

EXPLANATORY STATEMENT

National Health Act 1953

National Health Legislation Amendment (2024 Measures No. 1) Repeal Instrument 2024

Authority

This instrument is made under subsection 84(1) of the *National Health Act 1953* (the NH Act) for the purposes the definition of ‘authorised nurse practitioner’ (which deals with eligible nurse practitioners providing nurse practitioner treatment in collaborative arrangements with medical practitioners) and ‘authorised midwife’ (which deals with eligible midwives providing midwifery treatment in collaborative arrangements with medical practitioners).

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 *National Health Legislation Amendment (2024 Measures No. 1) Repeal Instrument 2024* (the Repeal Instrument) is to repeal the *National Health (Collaborative Arrangements for Midwives) Instrument 2022* (the Midwives Instrument) and the *National Health (Collaborative Arrangements for Nurse Practitioners) Instrument 2022* (the Nurse Practitioners Instrument).

From 1 November 2024, the *Health Legislation Amendment (Removal of Requirement for a Collaborative Arrangement) Act 2024* (the Amendment Act) will amend the *Health Insurance Act 1973* (HI Act) and the NH Act to remove the requirement for midwives and nurse practitioners to practice under collaborative arrangements with a medical practitioner. The changes will allow midwives and nurse practitioners to prescribe certain medicines under the Pharmaceutical Benefits Scheme without the need for a collaborative arrangement with a medical practitioner.

Currently, subsection 84(1) of the NH Act defines:

- ‘authorised midwife’ as an ‘eligible midwife’ in relation to whom an approval is in force under subsection 84AAF(2) of the NH Act, so far as the eligible midwife provides midwifery treatment in a collaborative arrangement of a kind or kinds specified in a legislative instrument made by the Minister for the purposes of the definition, with one or more medical practitioners of a kind or kinds specified in the legislative instrument; and
- ‘authorised nurse practitioner’ as an ‘eligible nurse practitioner’ in relation to whom an approval is in force under subsection 84AAJ(2) of the NH Act, so far as the eligible nurse practitioner provides nurse practitioner treatment in a collaborative arrangement of a kind or kinds specified in a legislative instrument made by the Minister for the purposes of the definition, with one or more medical practitioners of a kind or kinds specified in the legislative instrument.

The Midwives Instrument and the Nurse Practitioners Instrument specify the kinds of medical practitioners and collaborative arrangements for the purposes of defining an ‘authorised midwife’ and ‘authorised nurse practitioner’ respectively under subsection 84(1) of the NH Act. From 1 November 2024, the Amendment Act will amend subsection 84(1) of the NH Act to remove the legislative requirement for collaborative arrangements under the definitions for ‘authorised midwife’ and ‘authorised nurse practitioner’. Accordingly, the Repeal Instrument will repeal the Midwives Instrument and Nurse Practitioners Instrument on 1 November 2024 as these instruments will no longer be required for the purposes of the definitions of ‘authorised midwife’ and ‘authorised nurse practitioner’ under the NH Act.

The removal of collaborative arrangements for midwives and nurse practitioners was announced in the 2023-24 Budget under the *Strengthening Medicare* measure.

Consultation

Consultation on the Amendment Act was undertaken with stakeholders, including the Australian Medical Association, Australian College of Nurse Practitioners, Australian College of Midwives and Royal Australian College of General Practitioners, through the Independent Review of Collaborative Arrangements and Nurse Practitioner Workforce Plan.

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

The Repeal Instrument commences on 1 November 2024.

Details of the Repeal Instrument are set out in [Attachment A](#)

Authority: Subsection 84(1) of the
National Health Act 1953

Details of the *National Health Legislation Amendment (2024 Measures No. 1) Repeal Instrument 2024*

Section 1 – Name

Section 1 provides that the name of the instrument is the *National Health Legislation Amendment (2024 Measures No. 1) Repeal Instrument 2024*.

Section 2 – Commencement

Section 2 provides for the Instrument to commence on 1 November 2024.

Section 3 – Authority

Section 3 provides that the Instrument is made under subsection 84(1) of the *National Health Act 1953*.

Section 4 – Schedules

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

Schedule 1 – Repeals

Items 1 and 2 of Schedule 1 repeal the *National Health (Collaborative Arrangements for Nurse Practitioners) Instrument 2022* and the *National Health (Collaborative Arrangements for Midwives) Instrument 2022*.

The repeal of these instruments is consequential in nature following amendments to the *National Health Act 1953* by the *Health Legislation Amendment (Removal of Requirement for a Collaborative Arrangement) Act 2024* to remove the legislative requirement for midwives and nurse practitioners to practice under collaborative arrangements with a medical practitioner to prescribe certain medicines under the Pharmaceutical Benefits Scheme.

Statement of Compatibility with Human Rights

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

*National Health Legislation Amendment (2024 Measures No. 1) Repeal Instrument
2024*

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 legislative instrument

The purpose of the *National Health Legislation Amendment (2024 Measures No. 1) Repeal Instrument 2024* (the Repeal Instrument) is to repeal the *National Health (Collaborative Arrangements for Midwives) Instrument 2022* (the Midwives Instrument) and the *National Health (Collaborative Arrangements for Nurse Practitioners) Instrument 2022* (the Nurse Practitioners Instrument).

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- ‘authorised nurse practitioner’ as an ‘eligible nurse practitioner’ in relation to whom an approval is in force under subsection 84AAJ(2) of the NH Act, so far as the eligible nurse practitioner provides nurse practitioner treatment in a collaborative arrangement of a kind or kinds specified in a legislative instrument made by the Minister for the purposes of the definition, with one or more medical practitioners of a kind or kinds specified in the legislative instrument.

The Midwives Instrument and the Nurse Practitioners Instrument specify the kinds of medical practitioners and collaborative arrangements for the purposes of defining an ‘authorised midwife’ and ‘authorised nurse practitioner’ respectively under subsection 84(1) of the NH Act. From 1 November 2024, the Amendment Act will amend subsection 84(1) of the NH Act to remove the legislative requirement for collaborative arrangements under the definitions for ‘authorised midwife’ and ‘authorised nurse practitioner’. Accordingly, the Repeal Instrument will repeal the Midwives Instrument and Nurse Practitioners Instrument on 1 November 2024 as these instruments will no longer be required for the purposes of the definitions of ‘authorised midwife’ and ‘authorised nurse practitioner’ under the NH Act.

The removal of collaborative arrangements for midwives and nurse practitioners was announced in the 2023-24 Budget under the *Strengthening Medicare* measure.

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 does not affect the rights to health and social security and the right of equality and non-discrimination. This is an administrative change following the removal of the legislative requirement for midwives and nurse practitioners to practice under collaborative arrangements with a medical practitioner and there is no change to arrangements for patients.

Conclusion

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

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