

# EXPLANATORY STATEMENT

*National Health Act 1953*

## ***Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2021***

**PB 57 of 2021**

### **Authority**

Paragraph 98B(1)(a) of the *National Health Act 1953* (the Act) provides that a function of the Pharmaceutical Benefits Remuneration Tribunal (the Tribunal) is to determine the manner in which the Commonwealth price for all or any pharmaceutical benefits is to be worked out for the purpose of payments to approved pharmacists for the supply of pharmaceutical benefits.

Subsection 98BAA(1) of the Act requires that, where the Commonwealth and the Pharmacy Guild of Australia or another pharmacists' organisation that represents a majority of approved pharmacists have entered into an agreement relating to the manner in which the Commonwealth price for pharmaceutical benefits is to be calculated, the Tribunal, when making a determination pursuant to paragraph 98B(1)(a) of the Act, is to give effect to the terms of that agreement.

### **Reliance on subsection 33(3) of the *Acts Interpretation Act 1901***

Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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 *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2021* (Amendment Determination) amends the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2020* (the Principal Determination), to increase the Tier 1 Administration, Handling, and Infrastructure fee (Tier 1 AHI fee), the Dispensing fee for Ready Prepared Pharmaceutical Benefits, the Dispensing fee for Extemporaneously Prepared Pharmaceutical Benefits, and the Dangerous Drug fee, as specified in the Seventh Community Pharmacy Agreement (Seventh Agreement), from 1 July 2021.

The Seventh Agreement between the Commonwealth, the Pharmacy Guild of Australia and the Pharmaceutical Society of Australia Limited, which commenced on 1 July 2020 and expires on 30 June 2025, includes an agreement between the Commonwealth and the Pharmacy Guild of Australia for the purposes of subsection 98BAA(1) of the Act, setting out the manner in which the Commonwealth price for pharmaceutical benefits is to be calculated.

The Tier 1 AHI fee, the Dispensing fee for Ready Prepared Pharmaceutical Benefits, and the Dangerous Drug fee are all indexed annually on 1 July in each year of the Seventh Agreement. As per the Seventh Agreement, indexation from 1 July 2021 is based on the following formula:

$$\text{New Amount} = \text{Last Amount} \times 1.005$$

The Dispensing fee for Extemporaneously Prepared Pharmaceutical Benefits, being equal to the Dispensing fee for Ready Prepared Pharmaceutical Benefits, plus \$2.04, per dispense, is thus also increased on 1 July in each year of the Seventh Agreement.

This Amendment Determination increases the Tier 1 AHI fee from \$4.28 to **\$4.30**, the Dispensing fee for Ready Prepared Pharmaceutical Benefits from \$7.74 to **\$7.78**, the Dispensing fee for Extemporaneously Prepared Pharmaceutical Benefits Fee from \$9.78 to **\$9.82**, and the Dangerous Drug fee from \$4.80 to **\$4.82**.

This Amendment Determination also includes a minor administrative change to the expression of the Tier 2 AHI fee in the tables under Part 2, Section 12 and Part 3, Section 20 of the Principal

Determination. This change brings the expression of the Tier 2 AHI Fee in these tables closer to how this fee is expressed in the Seventh Agreement.

An overview of the instrument is set out at **Attachment A**.

### **Consultation**

The Seventh Agreement includes an agreement between the Commonwealth and the Pharmacy Guild of Australia for the purposes of subsection 98BAA(1) of the Act. The Pharmacy Guild of Australia has been consulted in relation to the changes made by this Amendment Determination as they relate to that agreement. Services Australia has also been consulted in relation to implementation of the Pharmaceutical Benefits Scheme payment systems changes managed by Services Australia, to support the changes made by this Amendment Determination.

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

**Attachment A****Details of the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2021*****Section 1 Name**

This section provides that the title of the instrument is the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2021* (the Amendment Determination). It provides that the Amendment Determination may also be cited as PB 57 of 2021.

**Section 2 Commencement**

Section 2 provides that the instrument is to commence on 1 July 2021.

**Section 3 Authority**

Section 3 provides that the instrument is made under paragraph 98B(1) (a) of the *National Health Act 1953*.

**Section 4 Schedules**

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

**Schedule 1 Amendments*****Commonwealth Price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2020*****Item 1**

This item amends the definitions of ‘dangerous drug fee’, ‘extemporaneously-prepared dispensing fee’ and ‘ready-prepared dispensing fee’ in Section 6 of the Principal Determination to increase the amount of the dangerous drug fee, extemporaneously-prepared dispensing fee and ready-prepared dispensing fee in order to give effect to the indexation arrangements in the Seventh Agreement.

**Item 2**

This item replaces the table in Section 12(1)(a) of the Principal Determination to increase the amount of the Tier 1 AHI fee for ready prepared pharmaceutical benefits from 1 July 2021, and also amends the expression of the Tier 2 AHI fee to align with how this fee is expressed in the Seventh Agreement.

**Item 3**

This item replaces the table in Section 20 of the Principal Determination to increase the amount of the Tier 1 AHI fee for extemporaneously prepared pharmaceutical benefits from 1 July 2021, and also amends the expression of the Tier 2 AHI fee to align with how this fee is expressed in the Seventh Agreement.

## Statement of Compatibility with Human Rights

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

### **Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2021**

#### **PB 57 of 2021**

This Disallowable 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 purpose of this Disallowable Legislative Instrument, made under paragraph 98B(1)(a) of the *National Health Act 1953* (the Act), is to amend the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2020*. This legislative instrument gives effect to increases from 1 July 2021 to the Tier 1 Administration, Handling and Infrastructure fee (Tier 1 AHI fee), the Dispensing fee for Ready Prepared Pharmaceutical Benefits, the Dispensing fee for Extemporaneously Prepared Pharmaceutical Benefits, and the Dangerous Drug fee as components of the Commonwealth price paid to approved pharmacists for the supply of pharmaceutical benefits.

The Pharmaceutical Benefits Remuneration Tribunal (the Tribunal) is an independent statutory body established under section 98A of the Act. The main functions of the Tribunal are to make a determination to give effect to the terms of an agreement between the Commonwealth and the Pharmacy Guild of Australia for the purposes of subsection 98BAA(1) of the Act, as currently applies under the Seventh Community Pharmacy Agreement.

This Disallowable Legislative Instrument amends, with effect from 1 July 2021, the Tier 1 AHI fee from \$4.28 to **\$4.30**, the Dispensing fee for Ready Prepared Pharmaceutical Benefits from \$7.74 to **\$7.78**, the Dispensing fee for Extemporaneously Prepared Pharmaceutical Benefits from \$9.78 to **\$9.82** and the Dangerous Drug fee from \$4.80 to **\$4.82**.

#### **Human rights implications**

This Disallowable Legislative Instrument engages Articles 2, 7 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The legislative instrument assists with the provision favourable conditions of work to ensure remuneration for workers with fair wages. In addition it also 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 step towards attaining the highest standard of health for all Australians. Efficient operational arrangements for the PBS support effective administration of the scheme.

#### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights because it does not raise any human rights issues.

**Abbeygail Beaumont**

**Chairperson**

**Pharmaceutical Benefits Remuneration Tribunal**

*Explanatory Statement to the Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2021 (PB 57 of 2021)*