

EXPLANATORY STATEMENT

National Health Act 1953

National Health (Concession Card or Entitlement Card Fee) Amendment Determination 2023

PB 123 of 2023

Purpose and operation

The *National Health (Concession Card or Entitlement Card Fee) Amendment Determination 2023* (PB 123 of 2023) (the Amendment Determination) amends the *National Health (Concession Card or Entitlement Card Fee) Determination 2021* (PB 133 of 2021) (the Determination) to index the fee for issue of a safety net concession card or pharmaceutical benefits entitlement card (or an additional or replacement concession card or entitlement card).

The Determination commenced on 1 January 2022 and reflects annual adjustments to the safety net concession or entitlement card issue fee. This fee is indexed on 1 January of each year by the ratio of the Consumer Price Index (CPI) for the September quarter for the current year and the CPI for the September quarter for the previous calendar year.

This Amendment Determination increases the fee from \$11.42 to \$12.04. This increase takes effect on 1 January 2024.

Background

Part VII of the *National Health Act 1953* (the Act) regulates the Pharmaceutical Benefits Scheme (PBS), which provides for the supply of listed drugs and medicinal preparations as pharmaceutical benefits. The PBS allows the Commonwealth to subsidise medicines to make them more affordable for the benefit of all Australians. Eligible veterans are also entitled to access the Repatriation Pharmaceutical Benefits Scheme (RPBS), in accordance with the *Veterans' Entitlements Act 1986*. The RPBS allows access to all pharmaceutical items available to the general community under the PBS and also an additional list contained in the RPBS.

Division 1A of Part VII of the Act provides for a safety net scheme in relation to pharmaceutical benefits and repatriation pharmaceutical benefits. The safety net scheme is designed to provide financial protection for those patients and their families who require a large number of PBS or RPBS medicines.

At a patient's request, a pharmacist records the supply of PBS and RPBS medicines to that patient and the cost of the supply. When a patient reaches a certain spending level on PBS or RPBS medicines (the safety net threshold), that patient may be eligible for a safety net concession card or a pharmaceutical benefits entitlement card in respect of a relevant entitlement period. The issuing of such a card to a patient enables that patient to receive PBS or RPBS medicines at a reduced rate or free of charge for the remainder of the relevant entitlement period. The relevant entitlement period for the safety net scheme is a calendar year, that is, from 1 January to 31 December.

Subsection 84HA(1) of the Act provides that an approved pharmacist, an approved medical practitioner or an approved hospital authority who issues a safety net concession card or pharmaceutical benefits entitlement card (or an additional or replacement concession card or entitlement card) is entitled to be paid by the Commonwealth a fee determined by the Minister. Subsection 84HA(2) of the Act provides that the Minister must not determine a fee

unless the Pharmacy Guild of Australia (Guild) has agreed in writing to making of the determination. The Guild agreed in writing on 27 November 2023 to the Minister making this instrument.

The Determination, made under subsection 84HA(1) of the Act, determines the amount payable for the issuing of each safety net concession card, each pharmaceutical benefits entitlement card, and each additional or replacement card in relation to any of these cards.

Authority

Subsection 84HA(1) of the Act provides that an approved pharmacist, approved medical practitioner or approved hospital authority who issues a safety net concession card, a pharmaceutical benefits entitlement card, or an additional or replacement card in relation to any of these cards, is entitled to be paid by the Commonwealth, in respect of the issue of the card, the fee determined by the Minister.

Subsection 84HA(2) of the Act provides that a determination under subsection 84HA(1) can only be made where the Guild has agreed in writing to the making of that determination.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

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.

Commencement

The Amendment Determination commences on 1 January 2024.

Consultation

The Guild has been consulted, as required by subsection 84HA(2) of the Act, and has agreed in writing on 27 November 2023 to the fee increase from \$11.42 to \$12.04 under the Amendment Determination.

General

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

Details of the Amendment Determination are set out in **Attachment A**.

The Amendment Determination is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

Details of the National Health (Concession Card or Entitlement Card Fee) Amendment Determination 2023**Section 1 - Name**

Section 1 provides that the name of the instrument is the *National Health (Concession Card or Entitlement Card Fee) Amendment Determination 2023* (Amendment Determination), and that it may also be cited as PB 123 of 2023.

Section 2 – Commencement

Section 2 provides that the Amendment Determination commences on 1 January 2024.

Section 3 - Authority

Section 3 provides that the Amendment Determination is made under section 84HA of the *National Health Act 1953*.

Section 4 - Schedule

Section 4 provides that the *National Health (Concession Card or Entitlement Card Fee) Determination 2021* (PB 133 of 2021) is amended as set out in Schedule 1 of the Amendment Determination.

Schedule 1 - Amendments***National Health (Concession Card or Entitlement Card Fee) Determination 2021 (PB 133 of 2021)*****Item 1 – Subsection 6(1)**

Item 1 amends subsection 6(1) of the *National Health (Concession Card or Entitlement Card Fee) Determination 2021* to increase the fee from \$11.42 to \$12.04, which is paid by the Commonwealth to an approved pharmacist, approved medical practitioner or approved hospital authority who issues a safety net concession card, a pharmaceutical benefits entitlement card or an additional or replacement card in relation to any of those cards. The fee increase has been calculated according to the increase in the Consumer Price Index (CPI) for the September quarter of the 2023 calendar year compared to CPI for the September quarter of the 2022 calendar year. The fee increase takes effect from 1 January 2024.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011
National Health (Concession Card or Entitlement Card Fee) Amendment Determination
2023

PB 123 of 2023

This 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

This legislative instrument amends the *National Health (Concession Card or Entitlement Card Fee) Determination 2021* (PB 133 of 2021) to increase the fee payable by the Commonwealth to an approved pharmacist, an approved medical practitioner or an approved hospital authority for issuing a safety net concession card or pharmaceutical benefits entitlement card (or an additional or replacement concession card or entitlement card). This fee is indexed on 1 January of each year by the ratio of the Consumer Price Index (CPI) for the September quarter for the current year and the CPI for the September quarter for the previous calendar year. On this occasion, the fee is calculated to be \$12.04 and takes effect from 1 January 2024.

Division 1A of Part VII of the *National Health Act 1953* (the Act) provides for a “safety net scheme” in relation to pharmaceutical benefits and repatriation pharmaceutical benefits (as defined in subsection 84(1) of the Act). The safety net scheme is designed to provide financial protection of those patients and their families who require a large number of Pharmaceutical Benefits Scheme (PBS) or Repatriation Pharmaceutical Benefits Scheme (RPBS) medicines.

At the person’s request, a pharmacist records the supply of PBS and RPBS medicines to that person and the cost of the supply. When a person reaches a certain spending level on PBS or RPBS medicines (“the safety net threshold”), that person may be eligible for a safety net concession card or a pharmaceutical benefits entitlement card in respect of a relevant entitlement period. The issuing of such a card to a person enables that person to receive PBS or RPBS medicines at a reduced rate or free of charge for the remainder of the relevant entitlement period. The relevant entitlement period for the safety net scheme is a calendar year, that is, from 1 January to 31 December.

Human rights implications

This legislative instrument engages the following rights:

- the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- the right to the enjoyment of the highest attainable standard of physical and mental health under Article 12 of the ICESCR.

The safety net scheme is a social security measure which is designed to provide financial protection for patients and families who require a large number of PBS or RPBS medicines. The safety net scheme also promotes the right to the attainment of the highest standard of physical and mental health by providing patients with subsidised access to these medicines.

This legislative instrument supports the efficient operation of the safety net scheme by providing for payments to approved pharmacists, approved medical practitioners and approved hospital authorities who undertake tasks to support its administration.

Conclusion

This legislative instrument is compatible with human rights because it promotes the protection of human rights.

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