

EXPLANATORY STATEMENT

National Health Act 1953

National Health (Medication Program for Homeless People) Amendment Special Arrangement 2024

PB 73 of 2024

Purpose

The *National Health (Medication Program for Homeless People) Amendment Special Arrangement Instrument 2024* (Amendment Instrument) amends the *National Health (Medication Program for Homeless People) Special Arrangement 2021* (PB 73 of 2021) (Special Arrangement) to repeal the definition of ‘residential care recipient’, further clarify the definition of ‘homeless’, and repeal the transitional provisions under Part 4 of the Special Arrangement as the transitional provisions have already ceased on 30 September 2021 or are due to cease on 30 June 2024.

The amendments will ensure that only eligible patients who meet the required eligibility criteria (including for Primary and Secondary homelessness as contained in the Special Arrangement) have access to the Pharmaceutical Benefits Scheme (PBS) General Schedule medicines with no out-of-pocket expense.

Background

2019-2020 Reforms

The Medication Program for Homeless People, (previously known as the Continuing Medication Program (CMP)) assists homeless people who are unable to manage their own affairs to continue to access essential medicines where lack of medication could lead to undesirable medical or social consequences. The program covers the PBS concessional co-payment for eligible homeless people.

An internal review of the CMP was undertaken in 2019-20 by the Department of Health and Aged Care (Department) to assess the operation of the program. The review identified a number of issues with the operation of the CMP, including:

- The CMP is administratively burdensome for organisations, pharmacies and the Department as it uses a manual payment process;
- The administration of the CMP (through funding agreements with approved not-for-profit organisations) does not align with the current legislative and financial rules; and
- The manual payment process does not align with similar arrangements, e.g., the Closing the Gap (CTG) PBS Co-payment Measure, where the pharmacy is automatically reimbursed for the relevant PBS co-payment when claiming the PBS supply through PBS Online.

As part of the 2020-21 Budget, the Government agreed to a range of administrative changes to the CMP, including establishing a new legislative instrument for the “Medication Program for Homeless People” established under section 100 of the *National Health Act 1953* (the Act). Other enhancements to the program included updating operations and simplifying the claims process to reduce the burden for participating not-for-profit organisations and community pharmacies. As part of discussions during the reforms and the preparation of the legislative instrument, it was determined that transitional provisions would be required in the legislative instrument. One of the transitional provisions was to allow 14 not-for-profit organisations who were already participating in the CMP three months to apply to the Department and be individually assessed under the new Special Arrangement. This transitional provision under section 22 of the Special Arrangement listed those 14 organisations.

The second transitional provision under section 23 of the Special Arrangement provided a three-year transitional arrangement for specific eligible residential care recipients. This provision provided that a person is considered ‘homeless’ if they met certain criteria, including that they were a residential care recipient of an organisation mentioned in the first transitional provision.

Patient eligibility for the Program

The Government currently provides assistance to homeless people who are unable to manage their own affairs to continue to access PBS medicines through the Medication Program for Homeless People (Program) established under the Special Arrangement, where failing to receive their prescribed medication could lead to undesirable medical or social consequences.

The Special Arrangement benefits eligible homeless people who hold a concession card to receive their PBS General Schedule medicines with no out-of-pocket expense. An eligible patient is not charged a PBS co-payment when they receive a supply of a pharmaceutical benefit through the Special Arrangement. The co-payment amount that would have been paid without this Special Arrangement continues to count towards the patient’s PBS safety net threshold. The Program operates with the support of approved not-for-profit organisations who present eligible patient prescriptions and repeat authorisations to a nominated pharmacist, receive the pharmaceutical benefits and then provide them to the eligible patient.

Experiencing homelessness means not having stable, safe and adequate housing, nor the means and ability of obtaining it. However, there is no clear definition of ‘homelessness’, as different definitions may be used depending on the purpose for which it is being defined. Some definitions also encompass people who are ‘at risk’ of becoming homeless.

Under the Special Arrangement, the definition of homelessness is based on the primary and secondary definition of homelessness from a paper titled “*Understanding Contemporary Homelessness: Issues of Definition and Meaning*” published in the Australian Journal of Social Issues Vol.27 No. 4, November 1992 by Chamberlain and MacKenzie, as this best reflects the policy intent of the Program. Although Chamberlain and MacKenzie’s definition of homelessness includes three categories, (primary, secondary and tertiary homelessness) in recognition of the diversity of homelessness, under the Program, only the primary and

secondary definitions are used. A person is defined as ‘homeless’ under the Special Arrangement if they meet one of the following definitions:

- **Primary homelessness:** *People without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter.*
- **Secondary homelessness:** *People who move frequently from one form of temporary shelter to another. It covers; people using emergency accommodation (such as hostels for the homeless or night shelters); teenagers staying in youth refuges; women and children escaping domestic violence (staying in women’s refuges).*

For the purposes of the Special Arrangement, a person is not **homeless** if the person is a care recipient of residential care within the meaning of the *Aged Care Act 1997*.

Approval of organisations to participate in the Program

The Special Arrangement sets out the eligibility requirements for an organisation applying to the Secretary of the Department to be approved to participate in the Program.

At an applicant’s request, the internal merits review supports a process by which the Department can reconsider an application, thus ensuring procedural fairness and accountability.

Authority

Subsection 100(1) of the Act enables the Minister to make special arrangements for, or in relation to, providing that an adequate supply of pharmaceutical benefits will be available to certain persons.

Subsection 100(2) of the Act provides that the Minister may vary or revoke an arrangement made under subsection 100(1) of the Act. Subsection 100(3) of the Act provides that Part 4 of the Act, and instruments made for the purposes of Part 4, have effect, subject to a special arrangement made under subsection 100(1).

Commencement

The Amendment Instrument commences on 1 July 2024.

Consultation

As part of the 2019-2020 internal review, targeted consultation was undertaken with the 14 not-for-profit organisations who were providing services and care to homeless people under the then CMP prior to the reforms which commenced on 1 July 2021 and formed the current Program. These organisations were kept informed at various stages of the process. The Department wrote to all participating not-for-profit organisations to inform them of the reforms to the Program and provided them with the opportunity to comment on the proposed changes, the draft guidelines and form of application required under the Program. The

majority of these organisations were satisfied with the proposed changes to streamline the CMP, saving them time and resources.

One organisation raised a matter regarding the eligibility of current care recipients in residential aged care. This matter was addressed through the transitional provision under section 23 of the Special Arrangement. The Department has consulted with this organisation about the transitional provisions in sections 22 and 23 of the Special Arrangement ceasing on 30 June 2024 and they had no comment.

The Department has not undertaken further consultation with the participating not-for-profit organisations in relation to these amendments due to the administrative nature of these amendments.

General

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

Details of this Amendment Instrument are set out in **Attachment A**.

This Amendment Instrument 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 (Medication Program for Homeless People) Amendment Special Arrangement 2024*

Section 1 – Name

Section 1 provides that the name of the Instrument is the *National Health (Medication Program for Homeless People) Amendment Special Arrangement 2024* (the Amendment Instrument) and that it may also be cited as PB 73 of 2024.

Section 2 – Commencement

Section 2 provides that the Amendment Instrument commences on 1 July 2024.

Section 3 – Authority

Section 3 provides that the Amendment Instrument is made under subsection 100(2) of the *National Health Act 1953*.

Section 4 – Schedule

Section 4 provides that each instrument that is specified in a Schedule to the Amendment 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 Amendment Instrument has effect according to its terms.

Schedule 1 – Amendments

Item 1 repeals the definition of ‘residential care recipient’. Repealing this definition will not substantially affect the intended operation of the Amendment Instrument.

Item 2 repeals and substitutes subsection 6(2) of the Special Arrangement to further clarify the definition of ‘homeless’. Namely, a person is not ‘homeless’ under the Special Arrangement if the person is a care recipient of residential care within the meaning of the *Aged Care Act 1997*. This will help ensure that this provision is read in isolation and will not disrupt contrary provisions within other legislation, such as the homeless supplement provisions within the *Subsidy Principles 2014*.

Item 3 repeals the transitional arrangements provided under Part 4 of the Special Arrangement. Sections 22 and 23 are the only provisions in Part 4 of the Special Arrangement and were initially included to assist approved not-for-profit organisations transition to the new arrangements following the reforms to the Program. Section 22 provides for transitional arrangements for a list of 14 not-for-profit organisations who were already approved to participate in the Program on the commencement date of the Special Arrangement, being 1 July 2021. Section 23 provides a three-year transitional arrangement for specific eligible residential care recipients and will cease on 30 June 2024. Subsection 23(2) of the Special Arrangement provides that a person is considered ‘homeless’ if they met

specified criteria, including that the person was a residential care recipient of an organisation mentioned in section 22 of the Special Arrangement.

While the transitional arrangements under section 22 were intended to automatically repeal at the end of 30 September 2021, as section 22 was still required to give effect to the transitional arrangements under section 23 of the Special Arrangement, both provisions are now being repealed through this Amendment Instrument to align with the ceased operation of section 23 at the end of 30 June 2024.

Statement of Compatibility with Human Rights

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

National Health (Medication Program for Homeless People) Amendment Special Arrangement 2024

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 Disallowable Legislative Instrument

The *National Health (Medication Program for Homeless People) Amendment Special Arrangement Instrument 2024* (Amendment Instrument) amends the *National Health (Medication Program for Homeless People) Special Arrangement 2021* (PB 73 of 2021) (Special Arrangement) to repeal the definition of ‘residential care recipient’, further clarify the definition of ‘homeless’ under subsection 6(2) and repeal the transitional provisions under Part 4, being sections 22 and 23 of the Special Arrangement.

The Special Arrangement is made under subsection 100(1) of the *National Health Act 1953* to support the Medication Program for Homeless People (Program). The Program assists homeless people who are unable to manage their own affairs to continue to access essential Pharmaceutical Benefit Scheme (PBS) medicines where lack of medication is likely to lead to undesirable medical or social consequences.

The Amendment Instrument will ensure that only those patients who meet the eligibility criteria contained in the Special Arrangement can access PBS General Schedule medicines with no out-of-pocket expenses. Those not-for-profit organisations who have already been approved by the Department of Health and Aged Care (Department) to participate in the Program can continue to do so. Any new not-for-profit organisations can apply to the Department to participate in the Program. The eligible patient is not charged a PBS co-payment when they receive a supply of a pharmaceutical benefit through the Special Arrangement. The co-payment amount that would have been paid without the Special Arrangement continues to count towards the eligible patient’s PBS safety net threshold. The Program operates with the support of approved not-for-profit organisations who present eligible patient prescriptions and repeat authorisations to a nominated pharmacist, receive the pharmaceutical benefits and then provide them to the eligible patient.

Human Rights Implications

This Amendment Instrument engages Articles 9 and 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the rights to social security and 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 United Nations Committee on Economic Social and Cultural Rights (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 Amendment Instrument does not aim to deny benefits to persons or groups previously entitled to them, but rather aims at clarifying the criteria of persons who are eligible to receive such benefits.

The Right to Health

The right to the enjoyment of the highest attainable standard of physical and mental health is contained in Article 12 of the ICESCR. 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.

This Amendment Instrument assists with the advancement of the human rights contained in Article 9 and 12 of the ICESCR by providing for PBS subsidised access to medicines, free of charge to eligible homeless people. This Amendment Instrument ensures more ready and equitable access to PBS medicines for eligible homeless people by ensuring that only eligible patients who meet the required eligibility criteria have access to PBS medicines with no out-of-pocket expense.

Conclusion

This Amendment Instrument is compatible with human rights as it promotes the protection of human rights.

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