

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance Legislation Amendment (2023 Measures No. 1) Determination 2022*

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 Table) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the Table.

The Table is set out in the regulations made under subsection 4(1) of the Act. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations 2021*.

This instrument relies on subsection 33(3) of the *Acts Interpretation Act 1901* (AIA). Subsection 33(3) of the AIA provides that 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 purpose of the *Health Insurance Legislation Amendment (2023 Measures No. 1) Determination 2022* (the Amendment Determination) is to amend the *Health Insurance (Allied Health Services) Determination 2014* (the AHS Determination); and the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination) to:

- repeal 17 allied health video conference items for mental health and eating disorder services, including two items in Group M6, six items in Group M7 and nine item in Group M16, which have been superseded due to the continuation of telehealth services introduced in response to the COVID-19 pandemic;
- amend 12 items, introduce one item and delete one item as part of the Government’s response to recommendations from the Medicare Benefits Schedule (MBS) Review Taskforce (the Taskforce) in relation to services for otolaryngology diagnostic procedures, audiology services and ear, nose and throat surgical operations; and
- amend 20 items related to services for complex neurodevelopmental disorders.

### Mental health and eating disorder video conference items

Temporary telehealth measures introduced as part of the Government’s response to the COVID-19 pandemic were ceased on 31 December 2021, with a transition to ongoing telehealth arrangements for general practitioner, specialist, nursing, midwifery and allied health providers.

Schedule 1 of the Amendment Determination amends the AHS Determination to repeal 17 pre-COVID-19 video conference items, which are for geographically restricted mental health and eating disorder services. This change will consolidate mental health and eating disorder telehealth services to remove duplication of

equivalent services, following the continuation of telehealth services introduced in response to the COVID-19 pandemic. Patients will continue to have access to telehealth services nationally for mental health and eating disorder services under the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021*.

#### Otolaryngology, head and neck services

Schedule 2 of the Amendment Determination amends the AHS Determination and the Telehealth Determination to introduce one new item, repeal one item and amend 12 existing items as part of the Government's response to recommendations from the MBS Review Taskforce (the Taskforce) in relation to services for otolaryngology diagnostic procedures, audiology services and ear, nose and throat surgical operations. These changes will ensure that items reflect contemporary clinical practice, and that the Medicare benefits appropriately reflect the skill and complexity of the relevant procedure.

These changes were announced in the March 2022-23 Budget under the *Guaranteeing Medicare – Medical Benefits Schedule new and amended listings* measure.

#### Complex neurodevelopmental disorder and disability services

Schedule 3 of the Amendment Determination amends the AHS Determination and the Telehealth Determination to implement the Government's response to recommendations from the Taskforce in relation to services for children and young adults with suspected or confirmed complex neurodevelopmental disorders or eligible disabilities. These changes were announced in the 2021-22 Mid-Year Economic and Fiscal Outlook (MYEFO) under the *Guaranteeing Medicare – Medicare Benefits Schedule new and amended listings* measure.

The changes include amendments to items 82000, 82005, 82010, 82015, 82020, 82025, 82030 and 82035 of the AHS Determination and items 92140, 92141, 92142, 92434, 93032, 93033, 93040, 93041, 93035, 93036, 93043 and 93044 of the Telehealth Determination to align the terminology used with current diagnostic terminology, reflect current clinical practice and provide additional clarity to providers using these items. These changes will also extend eligibility for these services from under 13 years of age to under 25 years of age to facilitate high quality of care for Australians presenting late with complex neurodevelopmental disorders and to provide equitable access for Australians with eligible disabilities.

#### Consequential amendments

Schedule 4 of the Amendment Determination updates provisions in the AHS Determination and Telehealth Determinations to remove outdated references to repealed items and implement other consequential and administrative changes.

#### **Consultation**

No consultation was undertaken on the changes in Schedule 1 as the removal of the superseded mental health and eating disorder video conference items will simplify MBS telehealth arrangements to ensure no duplication of services under the MBS. Further communication will be undertaken with stakeholders through publications on MBS Online (<http://www.mbsonline.gov.au/>).

The changes in Schedule 2 of the Amendment Determination were informed by an Implementation Liaison Group (ILG) which was established to provide advice on the implementation of the Taskforce's recommendations. Representatives from peak bodies, including the Australian Medical Association (AMA), Australasian Society of Otolaryngology, Head and Neck Surgery, Laryngology Society of Australia, Audiology Australia, Independent Audiologists Australia and Private Healthcare Australia (PHA), were consulted on the changes and were largely supportive.

Consultation on the changes to specialist, consultant physician and general practitioner (GP) items in Schedule 3 has been undertaken with consultant physicians, consultant paediatricians and psychiatrists and GP peak bodies as well as the AMA and rural peak bodies, and feedback on the changes was largely positive. Consultation regarding the changes to allied health service items in Schedule 3 was undertaken with:

- Audiology Australia;
- Australian Autism Alliance;
- AMA;
- Australian Physiotherapy Association;
- Australian Podiatry Association;
- Australian Psychological Society;
- Indigenous Allied Health Australia;
- Neurodevelopmental and Behavioural Paediatric Society of Australasia;
- Occupational Therapy Australia;
- Orthoptics Australia;
- Osteopathy Australia;
- Royal Australian College of General Practitioners;
- Services for Australian Rural and Remote Indigenous and Allied Health; and
- Speech Pathology Australia.

No consultation was undertaken on the changes in Schedule 4 of the Amendment Determination as these changes are consequential or administrative in nature.

Details of the Amendment Determination are set out in the [Attachment](#).

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

The Amendment Determination commences on 1 March 2023.

Authority: Subsection 3C(1) of the  
*Health Insurance Act 1973*

***Details of the Health Insurance Legislation Amendment (2023 Measures No. 1) Determination 2022***

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance Legislation Amendment (2023 Measures No. 1) Determination 2022*.

Section 2 – Commencement

Section 2 provides that the Amendment Determination commences on 1 March 2023.

Section 3 – Authority

Section 3 provides that the Amendment 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 Amendment 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 Amendment Determination has effect according to its terms.

Schedule 1 – Mental health and eating disorder video conference items

***Health Insurance (Allied Health Services) Determination 2014 (AHS Determination)***

***Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021 (Telehealth Determination)***

**Items 1 to 5** amend subsections 4(1), 6AA(3C) and 6AC(1) of the AHS Determination to remove references to repealed mental health and eating disorder video conference items (refer to **item 8** of Schedule 1).

**Item 6** repeals section 6B of the AHS Determination, which only applied to repealed mental health video conference items (refer to **item 8** of Schedule 1).

**Item 7** repeals section 13 of the AHS Determination, which was relevant to referrals under shared care plans. Items in the AHS Determination can no longer be claimed where the referral from a medical practitioner is under a shared care plan. The arrangements for shared care plans ceased on 30 June 2021.

**Item 8** amends the AHS Determination to repeal 17 video conference items for geographically restricted mental health and eating disorder services by allied health providers, which duplicate services available under equivalent telehealth items introduced in response to the COVID-19 pandemic that have now been continued on an ongoing basis.

**Items 9 to 12** amend subclauses 1.1.17(5) and 3.1.7(5) of the Telehealth Determination to remove references to repealed eating disorder video conference items (refer to the *Health Insurance Legislation Amendment (2022 Measures No. 4) Regulations 2022*).

Schedule 2 – Otolaryngology, head and neck services

***Health Insurance (Allied Health Services) Determination 2014 (AHS Determination)***

***Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021 (Telehealth Determination)***

**Item 1** amends subsection 12(1) of the AHS Determination to exclude item 82301 from the application of this section. Section 12 relates to requests for diagnostic audiology services.

**Item 2** amends item 82300 of the AHS Determination to broaden the request requirements to ‘medical practitioner’ to better reflect contemporary clinical practice and restrict claiming for the purposes of programming an auditory implant or the sound processor of an auditory implant. The AHS Determination provides for services related to programming an auditory implant or the sound processor of an auditory implant to be claimed under new item 82301.

**Item 3** introduces new item 82301 of the AHS Determination for services related to programming an auditory implant or sound processor of an auditory implant, which are currently claimed under item 82300. Item 82301 will not be claimable if a service to which item 11302 of the *Health Insurance (General Medical Services Table) Regulations 2021 (GMST)* or items 11342 or 11345 of the Telehealth Determination have been performed on the same day. Item 82301 will also only apply to one of the first four services to which this item or item 82302 or 82304 applies on the same day.

**Items 4 to 8** amends items 82306, 82309, 82312, 82315 and 82318 of the AHS Determination to broaden the request requirements to include ‘medical practitioner’ to better reflect contemporary clinical practice.

**Item 9** amends item 82324 of the AHS Determination to incorporate the services currently provided under 82327 (refer to **item 10** of Schedule 2) and broaden the request requirements to ‘medical practitioner’ to better reflect contemporary clinical practice. This change also removes the co-claiming restriction for item 82324 with a service to which item 82309, 82312, 82315 or 82318 applies. The schedule fee has been adjusted to reflect a weighted average of the two services to achieve cost neutrality.

**Item 10** repeals item 82327, which is being consolidated into a single service under item 82324 (refer to **item 9** of Schedule 2).

**Item 11** amends item 82332 to include the assessment of outer hair cell function in the cochlear as part of the service provided under the item and broaden the availability of services under the item to include all patients at risk of permanent hearing loss for a variety of specified reasons, not just infants with congenital or birth risk factors.

**Items 12 and 13** amends items 11342 and 11345 of the Telehealth Determination to update the co-claiming restriction to refer to new item 82301 and remove reference to item 82300 under which the service would previously have been claimed.

**Items 14 and 15** amends items 82302 and 82304 of the Telehealth Determination to update the co-claiming restriction to refer to new item 11302 and remove reference to item 11300 under which the service would previously have been claimed.

Schedule 3 – Attendance services for complex neurodevelopmental disorders and disabilities

***Health Insurance (Allied Health Services) Determination 2014 (AHS Determination)***

***Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021 (Telehealth Determination)***

**Items 1 and 2** amends the definitions for *course of assessment* and *course of treatment* in subsection 4(1) of the AHS Determination to omit “pervasive developmental disorder” and replace it with standardised terminology “complex neurodevelopmental disorder”.

**Item 3** repeals the definitions of *disability treatment and management plan* and *PDD treatment and management plan*.

**Item 4** replaces the heading of section 8 of the AHS Determination with “Referrals by psychiatrists and paediatricians for complex neurodevelopmental disorder and disability services”.

**Item 5** inserts section 8AA after section 8 of the AHS Determination, which applies to items 82000, 82005, 82010, 82015, 82020, 82025, 82030 and 82035 in Schedule 2 (refer to **items 13 to 20** of Schedule 3). New subsection 8A provides the definitions for *eligible medical practitioner* and *treatment and management plan* for the purposes of allied health complex neurodevelopmental disorder items and the limitations for the number of services provided to a patient under these items in the patient’s lifetime.

Subclause 8AA(5) also allows patients to receive a service to which item 82000, 82005, 82010 or 82030 applies, where the patient has been referred by an eligible medical practitioner to a second eligible allied health practitioner, if:

- the patient was referred to the first eligible allied health practitioner by an eligible medical practitioner; and
- the referral from the eligible medical practitioner is valid; and
- the eligible medical practitioner has been consulted and agreed to the referral to the second eligible allied health practitioner; and
- the first eligible allied health practitioner has documented the eligible medical practitioner’s agreement in the patient’s notes.

Services under items 82000, 82005, 82010 and 82030 will continue to be available following referral by an eligible medical practitioner.

For the purposes of items 82000, 82005, 82010 and 82030, subclause 8AA(7) provides that where the same eligible allied health practitioner has provided a patient with four services to which any of items 82000, 82005, 82010, 82030, 93032, 93033, 93040 or 93041 apply under a single referral, the eligible allied health practitioner must request the provision of additional services from the eligible medical practitioner who initially referred the patient before providing any of the remaining available services. The eligible allied health practitioner must make a record of the medical practitioner's agreement in the patient's notes.

**Items 6** replaces the heading of section 9A of the AHS Determination with “Complex neurodevelopmental disorder and disability services course of assessment—reporting requirements”.

**Items 7 and 8** amend section 9A of the AHS Determination to insert a reference to item 82010, which was previously omitted, and update the wording of subclause (2) to acknowledge the revised referral arrangements for the items specified in subclause (1) (refer to **item 5** of Schedule 3).

**Items 9 and 10** amend the heading and body of section 16 of the AHS Determination, replacing references to “autism or another pervasive developmental” with “complex neurodevelopmental” wherever it occurs in the text.

**Item 11** replaces the heading of Part 5 of Schedule 2 of the AHS Determination “Part 5—Services and fees—complex neurodevelopmental or disability services”.

**Item 12** amends the table heading of Group 10 in Schedule 2 of the AHS Determination, replacing the heading with “Group M10 – Complex neurodevelopmental disorder and disability services”.

**Items 13 to 20** amend items 82000, 82005, 82010, 82015, 82025, 82030 and 82035 of the AHS Determination, which provide allied health attendance services for complex neurodevelopment disorders and disabilities, to:

- extend eligibility for these services from under 13 or 15 years of age to under 25 years of age to facilitate high quality of care for Australians presenting late with neurodevelopmental disorders and to provide equitable access for Australians with eligible disabilities;
- replace references to “pervasive developmental disorders” with “complex neurodevelopmental disorders” to align the items with current diagnostic terminology, reflecting contemporary clinical practice, and ensure eligible patients continue to have access to these services; and
- remove requirements that are being specified in new section 8AA (refer to **item 5** of Schedule 3).

**Item 21** amends the table heading for Subgroup 1 of Group M10 in Schedule 2 of the AHS Determination, substituting references to “pervasive developmental disorders” with “complex neurodevelopmental disorder”.

**Item 22** amends the table heading for Subgroup 17 of Group A40 in Schedule 1 of the Telehealth Determination, substituting references to “pervasive developmental disorders” with “complex neurodevelopmental disorder”.

**Items 23 and 24** amend items 92142 and 92434 of the Telehealth Determination to extend eligibility for these services from under 13 years of age to under 25 years of age to facilitate high quality of care for Australians presenting late with neurodevelopmental disorders and to provide equitable access for Australians with eligible disabilities. The changes also replace references to “pervasive developmental disorders” with “complex neurodevelopmental disorders” to align the items with current diagnostic terminology, reflecting contemporary clinical practice, and ensure eligible patients continue to have access to these services.

**Item 25** amends the table heading for Subgroup 17 of Group A40 in Schedule 2 of the Telehealth Determination, substituting references to “pervasive developmental disorders” with “complex neurodevelopmental disorder”.

**Items 26 and 27** amend items 92140 and 92141 of the Telehealth Determination to extend eligibility for these services from under 13 years of age to under 25 years of age to facilitate high quality of care for Australians presenting late with neurodevelopmental disorders and to provide equitable access for Australians with eligible disabilities. The changes also replace references to “pervasive developmental disorders” with “complex neurodevelopmental disorders” to align the items with current diagnostic terminology, reflecting contemporary clinical practice, and ensure eligible patients continue to have access to these services.

**Items 28 and 29** amends the headings of clauses 3.1.2 and 3.1.4 in Schedule 3 of the Telehealth Determination, replacing references to “pervasive developmental disorders” with “complex neurodevelopmental disorder”.

**Item 30** amends subclause 3.1.4(2) of the Telehealth Determination to update the wording of subclause (2) to acknowledge the revised referral arrangements for the items specified in subclause (1) (refer to **item 31** of Schedule 3).

**Item 31** inserts new clause 3.1.4A after clause 3.1.4 in Schedule 3 of the Telehealth Determination, which applies to items 93032, 93033, 93035, 93036, 93040, 93041, 93043 and 93041 (refer to **items 33 to 40** of Schedule 3). New clause 3.1.4A provides the definitions for *eligible medical practitioner* and *treatment and management plan* for the purposes of allied health complex neurodevelopmental disorder items provided by telehealth and phone and the limitations for the number of services provided to a patient under these items in the patient’s lifetime.

Subclause 3.1.4A(5) also allows patients to receive a service to which 93032, 93033, 93040 or 93041 applies, where the patient has been referred by an eligible medical practitioner to a second eligible allied health practitioner, if:

- the patient was referred to the first eligible allied health practitioner by an eligible medical practitioner; and
- the referral from the eligible medical practitioner is valid; and



- the eligible medical practitioner has been consulted and agreed to the referral to the second eligible allied health practitioner; and
- the first eligible allied health practitioner has documented the eligible medical practitioner's agreement in the patient's notes.

Services under items 93032, 93033, 93040 and 93041 will continue to be available following referral by an eligible medical practitioner.

For the purposes of items 93032, 93033, 93040 and 93041, subclause 3.1.4A(7) provides that where the same eligible allied health practitioner has provided a patient with four services to which any of items 82000, 82005, 82010, 82030, 93032, 93033, 93040 or 93041 apply under a single referral, the eligible allied health practitioner must request the provision of additional services from the eligible medical practitioner who initially referred the patient before providing any of the remaining available services. The eligible allied health practitioner must make a record of the medical practitioner's agreement in the patient's notes.

**Item 32** replaces the table heading of Subgroup 15 of Group M18 in Schedule 3 of the Telehealth Determination with "Subgroup 15 – Complex neurodevelopmental disorder and disability telehealth services".

**Items 33 to 40** item 93032, 93033, 93035, 93036, 93040, 93041, 93043 and 93041 of the Telehealth Determination, which provide allied health attendance services for complex neurodevelopmental disorders and disabilities provided by telehealth or phone, to:

- extend eligibility for these services from under 13 or 15 years of age to under 25 years of age to facilitate high quality of care for Australians presenting late with neurodevelopmental disorders and to provide equitable access for Australians with eligible disabilities;
- replace references to "pervasive developmental disorders" with "complex neurodevelopmental disorders" to align the items with current diagnostic terminology, reflecting contemporary clinical practice, and ensure eligible patients continue to have access to these services; and
- remove requirements that are being specified in new clause 3.1.4A (refer to **item 31** of Schedule 3).

#### Schedule 4 – Consequential amendments

##### ***Health Insurance (Allied Health Services) Determination 2014 (AHS Determination)***

##### ***Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021 (Telehealth Determination)***

**Item 1** amends the definition of **COVID-19 Determination** at subsection 4(1) of the AHS Determination to replace a reference to the *Health Insurance (Section 3C General Medical Services - COVID-19 Telehealth and Telephone Attendances) Determination 2020* with the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021*.

**Items 2 to 4** amend sections 7, 8 and 8A of the AHS Determination to remove references to repealed items, remove inappropriate references to new Better Access items and replace references to “child” with “patient”.

**Items 5 to 7** amend clauses 3.1.2, 3.1.3 and 3.1.5 of the Telehealth Determination to remove references to repealed items, remove inappropriate references to new Better Access items and replace references to “child” with “patient”.

## Statement of Compatibility with Human Rights

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

*Health Insurance Legislation Amendment (2023 Measures No. 1) Determination 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 Determination

The purpose of the *Health Insurance Legislation Amendment (2023 Measures No. 1) Determination 2022* (the Amendment Determination) is to amend the *Health Insurance (Allied Health Services) Determination 2014* (the AHS Determination); and the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (the Telehealth Determination) to:

- repeal 17 allied health video conference items for mental health and eating disorder services, including two items in Group M6, six items in Group M7 and nine item in Group M16, which have been superseded due to the continuation of telehealth services introduced in response to the COVID-19 pandemic;
- amend 12 items, introduce one item and delete one item as part of the Government’s response to recommendations from the Medicare Benefits Schedule (MBS) Review Taskforce (the Taskforce) in relation to services for otolaryngology diagnostic procedures, audiology services and ear, nose and throat surgical operations; and
- amend 20 items related to services for complex neurodevelopmental disorders.

#### Mental health and eating disorder video conference items

Temporary telehealth measures introduced as part of the Government’s response to the COVID-19 pandemic were ceased on 31 December 2021, with a transition to ongoing telehealth arrangements for general practitioner, specialist, nursing, midwifery and allied health providers.

Schedule 1 of the Amendment Determination amends the AHS Determination to repeal 17 pre-COVID-19 video conference items, which are for geographically restricted mental health and eating disorder services. This change will consolidate mental health and eating disorder telehealth services to remove duplication of equivalent services, following the continuation of telehealth services introduced in response to the COVID-19 pandemic. Patients will continue to have access to telehealth services nationally for mental health and eating disorder services under the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021*.

#### Otolaryngology, head and neck services

Schedule 2 of the Amendment Determination amends the AHS Determination and the Telehealth Determination to introduce one new item, repeal one item and amend 12 existing items as part of the Government’s response to recommendations from the MBS Review Taskforce (the Taskforce) in relation to services for otolaryngology diagnostic procedures, audiology services and ear, nose and throat surgical operations. These changes will ensure that items reflect contemporary clinical practice, and that the Medicare benefits appropriately reflect the skill and complexity of the relevant procedure.

These changes were announced in the March 2022-23 Budget under the *Guaranteeing Medicare – Medical Benefits Schedule new and amended listings* measure.

#### Complex neurodevelopmental disorder and disability services

Schedule 3 of the Amendment Determination amends the AHS Determination and the Telehealth Determination to implement the Government's response to recommendations from the Taskforce in relation to services for children and young adults with suspected or confirmed complex neurodevelopmental disorders or eligible disabilities. These changes were announced in the 2021-22 Mid-Year Economic and Fiscal Outlook (MYEFO) under the *Guaranteeing Medicare – Medicare Benefits Schedule new and amended listings* measure.

The changes include amendments to items 82000, 82005, 82010, 82015, 82020, 82025, 82030 and 82035 of the AHS Determination and items 92140, 92141, 92142, 92434, 93032, 93033, 93040, 93041, 93035, 93036, 93043 and 93044 of the Telehealth Determination to align the terminology used with current diagnostic terminology, reflect current clinical practice and provide additional clarity to providers using these items. These changes will also extend eligibility for these services from under 13 years of age to under 25 years of age to facilitate high quality of care for Australians presenting late with complex neurodevelopmental disorders and to provide equitable access for Australians with eligible disabilities.

#### Consequential amendments

Schedule 4 of the Amendment Determination updates provisions in the AHS Determination and Telehealth Determinations to remove outdated references to repealed items and implement other consequential and administrative changes.

### **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.

#### *The right of equality and non-discrimination*

The rights of equality and non-discrimination are contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the ICCPR requires that all persons are equal before the law, are entitled without any discrimination to the equal protection of the law and in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### Analysis

This instrument maintains the right to health and social security and the right of equality and non-discrimination by ensuring access to publicly subsidised medical services are clinically and cost-effective as intended.

Despite repealing 17 mental health and eating disorder video conference items, this instrument maintains the rights to health and social security and the right of equality and non-discrimination as patients will continue to have access to equivalent mental health and eating disorder telehealth services without the geographical restrictions under items introduced as part of the Government's response to the COVID-19 pandemic, which have been continued on an ongoing basis.

#### **Conclusion**

This instrument is compatible with human rights as it maintains the right to health, the right to social security and the right of equality and non-discrimination.

**Travis Haslam**  
**Acting First Assistant Secretary**  
**Medical Benefits Division**  
**Health Resourcing Group**  
**Department of Health and Aged Care**