 124ZH(1)(b) of the Act, to a bonded participant who has not completed their required return of service (a 3 year return of service obligation) within the 18 year return of service timeframe under paragraph 124ZF(2)(a) of the Act. Subsection 17(3) also applies, under subparagraph 124ZQ(1)(b) of the Act, to a bonded participant who withdraws from the Bonded Medical Program after the census date of the second year of the participant's medical course.

The amount owing is determined by the formula: the proportion of return of service not completed by a bonded participant multiplied by the total repayment cost of the scholarship provided to the former participant of the MRBS scheme by the Commonwealth.

The total amount of the scholarship paid to a bonded participant is known to the Department and will be sourced from program records.

## **Section 18 Interest payable on overdue payments**

Section 18 sets out rules for the purposes of paragraph 124ZT(3)(f) and subsection 124ZQ(1) of the Act in relation to the applicable rate of interest and how it is to be applied on overdue payments incurred by a bonded participant.

## Statement of Compatibility with Human Rights

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

### HEALTH INSURANCE (BONDED MEDICAL PROGRAM) RULE 2020

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

This legislative instrument is made under subsection 124ZT(1) of the *Health Insurance Act 1973* (the Act).

This legislative instrument provides the detail necessary to support the operation of the Bonded Medical Program by prescribing:

- the period of time in which a bonded participant must complete their course of study in medicine;
- the requirements for completing a return of service obligation;
- the eligible locations in which a bonded participant must work as a medical practitioner to complete their return of service obligation;
- the circumstances in which a bonded participant may apply for an extension of time to complete their return of service obligation, including the evidential requirements for applying for an extension;
- the circumstances in which work which qualifies for completing a return of service obligation may be scaled;
- the events that a bonded participant must notify to evidence compliance with conditions of the Bonded Medical Program;
- the form in which, and the way in which, information or documents are to be provided to the Department; and
- the interest on the repayment of education costs, where a bonded participant has breached certain conditions of the Bonded Medical Program.

This legislative instrument will come into effect from 1 January 2020 for new entrants to the Bonded Medical Program and existing participants who choose to opt in to the Bonded Medical Program.

## **Human rights implications**

This legislative instrument engages Articles 6 and 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the right to work and the right to health.

### *The Right to Work*

The right to enjoy economic, social and cultural rights as well as civil and political rights is contained in Part III, Article 6 (1 and 2) of the ICESCR. There is an obligation under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms.

In accordance with the Universal Declaration of Human Rights, the idea of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy economic, social and cultural rights, as well as civil and political rights.

### Analysis

In this context, it is considered that the Rule provides participants of the Bonded Medical Program with flexibility to work with limited restriction.

New participants to the program agree to participate voluntarily and receive a Commonwealth supported place at university in return for fulfilment of a commitment to complete their return of service obligation, that is, to work in regional, rural or remote locations or areas of workforce shortage. The Bonded Medical Program allows participants to complete their return of service obligation over a total of 18 years.

The 18-year timeframe commences on the date on which the university advises the participant they have completed their medical degree. This 18-year timeframe applies to participants who have a 3 year return of service obligation as well as the 2016-19 cohorts of the BMP Scheme, who retain their full-time 12 month return of service obligation.

Participants with a 3 year return of service obligation have the option to count a single (one) day of work as contributing to their return of service obligation in certain circumstances. This flexibility increases employment opportunities and encourages continuity of care under healthcare delivery models which best suit rural and remote areas, such as part-time access to services, hub-and-spoke and rotational outreach service delivery models.

The Rule prescribes a work period of at least 10 consecutive weeks for participants with a 12 month return of service obligation. This requirement provides a balance between the participant's ability to work with limited restriction, and the continuity of medical care and access to medical services for rural and remote populations. Bonded participants with a 12 month return of service obligation have full flexibility of when they complete their return of services within the 18 year return of service timeframe.

The Rule prescribes that a bonded participant with a 12 month return of service obligation must work full-time. This is considered reasonable given the significantly reduced length of

return of service (reduced to 12 months from four (4) to six (6) years), the substantial commitment of Government to fund a Commonwealth supported place enabling the participant to gain a medical career and the objective of the program to deliver more medical services to areas of shortage.

The Rule prescribes that the return of service obligation must be completed in particular geographic locations in accordance with a bonded participant's level of training and specialisation. The Rule prescribes that all participants, irrespective of experience or qualifications, can complete their return of service obligations in locations which are categorised under the Modified Monash Model (MMM) 2-7 classifications either at the time participants entered the Bonded Medical Program (called '*point of entry locations*') or that become an eligible location within 6 months of the participant commencing work at that location. Once a participant has completed their return of service obligation in an eligible location, the location is retained as an eligible location (called '*quarantined location*') for that participant.

The Rule prescribes additional eligible locations for bonded participants with additional experience and qualifications. In particular, a bonded participant who is completing vocational training or has attained fellowship in general practice will have access to locations classified as a Distribution Priority Area (DPA); and a bonded participant who is completing vocational training or who has attained fellowship in non-GP specialities will have access to locations classified as a District of Workforce Shortage (DWS).

In addition, a bonded participant who opted in to the Bonded Medical Program as a vocational trainee or specialist will retain the right to work in their retained '*point of entry locations*' under MMM 2-7 and either, locations classified as eligible under DPA or DWS workforce classification systems, as relevant to their specialisation.

The Rule does not prohibit bonded participants from working in locations which do not count towards their return of service obligation during the 18 year period. Should a bonded participant delay completion of their return of service until the final three years of the 18 year period, they continue to retain the right to work elsewhere whilst they undertake their return of service obligation.

The Rule aims to provide certainty and consistency in the range of eligible locations that are available upon entry into the Bonded Medical Program ('*point of entry locations*') and to provide additional locations as they become available over the 18 year period due to updates to workforce classification systems or due to vocational training or specialisation by the participant.

The Rule ensures that future changes to the classification systems and to eligible locations will only apply prospectively and not retrospectively.

The Rule prescribes a comprehensive choice of eligible locations, known to a bonded participant at the point of entering the Bonded Medical Program as well as additional locations which will become available due to updates in workforce classification systems or additional training undertaken by the participant as their career develops. There is flexibility in when and how return of service can be completed across the 18 year period. Due to the retention of '*quarantined locations*', the flexibility for a participant to choose to work in a '*point of entry location*', or a newly defined location of need, and the flexibility in when and



how a bonded participant may complete their return of service obligation, there is very limited restriction on a participant's right to work.

The limited restriction that will exist is in keeping with the benefit provided to participants of a Commonwealth supported place in a course of study in medicine at an Australian university and a medical career.

### *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.

### Analysis

The Rule promotes equity of access to health services and, as such, supports the right to health by facilitating more access to essential medical services in geographic areas in Australia identified as having less than adequate access to services.

Participants are required to complete their return of service obligation in a regional, rural or remote area or an area of workforce shortage which will improve health service delivery in these areas. In turn, this will provide greater opportunity for people in these areas to access health services. The new statutory scheme will, within the available health workforce resources, improve the right of access to a variety of health care services.

The requirement to complete the return of service obligation is a limitation that is considered minimal and well balanced with the benefits to those living in regional, rural or remote areas and the objective of the program to provide more access to medical services in non-metropolitan areas.

### **Conclusion**

The Rule is compatible with human rights, noting that the limitations placed on voluntary participants of the Bonded Medical Program is considered reasonable, necessary and proportionate to the objectives of the program and benefits to the participant and the Australian public.

### **The Hon Greg Hunt MP, Minister for Health**