

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Amendment (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 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* (the 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 (Section 3C General Medical Services – Other Medical Practitioner) Amendment (No. 2) Determination 2023* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (the Principal Determination) from 1 November 2023. The Amendment Determination will:

- repeal all items and provisions in the Principal Determination except items in Subgroup 10 of Group A7 and any related provisions;
- amend 12 items in Subgroup 10 of Group A7 to replace references to “medical practitioner” with “prescribed medical practitioner” in alignment with amendments to the GMST;
- amend three items (745, 769 and 789) in Subgroup 10 of Group A7 to prescribe the maximum time for a service provided under the item;
- insert three new Level E (60+ minutes) items for after-hours general practice attendances in Subgroup 10 of Group A7; and
- apply an indexation factor of 0.5 per cent to the fees for listed items in Subgroup 10 of Group A7 of the Principal Determination, noting that these are not indexed in their own right but are instead calculated to reflect 80 per cent of the schedule fee for the equivalent GP item.

The Amendment Determination will commence immediately following the commencement of Schedule 5 of the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023*, which incorporates items currently in the Principal Determination (except for Subgroup 10 in Group A7 and any related provisions) into the GMST. These changes are administrative in nature; there are no changes to the policy intent, eligibility, or requirements of affected items.

The introduction of Level E consultations was a recommendation of the MBS Review Taskforce and supported by the Strengthening Medicare Taskforce. These new items and the inclusion of a maximum attendance time for items 745, 769 and 789 were announced as part of the *A Modern and Clinically Relevant Medicare Benefits Schedule* measure under the 2023-24 Budget.

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 Amendment Determination will increase the fees for relevant MBS items in the Principal Determination 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.

### **Consultation**

Consultation was undertaken as part of the MBS Review Taskforce for the new Level E items.

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

No consultation was undertaken regarding the other amendments in the Amendment Determination as they are machinery in nature due to the incorporation of other medical practitioner services into the GMST on 1 November 2023.

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

The Amendment Determination commences immediately after the commencement of Schedule 5 of the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 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 (Section 3C General Medical Services – Other Medical Practitioner) Amendment (No. 2) Determination 2023***

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Amendment (No. 2) Determination 2023* (the Amendment Determination).

Section 2 – Commencement

Section 2 provides that the Amendment Determination commences immediately after the commencement of Schedule 5 of the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 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 – Other Medical Practitioner) Determination 2018* (the Principal Determination)

**Items 1 and 3** repeals fourteen definitions at subsection 4(1), which only apply to items due to be incorporated into the GMST on 1 November 2023 by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023*.

**Item 2** repeals and replaces the definition of *medical practitioner* at subsection 4(1) with *prescribed medical practitioner*. The definition of prescribed medical practitioner will maintain the current definition of medical practitioner. This change is administrative in nature and consistent with the amendments to items in Subgroup 10 of Group A7 (refer to **item 13**), which align with changes made to items due to be incorporated into the GMST on 1 November 2023 by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023*.

**Item 4** repeals and replaces section 6 to remove obsolete provisions that apply to items due to be incorporated into the GMST on 1 November 2023 by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023*.

**Item 5** repeals and replaces the table at clause 1.1.1 of Schedule 1 to remove fees for items incorporated into the GMST on 1 November 2023 by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023* and insert fees for new Level E items (refer to **item 13**).

**Items 6 to 12** repeal Divisions 1.2 to 1.9 of Schedule 1, which contain items and provisions due to be incorporated into the GMST on 1 November 2023 by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023*.

**Item 13** repeals and replaces the table at Division 1.10 of Schedule 1 to:

- insert three new Level E (60+ minutes) items for after-hours general practice attendances;
- amend the item descriptors for three items (745, 769 and 789) to prescribe the maximum time for a service provided under the item;
- amend the item descriptors for all items in Subgroup 10 of Group A7 to replace references to “medical practitioner” with “prescribed medical practitioner”; and
- amend the fees for four items (733, 737, 741 and 745) to apply indexation.

**Items 14 to 15** repeal Divisions 1.11 to 1.14 of Schedule 1, which contains items and provisions due to be incorporated into the GMST on 1 November 2023 by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023*.

## Statement of Compatibility with Human Rights

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

### ***Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Amendment (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**

The purpose of the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Amendment (No. 2) Determination 2023* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Other Medical Practitioner) Determination 2018* (the Principal Determination) from 1 November 2023. The Amendment Determination will:

- repeal all items and provisions in the Principal Determination except items in Subgroup 10 of Group A7 and any related provisions;
- amend 12 items in Subgroup 10 of Group A7 to replace references to “medical practitioner” with “prescribed medical practitioner” in alignment with amendments to the General Medical Services Table (GMST);
- amend three items (745, 769 and 789) in Subgroup 10 of Group A7 to prescribe the maximum time for a service provided under the item;
- insert three new Level E (60+ minutes) items for after-hours general practice attendances in Subgroup 10 of Group A7; and
- apply an indexation factor of 0.5 per cent to the fees for listed items in Subgroup 10 of Group A7 of the Principal Determination, noting that these are not indexed in their own right but are instead calculated to reflect 80 per cent of the schedule fee for the equivalent GP item.

The Amendment Determination will commence immediately following the commencement of Schedule 5 of the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023*, which incorporates items currently in the Principal Determination (except for Subgroup 10 in Group A7 and any related provisions) into the GMST. These changes are administrative in nature; there are no changes to the policy intent, eligibility, or requirements of affected items.

The introduction of Level E consultations was a recommendation of the MBS Review Taskforce (the Taskforce) and supported by the Strengthening Medicare Taskforce. These new items and the inclusion of a maximum attendance time for items 745, 769 and 789 were announced as part of the *A Modern and Clinically Relevant Medicare Benefits Schedule* measure under the 2023-24 Budget.

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 Amendment Determination will increase the fees for relevant MBS items in the Principal Determination 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.

### **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 providing patients with continued access to services for after-hours general practice attendances. This instrument also advances these rights through the addition of new Level E items for after-hours general practice attendances, and fee increases in line with the Government's indexation policy. Patients will continue to have access to services repealed through the Amendment Determination, which will be incorporated into the GMST on

1 November 2023 by the *Health Insurance Legislation Amendment (2023 Measures No. 3) Regulations 2023*.

**Conclusion**

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

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