

## EXPLANATORY STATEMENT

### NATIONAL HEALTH ACT 1953

#### **NATIONAL HEALTH (HIGHLY SPECIALISED DRUGS PROGRAM) SPECIAL ARRANGEMENT AMENDMENT (AUGUST UPDATE) INSTRUMENT 2022**

#### **PB 70 of 2022**

#### **Purpose**

This is the *National Health (Highly Specialised Drugs Program) Special Arrangement Amendment (August Update) Instrument 2022* (PB 70 of 2022) (this Instrument). The purpose of this Instrument, made under subsection 100(2) of the *National Health Act 1953* (the Act), is to amend the *National Health (Highly Specialised Drugs Program) Special Arrangement 2021* (PB 27 of 2021) (the Special Arrangement), to make changes to the Special Arrangement relating to the Highly Specialised Drugs (HSD) Program.

The amendments made by this Instrument reflect amendments to the *National Health (Listing of Pharmaceutical Benefits) Instrument 2012* (PB 71 of 2012), which commence on the same day. The *National Health (Listing of Pharmaceutical Benefits) Instrument 2012* (PB 71 of 2012) is made under sections 84AF, 84AK, 85, 85A, 88 and 101 of the Act.

Schedule 1 to this Instrument provides for the alteration of circumstances in which a prescription may be written for the supply of the listed drugs nusinersen, and risdiplam under the Special Arrangement.

This change is summarised, by subject matter, in the Attachment.

#### **Authority**

Subsection 100(1) of the Act enables the Minister to make special arrangements for the supply of pharmaceutical benefits.

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

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).

#### **Consultation**

The amendments made by this Instrument accord with recommendations made by the Pharmaceutical Benefits Advisory Committee (PBAC).

An ongoing and formal process of consultation in relation to matters relevant to the Special Arrangement includes the involvement of interested parties through the membership of the PBAC.

PBAC is an independent expert body established by section 100A of the Act which makes recommendations to the Minister about which drugs and medicinal preparations should be available as pharmaceutical benefits. PBAC members are appointed following nomination by prescribed organisations and associations from consumers, health economists, practising community pharmacists, general practitioners, clinical pharmacologists and specialists, with at least one member selected from each of those interests or professions. Remaining members are persons whom the Minister is satisfied have qualifications and experience in a field relevant to the functions of PBAC, and that would enable them to contribute meaningfully to the deliberations of PBAC. In addition, an industry nominee has been appointed to the PBAC membership. When recommending the listing of a medicine on the Pharmaceutical Benefits Scheme (PBS), PBAC takes into account the medical conditions for which the medicine has been approved for use in Australia, its clinical effectiveness, safety and cost-effectiveness compared with other treatments.

Pharmaceutical companies were consulted throughout the process of changes to the listings on the PBS. This includes consultation through the PBAC process.

Further consultation for this Instrument was considered unnecessary due to the nature of the consultation that has already taken place in the decision to list the medications outlined under 'Purpose'.

Details of this Instrument are set out in the Attachment.

This Instrument commences on 1 August 2022.

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

**DETAILS OF THE NATIONAL HEALTH (HIGHLY SPECIALISED DRUGS PROGRAM) SPECIAL ARRANGEMENT AMENDMENT (AUGUST UPDATE) INSTRUMENT 2022**

**Section 1 Name of Instrument**

This section provides the name of this Instrument as the *National Health (Highly Specialised Drugs Program) Special Arrangement Amendment (August Update) Instrument 2022* and may also be cited as PB 70 of 2022.

**Section 2 Commencement**

This section provides that this Instrument commences on 1 August 2022.

**Section 3 Authority**

This section states that this instrument is made under subsection 100(2) of the *National Health Act 1953*.

**Section 4 Schedules**

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

**Schedule 1 Amendments**

The amendments in Schedule 1 involve the alteration of circumstances for prescribing various listed drugs available under the Special Arrangement. This change is summarised below.

**SUMMARY OF CHANGES TO THE HIGHLY SPECIALISED DRUGS PROGRAM MADE BY THIS INSTRUMENT**

**Alteration of Circumstances in Which a Prescription May be Written**

**Listed Drug**

Nusinersen

Risdiplam

**Diagnostic tools referenced in the Instrument**

*The following standard medical diagnostic tools are referenced in the Instrument but are not intended to incorporate a document by reference.*

<b>Listed Drug</b>	<b>Diagnostic tool</b>	<b>Purpose and use in the Instrument</b>	<b>Reason this reference does not serve to incorporate a document</b>
Nusinersen	<b>Revised Upper Limb Module</b>	To measure patient motor functioning (physical movement abilities) in any assessment of whether the drug is providing the patient with a clinically meaningful response to treatment.	The PBS restriction requires use of standardised measures of patient motor function in assessing whether their treatment has resulted in a clinically meaningful response, but only where it is practical to do so. Such measures are not limited to this particular instrument. Therefore the reference does not serve to incorporate a document.

Nusinersen	<b>Hammersmith Functional Motor Scale – Expanded</b>	To measure patient motor functioning (physical movement abilities) in any assessment of whether the drug is providing the patient with a clinically meaningful response to treatment.	The PBS restriction requires use of standardised measures of patient motor function in assessing whether their treatment has resulted in a clinically meaningful response, but only where it is practical to do so. Such measures are not limited to this particular instrument. Therefore the reference does not serve to incorporate a document.
Nusinersen	<b>Six Minute Walk Test (6MWT)</b>	To measure patient motor functioning (physical movement abilities) in any assessment of whether the drug is providing the patient with a clinically meaningful response to treatment.	The PBS restriction requires use of standardised measures of patient motor function in assessing whether their treatment has resulted in a clinically meaningful response, but only where it is practical to do so. Such measures are not limited to this particular instrument. Therefore the reference does not serve to incorporate a document.
Nusinersen	<b>Spinal Muscular Atrophy Health Index (SMA-HI)</b>	The Spinal Muscular Atrophy Health Index (SMAHI) is a patient questionnaire designed to estimate the patient’s personal view on their disease burden.	The PBS restriction suggests that this instrument be used, but does not mandate it. Therefore the reference does not serve to incorporate a document.
Nusinersen	<b>Spinal Muscular Atrophy Functional Rating Scale (SMA-FRS)</b>	The SMA Functional Rating Scale (SMA-FRS) is a bedside diagnostic tool to measure physical abilities in adult patients with SMA type 2 and 3.	The PBS restriction suggests that this instrument be used, but does not mandate it. Therefore the reference does not serve to incorporate a document.

## Statement of Compatibility with Human Rights

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

### *National Health (Highly Specialised Drugs Program) Special Arrangement Amendment (August Update) Instrument 2022*

**(PB 70 of 2022)**

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 Instrument**

The purpose of this Instrument, made under subsection 100(2) of the *National Health Act 1953* (the Act), is to amend the *National Health (Highly Specialised Drugs Program) Special Arrangement 2021* (PB 27 of 2021) (the Special Arrangement), to make changes to the Special Arrangement relating to the Highly Specialised Drugs Program.

The pharmaceutical benefits supplied under the Special Arrangement are for the treatment of chronic conditions which, because of their clinical use or other special features, may only be supplied to patients receiving specialised treatment.

#### **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 social security and 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 UN Committee on Economic Social and Cultural Rights 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.

##### *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.

## **Analysis**

This Instrument advances the right to health and the right to social security by ensuring that the amendments to the *National Health (Listing of Pharmaceutical Benefits) Instrument 2012* (the Listing Instrument), that affect the pharmaceutical benefits that may be supplied under the Special Arrangement, are made concurrently.

The Listing Instrument determines the pharmaceutical benefits that are on the Pharmaceutical Benefits Scheme (PBS) through declarations of drugs and medicinal preparations, and determinations of forms, manners of administration and brands. The PBS is a benefit scheme which assists with advancement of these human rights by providing for subsidised access by patients to medicines. The recommendatory role of the Pharmaceutical Benefits Advisory Committee (PBAC) ensures that decisions about subsidised access to medicines on the PBS are evidence-based.

## **Conclusion**

This Instrument is compatible with human rights because it advances the protection of human rights.

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