

## EXPLANATORY STATEMENT

*National Health Act 1953*

### ***National Health (Medication Program for Homeless People) Amendment Special Arrangement 2021***

**PB 85 of 2021**

#### **Authority**

Subsection 100(1) of the *National Health Act 1953* (the Act) enables the Minister to make special arrangements for, or in relation to, providing that an adequate supply of pharmaceutical benefits will be available to certain persons. These are persons who: live in isolated areas; or are receiving treatment in circumstances in which pharmaceutical benefits are inadequate for that treatment; or if the pharmaceutical benefits covered by the arrangements can be more conveniently or efficiently supplied under the arrangements.

Subsection 100(2) of the Act provides that the Minister may vary or revoke an arrangement made under subsection 100(1) of the Act. Subsection 100(3) of the Act provides that Part VII of the Act, and instruments made for the purposes of Part VII, have effect subject to a special arrangement made under subsection 100(1).

#### **Purpose**

The purpose of the *National Health (Medication Program for Homeless People) Amendment Special Arrangement 2021* (the Amendment Arrangement) is to amend the *National Health (Medication Program for Homeless People) Special Arrangement 2021* (the Arrangement) to provide flexibility around how eligible patients can receive special arrangement supplies.

The Arrangement is a special arrangement made under s 100 of the Act to support the Medication Program for Homeless People (the Program). The Arrangement commenced on 1 July 2021. The Program, formally known as the Continuing Medication Program (CMP), assists homeless people who are unable to manage their own affairs to continue to access essential Pharmaceutical Benefit Scheme (PBS) medicines where lack of medication could lead to undesirable medical or social consequences. The CMP was first established in 1990 in response to the introduction of a patient co-payment for pharmaceuticals on the PBS.

The Arrangement continues to benefit eligible homeless people who hold a concession card to receive their PBS General Schedule medicines with no out-of-pocket expense. The eligible patient is not charged a PBS co-payment when they receive a special arrangement supply of an eligible pharmaceutical benefit through the Arrangement. The co-payment amount that would have been paid without this special arrangement continues to count towards the patient's PBS safety net threshold. The Program operates with the support of approved not-for-profit organisations.

### *Annotation and dispensing of the prescription*

Under the Arrangement, a representative from the approved organisation is responsible for annotating an eligible homeless person's prescription with the organisation's unique individual approval number or in exceptional circumstances, the nominated pharmacist may be authorised to do this by the approved organisation.

The Amendment Arrangement removes the requirement that a representative from the approved organisation act as an agent for the patient by presenting the eligible patient's prescription for dispensing by the nominated pharmacy, receiving the special arrangement supply of the pharmaceutical benefit and then providing the pharmaceutical benefit to the patient. Removing this requirement provides flexibility in how the supply to the eligible patient occurs and will allow, for example, the eligible patient to present the annotated prescription directly to the nominated pharmacy themselves (with or without being accompanied by a representative from the approved organisation).

The pharmacist will enter the organisations approval number, along with the eligible patient's PBS concession card number, into the dispensing software to enable an eligible patient's PBS co-payment to be claimed through PBS Online at the time an annotated prescription is dispensed. The entire cost of the medicine, including the patient PBS concessional co-payment, will be reimbursed to the pharmacist by the Commonwealth at the time of dispensing through PBS Online.

### **Consultation**

This Amendment Arrangement is made in response to feedback from some of the 14 not-for-profit organisations that are approved organisations under the Arrangement. In particular, some organisations indicated that they would experience difficulties in presenting annotated prescriptions to the nominated pharmacy on behalf of a patient, due to limited staffing resources and ongoing lockdowns in response to the COVID-19 pandemic.

Details of this Amendment Arrangement are set out in the Attachment.

This Amendment Arrangement commences on the day after it is registered.

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

**Details of the *National Health (Medication Program for Homeless People) Amendment Special Arrangement 2021***

**Section 1 Name**

This section provides that the name of the instrument is the *National Health (Medication Program for Homeless People) Amendment Special Arrangement 2021* (the Amendment Arrangement) and that it may also be cited as PB 85 of 2021.

**Section 2 Commencement**

This section provides that the Amendment Arrangement commences the day after it is registered on the Federal Register of Legislation.

**Section 3 Authority**

This section provides that the Amendment Arrangement is made under section 100 of the *National Health Act 1953*.

**Section 4 Schedules**

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

There is one schedule to the Amendment Instrument, which sets out amendments to *National Health (Medication Program for Homeless People) Special Arrangement 2021* (the Arrangement).

**Schedule 1 Amendments to the *National Health (Medication Program for Homeless People) Special Arrangement 2021***

**Item 1 – Section 4**

Item 1 repeals and substitutes the simplified outline of the Arrangement and is a consequential change to items 2-4 of the Amendment Arrangement.

In effect, this amendment updates the simplified outline to reflect that the requirement for supply to be made through an approved organisation has been removed. Removing this requirement provides flexibility around how eligible pharmaceutical benefits may be supplied. For example, eligible pharmaceutical benefits could be supplied by nominated pharmacists directly to an eligible homeless person or alternatively, through a representative from the approved not-for-profit organisation acting as an agent on behalf of the eligible homeless person.

The simplified outline is included to assist readers to understand the substantive provisions and is not intended to be comprehensive. It is intended that readers should rely on the substantive provisions of the Arrangement.

## **Item 2 – Section 8**

Item 2 repeals and substitutes section 8 of the Arrangement, which defines the circumstances in which the supply of an eligible pharmaceutical benefit will be a ‘special arrangement supply’.

A supply of an eligible pharmaceutical benefit will now be a special arrangement supply if it is supplied by a nominated pharmacist on the basis of a paper-based prescription or a repeat authorisation that is annotated by an approved organisation with the organisation’s approval number or in exceptional circumstances, the nominated pharmacist may be authorised to do this by the approved organisation.

This amendment removes the requirement that the prescription or repeat authorisation be presented to the pharmacist by a representative of the organisation and the requirement that the supply be received from the pharmacist by a representative of the organisation as agent for the eligible patient. This amendment also clarifies that the prescription or repeat authorisation must be annotated by a representative of the approved organisation or in exceptional circumstances, the nominated pharmacist may be authorised to do this by the approved organisation.

This amendment is intended to provide flexibility in how eligible pharmaceutical benefits may be supplied. For example, the eligible pharmaceutical benefit may be supplied by nominated pharmacists directly to an eligible homeless person or alternatively, through a representative of the approved organisation as agent for the eligible patient.

## **Item 3 – Paragraph 15(2)(d)**

Item 3 repeals and substitutes paragraph 15(2)(d) of the Arrangement, which sets out one of the matters that the Secretary must be reasonably satisfied of before approving an organisation for the purposes of the Arrangement.

Paragraph 15(2)(d) will now require the Secretary to be satisfied that, were the organisation to be approved, the organisation would assist eligible patients to receive special arrangement supplies of eligible pharmaceutical benefits in accordance with the Arrangement. The Secretary is no longer required to be satisfied that the organisation will itself present prescriptions and repeat authorisations to a nominated pharmacist, receive special arrangement supplies for eligible patients and provide the benefits of the patients.

The intention of this change is to allow approved organisations to decide at a local level how to assist the eligible patient to receive the special arrangement supply of the eligible pharmaceutical benefit. After the organisation annotates the prescription, the eligible patient could, for example, take their annotated prescription directly to the nominated pharmacy themselves (with or without being accompanied by a representative from the approved organisation), or alternatively, a representative from the approved organisation could continue to act as an agent for the eligible patient, presenting the prescription to the

pharmacy, receiving the special arrangement supply and then providing the benefit to the eligible patient.

**Item 4 - Subsection 22(3)**

Item 4 repeals and substitutes subsection 22(3) of the Arrangement, which is a transitional provision setting out who is considered a nominated pharmacist until the end of 30 September 2021. In effect, this amendment removes the requirement that an approved organisation must present an annotated prescription or repeat authorisation to the approved pharmacist before the approved pharmacist can be taken to be a nominated pharmacist under the transitional provision. This amendment reflects that approved organisations can now decide at a local level how to assist the eligible patient to receive the special arrangement supply of the eligible pharmaceutical benefit. For example, whether the eligible patient will take their annotated prescription directly to the nominated pharmacy themselves, or alternatively, whether a representative from the approved organisation would act as an agent taking the prescription to the pharmacy on the eligible patient's behalf.

## **Statement of Compatibility with Human Rights**

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

### ***National Health (Medication Program for Homeless People) Amendment Special Arrangement 2021***

This *National Health (Medication Program for Homeless People) Amendment Special Arrangement 2021* (the Amendment Arrangement) 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 Instrument**

The purpose of the Amendment Arrangement is to amend the *National Health (Medication Program for Homeless People) Special Arrangement 2021* (the Arrangement) to provide flexibility around how eligible patients receive a special arrangement supply.

The Arrangement is a special arrangement made under section 100 of the *National Health Act 1953* to support the Medication Program for Homeless People (the Program), which operates with the support of approved not-for-profit organisations providing care to homeless people. The Arrangement commenced on 1 July 2021.

The Arrangement allows eligible homeless people who hold a concession card to receive their Pharmaceutical Benefits Scheme (PBS) General Schedule medicines with no out-of-pocket expense. The eligible patient is not charged a PBS co-payment when they receive a special arrangement supply of an eligible pharmaceutical benefit through the Arrangement. The entire cost of the medicine, including the patient PBS concessional co-payment, is reimbursed to the pharmacist by the Commonwealth at the time of dispensing through PBS Online. The co-payment amount that would have been paid without this special arrangement continues to count towards the patient's PBS safety net threshold.

Under the Arrangement, a representative from the approved organisation is responsible for annotating an eligible homeless person's prescription with the organisation's unique individual approval number or in exceptional circumstances, the nominated pharmacist may be authorised to do this by the approved organisation. The Amendment Arrangement removes the requirement that the representative from the approved organisation act as an agent for the eligible patient by presenting eligible patient's prescriptions for dispensing by the nominated pharmacy, receiving the special arrangement supply and then providing the benefit to the patient. Removing this requirement provides flexibility in how the supply to the eligible patient occurs and will allow, for example, the eligible patient to now present the annotated prescription directly to the nominated pharmacy themselves.

#### **Human Rights Implications**

This Amendment Arrangement engages Articles 2, 9 and 12 of the International Covenant on Economic, Social and Cultural Rights by assisting with the progressive realisation by all appropriate means of the right of everyone to social security and to the enjoyment of the highest attainable standard of physical and mental health.

This Amendment Arrangement assists with advancement of these human rights by increasing PBS subsidised access to medicines, free of charge to eligible homeless people. This Amendment Arrangement ensures more ready and equitable access to PBS medicines for eligible homeless people by providing greater flexibility in the way that annotated prescriptions can be presented to, and special arrangement supplies received from, a nominated pharmacist under the Arrangement.

**Conclusion**

This Amendment Arrangement is compatible with human rights as it promotes the protection of human rights.

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