

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance Legislation Amendment (Section 3C General Medical and Diagnostic Imaging Services – Medicare Indexation) 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 (the GMST) and the diagnostic imaging services table (the DIST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in one of these tables.

The GMST is set out in the regulations made under subsection 4(1) of the Act.

The DIST is set out in the regulations made under section 4AA of the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue an 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 (Section 3C General Medical and Diagnostic Imaging Services – Medicare Indexation) Determination 2021* is to amend 14 determinations made under subsection 3C(1) of the Act to increase the fees of the health services specified by 0.9 per cent. This reflects the Government's policy regarding Medicare indexation and means that patients will receive a higher Medicare benefit for these services from 1 July 2021.

#### **Consultation**

In the 2017-18 Budget, the Government announced the re-commencement of indexation of Medicare benefits under the *Guaranteeing Medicare - Medicare Benefits Schedule - indexation* measure.

In the 2019-20 Budget, the Government announced that it would index ultrasound and x-ray diagnostic imaging services from 1 July 2020 under the *Guaranteeing Medicare – improved patient access to diagnostic imaging* measure.

This instrument will implement the Government's policy regarding indexation by indexing the schedule fees of Medicare items which are listed in certain determinations made under subsection 3C(1) of the Act.

No consultation was undertaken on this instrument as it continues the business-as-usual implementation of the Government's policy on Medicare indexation, which is expected by stakeholders to be applied on 1 July of each year. The complete list of all indexed fees is available in the Medicare Benefits Schedule xml data file which is available for anyone to download on MBS Online ([www.mbsonline.gov.au](http://www.mbsonline.gov.au)).

Details of the Determination are set out in the Attachment.

The Determination commences on 1 July 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*

## ATTACHMENT

***Details of the Health Insurance Legislation Amendment (Section 3C General Medical and Diagnostic Imaging Services – Medicare Indexation) Determination 2021***Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislation Amendment (Section 3C General Medical and Diagnostic Imaging Services – Medicare Indexation) Determination 2021*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 July 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 – Amendments

The amendments in Schedule 1 index the schedule fee for items which are listed in the specified determinations by 0.9 per cent from 1 July 2021.

## Statement of Compatibility with Human Rights

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

*Health Insurance Legislation Amendment (Section 3C General Medical and Diagnostic Imaging Services – Medicare Indexation) 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 (Section 3C General Medical and Diagnostic Imaging Services – Medicare Indexation) Determination 2021* is to amend 14 determinations made under subsection 3C(1) of the Act to increase the fees of the health services specified by 0.9 per cent. This reflects the Government's policy regarding Medicare indexation and means that patients will receive a higher Medicare benefit for these services from 1 July 2021.

### 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 furthers the right to health and the right to social security by increasing the Medicare benefit patients will receive when accessing these services. This will assist patients to continue accessing clinically relevant health services, consistent with the rights to health and social security.

### **Conclusion**

This instrument is compatible with human rights.

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