

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance Legislation Amendment (Indexation No. 2) 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 GMST) or the diagnostic imaging services table (the DIST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the Table.

The GMST 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*.

The DIST is set out in the regulations made under subsection 4AA of the Act. The most recent version of the regulations is the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020*.

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

On 1 July 2023, annual fee indexation of 3.6 per cent was applied to most services under the Medicare Benefits Schedule (MBS). On 9 May 2023, as part of the 2023-24 Budget, the Government announced changes to the indexation methodology applying to Government programs, including the MBS, to better align with changes in economic conditions.

The purpose of the *Health Insurance Legislation Amendment (Indexation No. 2) Determination 2023* (the Determination) is to increase the fees for relevant MBS items by applying an indexation rate of 0.5 per cent from 1 November 2023, to align these MBS services with the updated indexation methodology. This increase of the schedule fees means that patients will receive an increased Medicare benefit for the affected services.

Schedule 1 of this instrument amends the indexation provisions for the following instruments:

- *Health Insurance (Section 3C General Medical Services – Transcatheter Aortic Valve Implantation) Determination 2018*;
- *Health Insurance (Section 3C General Medical Services – Botox, Dysport or Xeomin Injection) Determination 2020*;
- *Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020*;

- *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services – Extracorporeal Photopheresis) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services – Botox Injection) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services—Transcatheter Mitral Valve Repair) Determination 2021;*
- *Health Insurance (Section 3C Diagnostic Imaging – Cardiac MRI for Myocarditis) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services – Extracorporeal Photopheresis for Chronic Graft Versus Host Disease) Determination 2022;*
and
- *Health Insurance (Allied Health Services) Determination 2014.*

Schedule 2 of this instrument applies an indexation rate of 0.5 per cent to relevant MBS items in the following instruments:

- *Health Insurance (Section 3C General Medical Services – Heart Health Assessment No.2) Determination 2019;*
- *Health Insurance (Section 3C General Medical Services – Smoking Cessation Services) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services - Ventral Mesh Rectopexy Services) Determination 2022;*
- *Health Insurance (Section 3C General Medical Services — Artificial Bowel Sphincter Services) Determination 2023;*
- *Health Insurance (Section 3C General Medical Services – Removal of Single Tumour, Lipoma or Cyst) Determination 2023;*
- *Health Insurance (Section 3C Diagnostic Imaging Services – Whole Body Magnetic Resonance Imaging Scan) Determination 2022;*
- *Health Insurance (General Practice COVID-19 Treatment) Determination 2022;* and
- *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021.*

Consultation

No consultation was undertaken regarding the changes in the Determination, as they are intended to align the MBS with the Government’s policy on Medicare indexation, following the announcement in the 2023-24 Budget of revisions to the indexation methodology.

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

The Determination commences on 1 November 2023.

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

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

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

ATTACHMENT

Details of the *Health Insurance Legislation Amendment (Indexation No. 2) Determination 2023*Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance Legislation Amendment (Indexation No. 2) Determination 2023* (the Determination).

Section 2 – Commencement

Section 2 provides for the Determination to commence on 1 November 2023.

Section 3 – Authority

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

Schedule 1 – Indexation provision amendments

Schedule 1 increases fees for relevant MBS items by 0.5 per cent from 1 November 2023, to align these MBS services with the updated indexation methodology. This will increase the Medicare benefit paid to patients for these services. The indexation figures are calculated as per section 10 of the *Health Insurance Act 1973*.

Items 1 to 10 amend the indexation provisions in the following determinations to apply at an indexation rate of 0.5 per cent from 1 November 2023 to the schedule fees of listed items:

- *Health Insurance (Section 3C General Medical Services – Transcatheter Aortic Valve Implantation) Determination 2018;*
- *Health Insurance (Section 3C General Medical Services – Botox, Dysport or Xeomin Injection) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020;*
- *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services – Extracorporeal Photopheresis) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services – Botox Injection) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services—Transcatheter Mitral Valve Repair) Determination 2021;*

- *Health Insurance (Section 3C Diagnostic Imaging – Cardiac MRI for Myocarditis) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services – Extracorporeal Photopheresis for Chronic Graft Versus Host Disease) Determination 2022;* and
- *Health Insurance (Allied Health Services) Determination 2014.*

Schedule 2 – Indexation amendments

Schedule 2 increases the fees for relevant MBS items by 0.5 per cent from 1 November 2023, to align these MBS services with the updated indexation methodology. This will increase the Medicare benefit paid to patients for these services. The indexation figures are calculated as per section 10 of the *Health Insurance Act 1973*.

Health Insurance (Section 3C General Medical Services – Heart Health Assessment No.2) Determination 2019 (Heart Health Determination)

Items 1 and 2 amend Schedule 1 of the Heart Health Determination to apply an indexation factor of 0.5 per cent to items 699 and 177.

Health Insurance (Section 3C General Medical Services – Smoking Cessation Services) Determination 2021 (Smoking Cessation Determination)

Item 3 amends the Schedule of the Smoking Cessation Determination to apply an indexation factor of 0.5 per cent to the items listed in the table.

Health Insurance (Section 3C General Medical Services - Ventral Mesh Rectopexy Services) Determination 2022 (Rectopexy Determination)

Items 4 amends the Schedule of the Rectopexy Determination to apply an indexation factor of 0.5 per cent to the schedule fee for item 32118.

Health Insurance (Section 3C General Medical Services — Artificial Bowel Sphincter Services) Determination 2023 (Artificial Bowel Determination)

Item 5 amends Schedule 1 of the Artificial Bowel Determination to apply an indexation factor of 0.5 per cent to the schedule fee for item 32221.

Health Insurance (Section 3C General Medical Services – Removal of Single Tumour, Lipoma or Cyst) Determination 2023 (Removal of Single Cyst Determination)

Item 6 amends the Schedule of the Removal of Single Cyst Determination to apply an indexation factor of 0.5 per cent to the schedule fee for item 31227.

Health Insurance (Section 3C Diagnostic Imaging Services – Whole Body Magnetic Resonance Imaging Scan) Determination 2022 (Magnetic Resonance Imaging Determination)

Item 7 amends the Schedule of the Magnetic Resonance Imaging Determination to apply an indexation factor of 0.5 per cent the schedule fee for item 63564.

Health Insurance (General Practice COVID-19 Treatment) Determination 2022 (GP COVID Treatment Determination)

Item 8 amends the Schedule of the GP COVID Treatment Determination to apply an indexation factor of 0.5 per cent the schedule fee for item 93716.

Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021 (COVID Vaccine Suitability Determination)

Item 9 amends subsection 9(1) of the COVID Vaccine Suitability Determination to apply an indexation factor of 0.5 per cent to the first patient during each attendance fee.

Items 10 amends subsection 10(1) of the COVID Vaccine Suitability Determination to change the indexation provision to apply indexation at the rate of 0.5 per cent to the schedule fees.

Statement of Compatibility with Human Rights

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

Health Insurance Legislation Amendment (Indexation No. 2) 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 Determination

On 1 July 2023, annual fee indexation of 3.6 per cent was applied to most services under the Medicare Benefits Schedule (MBS). On 9 May 2023, as part of the 2023-24 Budget, the Government announced changes to the indexation methodology applying to Government programs, including the MBS, to better align with changes in economic conditions.

The purpose of the *Health Insurance Legislation Amendment (Indexation No. 2) Determination 2023* (the Determination) is to increase the fees for relevant MBS items by applying an indexation rate of 0.5 per cent from 1 November 2023, to align these MBS services with the updated indexation methodology. This increase of the schedule fees means that patients will receive an increased Medicare benefit for the affected services.

Schedule 1 of this instrument amends the indexation provisions for the following instruments:

- *Health Insurance (Section 3C General Medical Services – Transcatheter Aortic Valve Implantation) Determination 2018;*
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- *Health Insurance (Section 3C General Medical Services - Optometric Services) Determination 2020 ;*
- *Health Insurance (Section 3C Midwife and Nurse Practitioner Services) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services – Extracorporeal Photopheresis) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services – Botox Injection) Determination 2020;*
- *Health Insurance (Section 3C General Medical Services—Transcatheter Mitral Valve Repair) Determination 2021;*
- *Health Insurance (Section 3C Diagnostic Imaging – Cardiac MRI for Myocarditis) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services – Extracorporeal Photopheresis for Chronic Graft Versus Host Disease) Determination 2022;* and
- *Health Insurance (Allied Health Services) Determination 2014.*

Schedule 2 of this instrument applies an indexation rate of 0.5 per cent to relevant MBS items in the following instruments:

- *Health Insurance (Section 3C General Medical Services – Heart Health Assessment No.2) Determination 2019;*

- *Health Insurance (Section 3C General Medical Services – Smoking Cessation Services) Determination 2021;*
- *Health Insurance (Section 3C General Medical Services - Ventral Mesh Rectopexy Services) Determination 2022;*
- *Health Insurance (Section 3C General Medical Services — Artificial Bowel Sphincter Services) Determination 2023;*
- *Health Insurance (Section 3C General Medical Services – Removal of Single Tumour, Lipoma or Cyst) Determination 2023;*
- *Health Insurance (Section 3C Diagnostic Imaging Services – Whole Body Magnetic Resonance Imaging Scan) Determination 2022;*
- *Health Insurance (General Practice COVID-19 Treatment) Determination 2022;* and
- *Health Insurance (Section 3C General Medical Services – General Practice Attendance for Assessing Patient Suitability for a COVID-19 Vaccine) Determination 2021.*

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 advances the rights to health and social security and the right of equality and non-discrimination by increasing the Medicare benefit patients will receive when accessing the services listed in the determinations specified. This will assist patients to continue accessing clinically relevant health services.

Conclusion

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

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