

## EXPLANATORY STATEMENT

### *National Health Act 1953*

#### *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement Amendment (Continued Dispensing) Instrument 2022*

#### **Purpose and operation**

The *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* (2016 CTG instrument) reduces or removes the PBS co-payment for eligible Aboriginal and Torres Strait Islander people.

In November 2021, the Pharmaceutical Benefits Advisory Committee (PBAC) recommended expanding the Continued Dispensing arrangements under the *National Health (Continued Dispensing) Determination 2012* (2012 Continued Dispensing Determination) to include additional pharmaceutical benefits that are considered appropriate to be supplied without a prescription under a Continued Dispensing supply on the basis that they would be safe and well-tolerated for the treatment of chronic and stable disease.

The purpose of the *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement Amendment (Continued Dispensing) Instrument 2022* (amending instrument) is to consequentially amend the 2016 CTG instrument as a result of remaking the 2012 Continued Dispensing Determination, to allow medicines supplied under the Closing the Gap PBS Co-payment Program to be supplied under Continued Dispensing, where the applicable medicines are available under new Continued Dispensing arrangements.

#### **Authority**

Subsection 100(1) of the *National Health Act 1953* (Act) provides that the Minister may make special arrangements for, or in relation to, providing that an adequate supply of pharmaceutical benefits will be available to persons who are living in isolated areas or are receiving treatment in circumstances in which pharmaceutical benefits are inadequate for that treatment, amongst other circumstances.

Subsection 100(2) of the Act provides that the Minister may vary or revoke a special arrangement made under subsection 100(1) of the Act.

#### **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.

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

## **Commencement**

This amending instrument commences on 1 July 2022.

## **Consultation**

Consultation was not required for the amendments made by the amending instrument.

Details of the amending instrument are set out in **Attachment A**.

The amending instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

**National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement Amendment (Continued Dispensing) Instrument 2022**

**Section 1 Name**

Section 1 provides that the name of the amending instrument is the *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement Amendment (Continued Dispensing) Instrument 2022* (amending instrument) and specifies the PB number as 63 of 2022.

**Section 2 Commencement**

Section 2 provides that the amending instrument commences on 1 July 2022.

**Section 3 Authority**

Section 3 provides that the amending instrument is made under subsection 100(2) of the *National Health Act 1953*.

**Section 4 Schedule**

Section 4 provides that the Schedule sets out the specific terms of amendment and repeal of each instrument, and any other item in the Schedule has effect according to its terms.

**Schedule 1—Amendments**

**Item 1 – Subsection 6(3)**

Item 1 repeals subsection 6(3) of the *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* (2016 CTG instrument) which provides that the special arrangements under the 2015 CTG instrument does not apply to continued dispensing under subsection 89A(1) of the *National Health Act 1953*. This is a consequential amendment resulting from the remake of the *National Health (Continued Dispensing) Determination 2012*, which effectively expands the list of pharmaceutical benefits that may be supplied without a prescription by an approved pharmacist. In effect, this repeal allows medicines provided under the Closing the Gap – PBS Co-payment Program to be available under Continued Dispensing, provided the medicines are available under new Continued Dispensing arrangements and was made on or after the commencement of this amending instrument.

**Item 2 – Part 2 (heading)**

Item 2 repeals the heading of “Transitional/application provisions” and substitutes it with a new heading of “Part 2—Application, savings and transitional provisions” and also inserts a new subheading of “Division 1—Transitional provisions relating to old Special Arrangement”. This amendment clarifies that Division 1, containing sections 15 to 18 of the 2016 CTG instrument specifically applies to transitional provisions relating to the 2016 CTG instrument and not transitional provisions of this amending instrument.

### **Item 3 – Section 15**

Item 3 omits the words “In this Part” and substitutes it with “In this Division”. This is a consequential amendment resulting from the amendment in item 2.

### **Item 4 – At the end of the instrument**

Item 4 adds a new Division 2 with the heading “Amendment made by the National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement Amendment (Continued Dispensing) Instrument 2022” and inserts new clause 19 which provides that the repeal of subsection 6(3) of the 2016 Special Arrangement Instrument relates to the supply of a pharmaceutical benefit without a prescription for that supply made on and after 1 July 2022. This means continued dispensing only applies to medicines supplied under the Closing the Gap – PBS Co-Payment Program (where available under new Continued Dispensing arrangements) on or after the commencement of this amending instrument.

## Statement of Compatibility with Human Rights

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

### ***National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement Amendment (Continued Dispensing) Instrument 2022***

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 amending instrument**

The *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement Amendment (Continued Dispensing) Instrument 2022* amends the *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* to allow medicines supplied under the Closing the Gap – PBS Co-payment Program to apply to Continued Dispensing under subsection 89A(1) of the *National Health Act 1953*, where those pharmaceutical benefits are available under the Continued Dispensing arrangements.

These are consequential amendments resulting from the remake of the *National Health (Continued Dispensing) Determination 2012*, and reflect the recommendation made by the PBAC in November 2021 that pharmaceutical benefits supplied under the Closing the Gap PBS Co-Payment Program should be able to be supplied under Continued Dispensing.

#### **Human rights implications**

This instrument engages with Article 12(1) of the International Covenant on Economic, Social and Cultural Rights by promoting the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

By expanding Continued Dispensing arrangements and including its application to pharmaceutical benefits supplied under the Closing the Gap – PBS Co-Payment Program, this amending instrument promotes the human right to health by allowing marginalised groups to access PBS benefits where necessary and ultimately ensuring continued access for patients to prescribed medication in circumstances where they are unable to obtain a prescription.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.