

EXPLANATORY STATEMENT

National Health Act 1953

Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2023

PB 51 of 2023

Authority

Paragraph 98B(1)(a) of the *National Health Act 1953* (the Act) provides that a function of the Pharmaceutical Benefits Remuneration Tribunal (the Tribunal) is to determine the manner in which the Commonwealth price for all or any pharmaceutical benefits is to be worked out for the purpose of payments to approved pharmacists for the supply of pharmaceutical benefits.

Subsection 98BAA(1) of the Act requires that, where the Commonwealth and the Pharmacy Guild of Australia (the Guild) or another pharmacists' organisation that represents a majority of approved pharmacists have entered into an agreement relating to the manner in which the Commonwealth price for pharmaceutical benefits is to be calculated, the Tribunal, when making a determination pursuant to paragraph 98B(1)(a) of the Act, is to give effect to the terms of that agreement.

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.

Purpose

The *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2023* (Amendment Determination) amends the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2020* (the Principal Determination), to increase the Tier 1 Administration, Handling, and Infrastructure fee (Tier 1 AHI fee), the Dispensing fee for Ready Prepared Pharmaceutical Benefits, the Dispensing fee for Extemporaneously Prepared Pharmaceutical Benefits, and the Dangerous Drug fee, as specified in the Seventh Community Pharmacy Agreement (Seventh Agreement), on 1 July 2023. A copy of the Seventh Agreement can be found at the Department of Health's website at: <https://www.health.gov.au/topics/primary-care/what-we-do/7cpa>.

The Seventh Agreement between the Commonwealth, the Guild and the Pharmaceutical Society of Australia Limited, which commenced on 1 July 2020 and expires on 30 June 2025, includes an agreement between the Commonwealth and the Guild for the purposes of subsection 98BAA(1) of the Act, setting out the manner in which the Commonwealth price for pharmaceutical benefits is to be calculated.

The Tier 1 AHI fee, the Dispensing fee for Ready Prepared Pharmaceutical Benefits, and the Dangerous Drug fee are all indexed annually on 1 July in each year of the Seventh Agreement. As per the Seventh Agreement, indexation on 1 July 2023 is based on the following formula:

$$\text{New Amount} = \text{Last Amount} \times \left(\frac{\text{MRIN}}{\text{LIN}} \right)$$

New Amount means the amount, rounded to the nearest cent, on and from the relevant indexation date.

Last Amount means the value of amount payable immediately before the relevant indexation date (in this case it means the value payable from 1 July 2022).

MRIN means Most Recent Index Number, the most recently published quarterly index number as at the relevant indexation date (meaning the Australian Bureau of Statistics Consumer Price Index, being the weighted average of eight capital cities, and the index number published by the Australian Bureau of Statistics in respect of the March quarter of 2023).

LIN means Last Index Number, the quarterly index number, as published for the same quarter as the MRIN in the year immediately preceding the year of the MRIN (meaning the Australian Bureau of Statistics Consumer Price Index, being the weighted average of eight capital cities, and the index number published by the Australian Bureau of Statistics in respect of the March quarter of 2022).

On 26 April 2023 the MRIN equals 132.6 and the LIN equals 123.9.

The Dispensing fee for Extemporaneously Prepared Pharmaceutical Benefits, being equal to the Dispensing fee for Ready Prepared Pharmaceutical Benefits, plus \$2.04, per dispense, is thus also increased on 1 July in each year of the Seventh Agreement.

This Amendment Determination increases the Tier 1 AHI fee from \$4.32 to **\$4.62**, the Dispensing fee for Ready Prepared Pharmaceutical Benefits from \$7.82 to **\$8.37**, the Dispensing fee for Extemporaneously Prepared Pharmaceutical Benefits Fee from \$9.86 to **\$10.41**, and the Dangerous Drug fee from \$4.84 to **\$5.18**.

An overview of the instrument is set out at **Attachment A**.

Consultation

The Seventh Agreement includes an agreement between the Commonwealth and the Guild or the purposes of subsection 98BAA(1) of the Act. The Pharmacy has been consulted in relation to the changes made by this Amendment Determination as they relate to that agreement. Services Australia has also been consulted in relation to implementation of the Pharmaceutical Benefits Scheme payment systems changes managed by Services Australia, to support the changes made by this Amendment Determination.

This instrument commences on 1 July 2023.

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

Details of the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2023*

Section 1 Name

This section provides that the title of the instrument is the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2023* (the Amendment Determination). It provides that the Amendment Determination may also be cited as PB 51 of 2023.

Section 2 Commencement

Section 2 provides that the instrument commences on 1 July 2023.

Section 3 Authority

Section 3 provides that the Amendment Determination is made under paragraph 98B(1)(a) of the *National Health Act 1953*.

Section 4 Schedules

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

Schedule 1 Amendments

Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2020

Item 1

This item amends the definitions of ‘dangerous drug fee’, ‘extemporaneously-prepared dispensing fee’ and ‘ready-prepared dispensing fee’ in Section 6 of the Principal Determination to increase the amount of the dangerous drug fee, extemporaneously-prepared dispensing fee and ready-prepared dispensing fee in order to give effect to the indexation arrangements in the Seventh Agreement.

Item 2

This item replaces the table in paragraph 12(1)(a) of the Principal Determination to increase the amount of the Tier 1 AHI fee for ready prepared pharmaceutical benefits from 1 July 2023.

Item 3

This item replaces the table in section 20 of the Principal Determination to increase the amount of the Tier 1 AHI fee for extemporaneously prepared pharmaceutical benefits from 1 July 2023.

Statement of Compatibility with Human Rights

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

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This Disallowable 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 legislative instrument

The purpose of this Disallowable Legislative Instrument, made under paragraph 98B(1)(a) of the *National Health Act 1953* (the Act), is to amend the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2020*. This legislative instrument gives effect to increases on 1 July 2023 to the Tier 1 Administration, Handling and Infrastructure fee (Tier 1 AHI fee), the Dispensing fee for Ready Prepared Pharmaceutical Benefits, the Dispensing fee for Extemporaneously Prepared Pharmaceutical Benefits, and the Dangerous Drug fee as components of the Commonwealth price paid to approved pharmacists for the supply of pharmaceutical benefits.

The Pharmaceutical Benefits Remuneration Tribunal (the Tribunal) is an independent statutory body established under section 98A of the Act. The main functions of the Tribunal are to make a determination to give effect to the terms of an agreement between the Commonwealth and the Pharmacy Guild of Australia for the purposes of subsection 98BAA(1) of the Act, as currently applies under the Seventh Community Pharmacy Agreement.

This Disallowable Legislative Instrument amends, with effect on 1 July 2023, the Tier 1 AHI fee from \$4.32 to **\$4.62**, the Dispensing fee for Ready Prepared Pharmaceutical Benefits from \$7.82 to **\$8.37**, the Dispensing fee for Extemporaneously Prepared Pharmaceutical Benefits from \$9.86 to **\$10.41** and the Dangerous Drug fee from \$4.84 to **\$5.18**.

Human rights implications

This Disallowable Legislative Instrument engages Articles 2, 7, 9 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The legislative instrument assists with the provision of favourable conditions of work to ensure remuneration for workers with fair wages. In addition it also assists in the progressive realisation by all appropriate means of the right of everyone to social security, and the enjoyment of the highest attainable standard of physical and mental health.

The Pharmaceutical Benefits Scheme (PBS) is a benefit scheme which assists with providing subsidised access for people to medicines. This is a positive step towards attaining the highest standard of health for all Australians. Efficient operational arrangements for the PBS support effective administration of the scheme.

The amendment made by the Amendment Determination is only in relation to the additional amounts described above. It does not change the protection of human rights to health and social security by all Australians under the PBS implemented under the Principal Determination.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because it promotes the protection of human rights to health.

Abbeygail Beaumont

Chairperson

Pharmaceutical Benefits Remuneration Tribunal