

## **EXPLANATORY STATEMENT**

### ***National Health Act 1953***

#### ***National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020—PB 99 of 2020***

Subsection 99(4) of the *National Health Act 1953* (the Act) provides that an approved hospital authority is entitled to payment from the Commonwealth, at such rates and subject to such conditions as the Minister determines, in respect of the supply of particular quantities or numbers of units of pharmaceutical benefits to patients receiving treatment in or at a hospital in respect of which the approved hospital authority is approved.

The *National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020* (the new determination) replaces and repeals the *National Health (Pharmaceutical benefits supplied by private hospitals) Determination 2010* (21/09/2010) (the old determination), which is due to sunset on 1 October 2020 in accordance with subsection 50(2) of the *Legislation Act 2003*.

The provisions in the new determination retain the content of the old determination, with minor redrafting to ensure those provisions are structured in a clear and logical manner, and that references to provisions in other instruments are current. Sections 2, 2A, 2B, 2C and 2D have been added, in order to remain consistent with, and reflect the drafting style of, the *National Health (Commonwealth Price - Pharmaceutical benefits supplied by public hospitals) Determination 2017*.

#### **References to another legislative instrument**

The determination contains certain provisions which replicate the corresponding provisions in the determination in force under paragraph 98B(1)(a) of the Act. The determination in force at the time of commencement of the new determination is the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2020* (PB 66 of 2020).

The determination also corrects a reference to a determination under paragraph 98C(1)(b) of the *National Health Act 1953*, which has been repealed and superseded by the *National Health (Commonwealth Price and Conditions for Commonwealth Payments for Supply of Pharmaceutical Benefits) Determination 2019*.

The above legislative instruments may be obtained from the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)).

#### **Consultation**

An internal review was conducted within the Department of Health which confirmed that the provisions in the old determination were still in use, still functioning effectively and still needed. The new determination retains the content of the old determination, with minor redrafting to ensure those provisions are structured in a clear and logical manner, with sections 2, 2A, 2B, 2C and 2D inserted to reflect the drafting style of the *National Health (Commonwealth Price - Pharmaceutical benefits*

*supplied by public hospitals) Determination 2017*. As such, no public consultation was undertaken as it was considered unnecessary.

This instrument commences on 1 October 2020.

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of this instrument are set out in the Attachment.

## Statement of Compatibility with Human Rights

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

### ***National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 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**

The *National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020* (the new determination) revokes and replaces in its entirety, the *National Health (Pharmaceutical benefits supplied by private hospitals) Determination 2010* (21/09/2010) (the old determination), which sunsets on 1 October 2020.

The new determination preserves existing arrangements provided for in the old determination. Some minor technical changes have been made to ensure the provisions are structured in a clear and logical manner, and that references to provisions in other instruments are current. Sections 2, 2A, 2B, 2C and 2D have been added to reflect the drafting style of the *National Health (Commonwealth Price - Pharmaceutical benefits supplied by public hospitals) Determination 2017*.

#### **Human rights implications**

The Determination engages Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Determination assists in the progressive realisation by all appropriate means of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Pharmaceutical Benefits Scheme (PBS) is a benefit scheme which assists with providing subsidised access for people to medicines. This is a positive and supportive step towards attaining the highest standard of health for all Australians. Efficient operational arrangements for the PBS support effective administration of the scheme.

The new determination maintains existing provisions to ensure ongoing and unchanged access for individuals receiving treatment in or at private hospitals to subsidised medicines under the Pharmaceutical Benefits Scheme (PBS) in such circumstances as prescribed by the Act. The new determination does not alter the operation of the PBS and does not result in any change to PBS entitlements, PBS eligibility or costs to consumers.

#### **Conclusion**

This Legislative Instrument is compatible with human rights, as they apply to Australia, as it does not raise any human rights issues and does not impinge on any rights or freedoms.

**Penny Shakespeare  
Deputy Secretary  
Department of Health**

## ATTACHMENT

**Details of the *National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020*****Part 1 – Preliminary**Section 1 – Name

Section 1 provides that the name of the instrument is the *National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020* and that it may also be cited as PB 99 of 2020.

Section 2 – Commencement

Section 2 provides that the whole of the instrument will commence on 1 October 2020.

The note to subsection 2(1) provides that the commencement information contained in the table relates only to the provisions of the instrument as originally made. It will not be amended to address any later amendments.

Section 2A – Authority

Section 2A provides that the instrument is made under subsection 99(4) of the *National Health Act 1953*.

Section 2B – Purpose

Section 2B provides that the purpose of the determination is to determine the amount of the Commonwealth payment for pharmaceutical benefits supplied by an approved hospital authority to a patient receiving treatment in or at a private hospital for which the authority is approved.

Section 2C – Schedules

Section 2C provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the applicable items of the relevant Schedule. Any other item in a Schedule to the instrument will have effect according to its terms.

Section 2D - Things done under the *National Health (Pharmaceutical benefits supplied by private hospitals) Determination 2010 (21/09/2010)*

Section 2D is a new section that provides that if a thing was done for a particular purpose under the *National Health (Pharmaceutical benefits supplied by private hospitals) Determination 2010 (21/09/2010)* as in force immediately before that Determination was repealed, and that thing could be done for that purpose under the new determination, then that thing will have effect, for the purposes of the new determination, as if it has been done under the new determination. A reference to a thing being done will include a reference to a notice, approval or other instrument being given or made.

### Section 3 – Definitions

Section 3 retains all of the defined terms and definitions from paragraph 5 of the old determination.

A reference to the *Determination under paragraph 98C(1)(b) of the National Health Act 1953* within the definition of “**dangerous drug**” has been corrected with a reference instead to the *National Health (Commonwealth Price and Conditions for Commonwealth Payments for Supply of Pharmaceutical Benefits) Determination 2019*, which repealed and replaced the earlier instrument.

### **Part 2 – Rates and conditions of payment - general**

Part 2 includes all of the sections of the old determination that relate to payments in general for both ready-prepared pharmaceutical benefits and extemporaneously prepared pharmaceutical benefits.

### **Part 3 – Dispensed price for supply of ready-prepared pharmaceutical benefits**

Part 3 includes all of the sections of the old determination that relate to the supply of ready-prepared pharmaceutical benefits.

A reference to the *Determination under paragraph 98C(1)(b) of the National Health Act 1953* within subsection 9(2) has been corrected with a reference instead to the *National Health (Commonwealth Price and Conditions for Commonwealth Payments for Supply of Pharmaceutical Benefits) Determination 2019*, which repealed and replaced the earlier instrument.

### **Part 4 – Dispensed price for supply of extemporaneously prepared pharmaceutical benefits**

Part 4 includes all of the sections of the old determination that relate to the supply of extemporaneously prepared pharmaceutical benefits.

### **Schedule 1— Repeals**

This item repeals the old determination, as it will be replaced by the new determination.