

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance Legislation Amendment Determination 2021*

Subsection 3C(1) of the *Health Insurance Act 1973* (the Act) provides that the Minister may, by legislative instrument, determine that a health service not specified in an item in the general medical services table (GMST), the diagnostic imaging service table (DIST) and the pathology services table (PST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in these tables.

The GMST is set out in the regulations made under subsection 4(1) of the Act. The latest version of the GMST is the *Health Insurance (General Medical Services Table) Regulations (No. 2) 2020*.

The DIST is set out in the regulations made under subsection 4AA(1) of the Act. The latest version of the DIST is the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020*.

The PST is set out in the regulations made under subsection 4A of the Act. The latest version of the PST is the *Health Insurance (Pathology Services Table) Regulations 2020*.

This instrument relies on subsection 33(3) of the *Acts Interpretation Act 1901* (AIA). Subsection 33(3) of the AIA provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Purpose**

The purpose of the *Health Insurance Legislation Amendment Determination 2021* (the Determination) is to revoke and amend instruments made under subsection 3C(1) of the Act because items included in those instruments will be included in the GMST, DIST and PST from 1 March 2021. This is an administrative change and there is no change to the Medicare arrangements for patients or providers.

From 1 March 2021, the *Health Insurance Legislation Amendment (2020 Measures No. 3) Regulations 2020* (the Regulations) will list items which are currently listed in instruments made under subsection 3C(1) of the Act in the following tables:

- General Medical Services Table:
  - *Health Insurance (Section 3C General Medical Services – Cardiac Services) Determination 2020*
  - *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*

- *Health Insurance (Section 3C General Medical Services—Transvaginal repair of pelvic organ prolapse and procedures for the excision of graft material) Determination 2018*
- *Health Insurance (Section 3C General Medical Services – Optical Coherence Tomography) Determination 2018*
- Diagnostic Imaging Services Table:
  - *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac Services) Determination 2020*
  - *Health Insurance (Section 3C Diagnostic Imaging Services – Computed Tomography Angiography) Determination 2020*
- Pathology Services Table:
  - *Health Insurance (Section 3C Pathology Services – Archival Tissue Retrieval) Determination 2019*

Schedule 1 of the Determination will repeal these instruments from 1 March 2021. This is an administrative change, as these items will be listed in the tables.

The Regulations will also list items 2729 and 2731, which are for focused psychological strategies by videoconference, in the GMST from 1 March 2021.

These items are currently listed in the *Health Insurance (Section 3C General Medical Services - General Practitioner Telehealth Services) Determination 2018* (the Telehealth Services Determination). The Telehealth Services Determination also lists items 2121, 2150 and 2196, which are for mental health services for patients affected by bushfire.

Schedule 2 of the Determination will amend the Telehealth Services Determination to remove items 2729 and 2731, including definitions and applications relevant to these services, as these items will be listed in the GMST. The bushfire items (2121, 2150 and 2196) will continue to be listed in the Telehealth Services Determination. This is an administrative change and there is no change to the Medicare arrangements for patients or providers.

### **Consultation**

Consultation was not undertaken for this instrument as the revocation and amendment of these instruments is machinery in nature and does not alter existing arrangements. There is no change to the arrangements for patients and health professionals, and Medicare will continue to subsidise those services.

Details of the Determination are set out in the [Attachment](#).

The Determination commences on 1 March 2021.

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

Authority: Subsection 3C(1) of the  
*Health Insurance Act 1973*

## **Details of the *Health Insurance Legislation Amendment Determination 2021***

### Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislation Amendment Determination 2021*.

### Section 2 – Commencement

Section 2 provides that the Determination commences on 1 March 2021.

### Section 3 – Authority

Section 3 provides that the Determination is made under subsection 3C(1) of the *Health Insurance Act 1973*.

### Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to this Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Determination has effect according to its terms.

### **Schedule 1 – Repeals of instruments**

**Item 1** repeals the following instruments:

- *Health Insurance (Section 3C General Medical Services – Cardiac Services) Determination 2020*
- *Health Insurance (Section 3C General Medical Services – Eating Disorders Treatment Plan and Psychological Treatment Services) Determination 2019*
- *Health Insurance (Section 3C General Medical Services—Transvaginal repair of pelvic organ prolapse and procedures for the excision of graft material) Determination 2018*
- *Health Insurance (Section 3C General Medical Services – Optical Coherence Tomography) Determination 2018*
- *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac Services) Determination 2020*
- *Health Insurance (Section 3C Diagnostic Imaging Services – Computed Tomography Angiography) Determination 2020*
- *Health Insurance (Section 3C Pathology Services – Archival Tissue Retrieval) Determination 2019*

This is a consequential changes as the items listed in these instruments will be listed in the general medical services table, the diagnostic imaging services table or the pathology services table.

## **Schedule 2 - Amendments**

*Health Insurance (Section 3C General Medical Services – General Practitioner Telehealth Services) Determination 2018 (the Principal Determination)*

**Item 1** repeals the following definitions which are in relation to the focussed psychological strategy items 2729 and 2731:

- *ASGS*
- *focussed psychological strategies*
- *mental disorder*
- *Modified Monash 3 area*
- *Modified Monash 4 area*
- *Modified Monash 5 area*
- *Modified Monash 6 area*
- *Modified Monash 7 area*
- *telehealth eligible area*

This is a consequential change, as items 2729 and 2731 will be listed in the GMST from 1 March 2021 and these definitions in the Principal Determination are no longer required.

**Item 2** repeals and substitutes section 6 of the Principal Determination to provide that items 2121, 2150 and 2196 do not apply if the service is performed on an admitted patient of a hospital. This is a consequential change to ensure there is no change to the existing arrangements for the mental health video conferencing items (2121, 2150 and 2196) for patients affected by bushfire.

**Item 3** repeals section 7 of the Principal Determination, which provides that items 2729 and 2731 are to be treated as if they were specified in clause 2.20.7 of the general medical services table (GMST). This is a consequential change as items 2729 and 2731 will be moved from the Principal Determination into the GMST and clause 2.20.7 will automatically apply.

**Item 4** repeals and substitutes the table in Schedule 1 of the Principal Determination to remove items 2729 and 2731. This is a consequential change as these items will be moved from the Principal Determination into the GMST. The table will continue to list items 2121, 2150 and 2196 for mental health video conferencing services for patients affected by bushfire.

## Statement of Compatibility with Human Rights

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

### *Health Insurance Legislation Amendment Determination 2021*

This 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 Determination

The purpose of the *Health Insurance Legislation Amendment Determination 2021* (the Determination) is to revoke and amend instruments made under subsection 3C(1) of the Act because items included in those instruments will be included in the GMST, DIST and PST from 1 March 2021. This is an administrative change and there is no change to the Medicare arrangements for patients or providers.

From 1 March 2021, the *Health Insurance Legislation Amendment (2020 Measures No. 3) Regulations 2020* (the Regulations) will list items which are currently listed in instruments made under subsection 3C(1) of the Act in the following tables:

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The Regulations will also list items 2729 and 2731, which are for focused psychological strategies by videoconference, in the GMST from 1 March 2021.

These items are currently listed in the *Health Insurance (Section 3C General Medical Services – General Practitioner Telehealth Services) Determination 2018* (the Telehealth Services Determination). The Telehealth Services Determination also lists items 2121, 2150 and 2196, which are for mental health services for patients affected by bushfire.

Schedule 2 of the Determination will amend the Telehealth Services Determination to remove items 2729 and 2731, including definitions and applications relevant to these services, as these items will be listed in the GMST. The bushfire items (2121, 2150 and 2196) will continue to be listed in the Telehealth Services Determination. This is an administrative change and there is no change to the Medicare arrangements for patients or providers.

### **Human rights implications**

This instrument engages Articles 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

This instrument maintains rights to health and social security by ensuring access to publicly subsidised health services, which are clinically effective and cost-effective.

### **Conclusion**

This instrument is compatible with human rights as it advances the right to health and the right to social security.

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