**EXPLANATORY STATEMENT**

*Health Insurance Act 1973*

*Health Insurance Legislation Amendment (2023 Measures No. 2) Regulations 2023*

The *Health Insurance Act 1973* (the Act) sets out the principles and definitions governing the Medicare Benefits Schedule (MBS). The Act provides for payments by way of medical benefits and for other purposes.

Subsection 133(1) of the Act provides that the Governor‑General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Part II of the Act provides for the payment of Medicare benefits for professional services rendered to eligible persons. Section 9 of the Act provides that Medicare benefits be calculated by reference to the fees for medical services set out in prescribed tables.

Section 4AA of the Act provides that regulations may prescribe a table of diagnostic imaging services which sets out items of diagnostic imaging services, the fees applicable for each item, and rules for interpreting the table. The table made under this section is referred to as the Diagnostic Imaging Services Table.  The most recent version of the regulations is the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020* (DIST)*.*

Subsection 4(1) of the Act provides that regulations may prescribe a table of general medical services which sets out items of general medical services, the fees applicable for each item, and rules for interpreting the table. The table made under this subsection is referred to as the General Medical Services Table. The most recent version of the regulations is the *Health Insurance (General Medical Services Table) Regulations 2021* (GMST)*.*

**Purpose**

The purpose of the *Health Insurance Legislation Amendment (2023 Measures No. 2) Regulations 2023* (the Regulations) is to amend the DIST and GMST.

The Regulations will amend the DIST by inserting application and restriction provisions for magnetic resonance imaging (MRI) items 63501, 63502, 63504, 63505, 63498 and 63499. These items are currently in the *Health Insurance (Poly Implant Prosthese MRI) Determination 2020* (the Poly Implant Prosthese MRI Determination)and will be incorporated into the DIST on 1 July 2023 by the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulations 2023*. Due to an administrative oversight, several application and restriction provisions in the Poly Implant Prosthese MRI Determination were not incorporated into the DIST as part of the amendments. The Regulations will address this oversight.

The Regulations will amend the GMST to allow certain non-vocationally recognised medical practitioners who are currently providing MBS services under programs that are due to cease on 30 June 2023 to continue providing services under the MBS from 1 July 2023, including medical practitioners registered in:

* the Other Medical Practitioners Extension Program, which will commence on 1 July 2023; and
* the MedicarePlus for Other Medical Practitioners Program, which will be extended until 31 December 2023.

The Regulations will also amend the schedule fee for item 30630 to address a rounding error in the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulations 2023* and correctly apply annual fee indexation.

**Consultation**

No consultation was undertaken regarding the changes to the DIST in the Regulations as these changes are administrative in nature to ensure arrangements for services provided under the specified MRI items continue unchanged following incorporation of the items into the DIST.

No consultation was undertaken regarding the new and extended Other Medical Practitioner Programs as this change will continue the existing arrangements for these groups of providers.

No consultation was undertaken regarding the fee amendment for item 30630 as the change aligns with business-as-usual implementation of the Government’s policy on Medicare indexation, which is expected by stakeholders to be applied on 1 July of each year.

Some of the amendments in the Regulations are minor and machinery in nature and did not require consultation to be undertaken.

Details of the Regulationsare set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations will commence immediately after the commencement of Schedule 3 of the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulations 2023*.

 Authority: Subsection 133(1) of the

 *Health Insurance Act 1973*

**ATTACHMENT**

**Details of the** ***Health Insurance Legislation Amendment (2023 Measures No. 2) Regulations 2023***

Section 1 – Name

This section provides for the Regulations to be referred to as the *Health Insurance Legislation Amendment (2023 Measures No. 2) Regulations 2023.*

Section 2 – Commencement

This section provides for the Regulations to commence immediately after the commencement of Schedule 3 of the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulations 2023*.

Section 3 – Authority

This section provides that the Regulations are made under the *Health Insurance Act 1973*.

Section 4 – Schedules

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

Schedule 1 – Amendments

***Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020* (DIST)**

**Item 1** amends subclause 2.5.1(3) to apply the subclause to items in Subgroup 32 of Group I5. Subclause 2.5.1(3) provides requirements for certain magnetic resonance imaging (MRI) services. The change will be administrative in nature to ensure arrangements for services provided under items 63501, 63502, 63504 and 63505 remain unchanged following the incorporation of these items into the DIST by the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulations 2023* (the July 2023 MBS Regulations).

**Item 2** amends the table at clause 2.5.9 to restrict claiming of item 63501 or 63502 more than once in a 24 month period. The change will ensure that items 63501 and 63502 continue not apply to a service described in the item if the patient has been provided with a service described in either item in the previous 24 months, following the incorporation of these items into the DIST by the July 2023 MBS Regulations.

**Items 3** and **4** amend clause 2.5.13A to include items 63498 and 63499 in the application provision at subclause 2.5.13A(1) and insert three new subclauses. Clause 2.5.13A contains provisions regarding appropriate claiming of items in Subgroup 22 of I5. The change will be administrative in nature to ensure arrangements for services provided under items 63498 and 63499 remain unchanged following the incorporation of these items into the DIST by the July 2023 MBS Regulations.

***Health Insurance (General Medical Services Table) Regulations 2021* (GMST)**

**Item 5** amend the definition of ***eligible non‑vocationally recognised medical practitioner*** at clause 1.1.2 to include medical practitioners registered in the Other Medical Practitioners Extension Program and the MedicarePlus for Other Medical Practitioners Program.

In accordance with clause 1.1.3 of the GMST, non-vocationally recognised medical practitioners who meet the definition of ***eligible non-vocationally recognised medical practitioner*** are able to provide MBS general practitioner (GP) services, which attract a higher Medicare benefit than MBS services for non-vocationally recognised medical practitioners.

The Other Medical Practitioners Extension Program will commence on 1 July 2023 and will be available to medical practitioners currently registered and providing services under the After Hours Other Medical Practitioners Program, Outer Metropolitan (Other Medical Practitioners) Relocation Incentive Program or Rural Other Medical Practitioners’ Program as these three programs will cease on 30 June 2023. This change will allow medical practitioners previously registered and providing MBS services under the After Hours Other Medical Practitioners Program, Outer Metropolitan (Other Medical Practitioners) Relocation Incentive Program and Rural Other Medical Practitioners’ Program to continue to be able to provide services under the MBS from 1 July 2023 until 30 June 2025.

The MedicarePlus for Other Medical Practitioners Program was due to cease on
30 June 2023. During the 2023-24 Budget it was agreed that the Program would be extended until 31 December 2023. This change will ensure medical practitioners currently providing services under the MBS who are registered under this Program to continue to be able to provide services under the MBS which attract a higher benefit.

**Item 6** amends clause 2.14.4 to provide restrictions for items in Group A11 provided by medical practitioners registered in the Other Medical Practitioners Extension Program who were registered in the After Hours Other Medical Practitioners Program on or before 30 June 2023. The changes to clause 2.14.4 will mirror the arrangements currently in place for medical practitioners registered under the After Hours Other Medical Practitioners Program.

**Item 7** amend the schedule fee for item 30630 to address a rounding error in the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulations 2023*. This amendment will correctly apply annual fee indexation of 3.6 per cent to item 30630.

**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) Regulations 2023***

This Regulation 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 Disallowable Legislative Instrument**

The purpose of the *Health Insurance Legislation Amendment (2023 Measures No. 2) Regulations 2023* (the Regulations) is to amend the DIST and GMST.

The Regulations will amend the DIST by inserting application and restriction provisions for magnetic resonance imaging (MRI) items 63501, 63502, 63504, 63505, 63498 and 63499. These items are currently in the *Health Insurance (Poly Implant Prosthese MRI) Determination 2020* (the Poly Implant Prosthese MRI Determination)and will be incorporated into the DIST on 1 July 2023 by the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulations 2023*. Due to an administrative oversight, several application and restriction provisions in the Poly Implant Prosthese MRI Determination were not incorporated into the DIST as part of the amendments. The Regulations will address this oversight.

The Regulations will amend the GMST to allow certain non-vocationally recognised medical practitioners who are currently providing MBS services under programs that are due to cease on 30 June 2023 to continue providing services under the MBS from 1 July 2023, including medical practitioners registered in:

* the Other Medical Practitioners Extension Program, which will commence on 1 July 2023; and
* the MedicarePlus for Other Medical Practitioners Program, which will be extended until 31 December 2023.

The Regulations will also amend the schedule fee for item 30630 to address a rounding error in the *Health Insurance Legislation Amendment (2023 Measures No. 1) Regulations 2023* and correctly apply annual fee indexation.

**Human rights implications**

The Regulations engage 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

The Regulations maintain 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 because it maintains existing arrangements and the protection of human rights.

**Mark Butler**

**Minister for Health and Aged Care**