

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

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

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* (GMST).

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 2023* (the Amendment Determination) is to make administrative and machinery amendments from 1 July 2023 to:

- the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (Telehealth Determination);
- the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (Other Medical Practitioner Determination); and
- *Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020* (Optometric Services Determination).

The changes to the Telehealth Determination include amending the name of subgroup 16 of Group M18 to align with changes introduced on 1 March 2023 by the *Health Insurance Legislation Amendment (2022 Measures No. 4) Regulations 2022*. The Amendment Determination will also repeal Schedules 6 to 8 of the Telehealth Determination, which ceased on 30 June 2022.

The Amendment Determination will amend clause 1.1.05 of the Telehealth Determination and clause 1.6.2 of the Other Medical Practitioner Determination to ensure items listed in these clauses align with clause 2.16.11 of the GMST, which was amended on 1 March 2023 by the *Health Insurance Legislation Amendment (2022 Measures No. 4) Regulations 2022*.

The Amendment Determination will also make the following minor administrative amendments:

- repeal the definitions of ***admitting dental practitioner*** and ***admitting medical practitioner*** from the Telehealth Determination as these terms are only relevant to Schedule 6, which ceased on 30 June 2022;
- update the definition of ***COVID-19 Determination*** in the Other Medical Practitioner Determination to refer to the revised determination name; and
- repeal the definition of ***institution*** in the Optometric Services Determination as the definition refers to the meaning of institution in the GMST, which does not define this term.

### **Consultation**

No consultation was undertaken for the changes in the Amendment Determination as they are administrative in nature.

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

The Amendment Determination commences on 1 July 2023.

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

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

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

### 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 2023*.

### Section 2 – Commencement

Section 2 provides that the Amendment Determination commences 1 July 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 – Amendments

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

**Amendment item 1** amends subsection 5(1) of the Telehealth Determination to repeal the definitions of *admitting dental practitioner* and *admitting medical practitioner*. These terms were only relevant to Schedule 6, which ceased on 30 June 2022 and will be repealed by **amendment item 4** of the Amendment Determination.

**Amendment item 2** amends subclause 1.1.05(1) of the Telehealth Determination, which provides the same day co-claiming restrictions for items 92024, 92025 and 92028, to ensure items listed in these clauses align with clause 2.16.11 of the *Health Insurance (General Medical Services Table) Regulations 2021* (GMST) as amended on 1 March 2023. It is intended that this amendment will ensure consistent co-claiming restrictions for equivalent face-to-face and remote service options.

**Amendment item 3** amends the heading of subgroup 16 of Group M18 in the Telehealth Determination, replacing the existing heading with “Complex neurodevelopmental disorder and disability phone services”. This amendment aligns with changes made to complex neurodevelopmental disorder services introduced on 1 March 2023. This amendment will ensure that the terminology used in the Telehealth Determination is in accordance with current diagnostic terminology and reflects current clinical practice. The shift in language will also provide additional clarity to providers using these items.

**Amendment item 4** repeals Schedules 6 to 8 of the Telehealth Determination, which ceased on 30 June 2022. This is an administrative change to remove these schedules from the Principal Determination to avoid confusion for stakeholders.

*Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018 (Other Medical Practitioner Determination)*

**Amendment item 5** amends subclause 1.6.2(4) of the Other Medical Practitioner Determination, which provides the same day co-claiming restrictions for items 229, 230 and 233, to ensure items listed in these clauses align with clause 2.16.11 of the GMST as amended on 1 March 2023. It is intended that the amendments will ensure consistent co-claiming restrictions for equivalent face-to-face and remote service options.

**Amendment item 6** amends the definition of **COVID-19 Determination** at subsection 4(1) of the Other Medical Practitioner 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*”. This is an administrative amendment to refer to the updated determination name.

*Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020 (Optometric Services Determination)*

**Amendment item 7** repeals the definition of **institution** from subsection 5(1) of the Optometric Services Determination. Subsection 5(1) of the Optometric Services Determination defines the term “institution” as having the same meaning as provided in the GMST. However, the word “institution” is not defined in the GMST. A definition of the term institution is unnecessary as it could restrict usage of items in the Optometric Services Determination. Therefore, this definition will be removed.

## 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 2023*

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 Amendment

The purpose of the *Health Insurance Legislation Amendment (2023 Measures No. 1) Determination 2023* (the Amendment Determination) is to make administrative and machinery amendments from 1 July 2023 to:

- the *Health Insurance (Section 3C General Medical Services – Telehealth and Telephone Attendances) Determination 2021* (Telehealth Determination);
- the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (Other Medical Practitioner Determination); and
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- update the definition of **COVID-19 Determination** in the Other Medical Practitioner Determination to refer to the revised determination name; and
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### 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 rights 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.

#### **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.

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