

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation (MRCA Pharmaceutical Benefits Scheme) Amendment (Additional Community Supply Support Payment) Determination 2024

EMPOWERING PROVISION

The Military Rehabilitation and Compensation Commission makes this instrument under subsection 286(5) of the *Military Rehabilitation and Compensation Act 2004* (the **MRCA**).

PURPOSE

This instrument amends the *MRCA Pharmaceutical Benefits Scheme* (the **MRCA PBS**).

OVERVIEW

Veterans access subsidised pharmaceuticals under the MRCA through the MRCA PBS and the *MRCA Treatment Principles* (the **MRCA TP**). The MRCA PBS provides veterans with subsidised access to medicines on the Pharmaceutical Benefits Schedule (the **PBS**), and a broader range of listed and unlisted pharmaceuticals. The MRCA PBS-only listed and unlisted items are available to veterans who have a Department of Veterans' Affairs (**DVA**) health care card. All medicines supplied under the MRCA PBS are dispensed at the concessional rate (or free if the patient has reached their Safety Net threshold).

The amount and application of the fees paid to pharmacists for community pharmacy services, including the dispensing of prescriptions under the PBS and MRCA PBS, are outlined in the 8th Community Pharmacy Agreement (**8CPA**) between the Commonwealth and the Pharmacy Guild of Australia (the **Guild**). That agreement came into effect on 1 July 2024.

Under the 8CPA, a new Additional Community Supply Support (**ACSS**) payment will be paid to pharmacists under both the PBS and the MRCA PBS. The changes to the *National Health Act 1953 (NH Act)* made by Schedule 1 of the *National Health Amendment (Supporting Patient Access to Cheaper Medicines and Other Measures) Act 2024* will allow pharmacists to access the new ACSS payments under the PBS. Under new paragraph 98B(1)(b) of the NH Act, the Pharmaceutical Benefits Remuneration Tribunal has made the *National Health (Additional Community Supply Support Payment) Determination 2024* (the **NH Act Instrument**), which determined:

- which kinds of supplies by approved pharmacists of pharmaceutical benefits (if any) are ACSS eligible supplies; and
- the amount of the ACSS payment for ACSS eligible supplies, or the manner in which that amount is worked out.

These NH Act provisions, and the NH Act instrument, do not automatically flow on to MRCA PBS listed and unlisted items.

This instrument amends the MRCA PBS to mirror the NH Act instrument, so that the MRCA PBS includes the ACSS payment for eligible supplies of pharmaceutical benefits made by approved pharmacists from 1 April 2024 under the MRCA PBS, or (for a prescription written by a dentist) under Part 5.7 of the MRCA TP. The ACSS payment will be paid to approved pharmacists in addition to the existing fees paid to pharmacists for the dispensing of pharmaceuticals.

This will provide the necessary level of support to community pharmacies for the dispensing of PBS medicines to veterans and ensure continued access to these medicines for veterans without impacting the costs to patients. This reduces veterans' disadvantage compared to the non-veteran population.

ACSS payments will initially be made on a quarterly basis. Where approved pharmacists have already submitted claims to Services Australia in respect of pharmaceutical benefits made on or after 1 April 2024, but before this instrument commences, those claims will be taken to also include a claim for the ACSS payment.

EXPLANATION OF PROVISIONS

Section 1 states the name of the instrument.

Section 2 provides that the instrument commences at the same time as the commencement of the instrument made under paragraph 98B(1)(b) of the NH Act. This timing is to ensure that pharmacists are paid the same rate whether they dispense medication to a veteran health care card holder or a non-veteran.

Section 3 sets out the authority for the Military Rehabilitation and Compensation Commission making the instrument, namely subsection 286(5) of the MRCA.

Section 4 is a standard provision used in instruments that amend or repeal other instruments. It gives effect to Schedule 1.

Schedule 1—Amendments

At the end of part 5

This item inserts new section 32A Additional community supply support payment.

Section 32A sets the requirements for approved pharmacists to claim the ACSS payment. It mirrors the instrument made under paragraph 98B(1)(b) of NH Act.

Subsection 32A(1) sets out the definition of new terms used in section 32A, mirroring subsection 4(1) of the NH Act instrument. The terms ‘increased maximum quantity’, ‘increased maximum quantity prescription’, ‘relevant purpose’ and ‘Schedule equivalent’ are used to determine whether the additional ACSS amount is payable under subsections 32A(3), (4) and (5).

Subsection 32A(2) entitles pharmacists to an ACSS payment for supply of a pharmaceutical benefit from April 2024 under the MRCA PBS, or (for a prescription written by a dentist) under Part 5.7 of the MRCA TP. Supplies of benefits listed under section 100 of the NH Act are excluded, mirroring section 5 of the NH Act instrument.

Subsections 32A(3), (4) and (5) sets the amount of the ACSS payment, mirroring section 6 of the NH Act instrument. The new ACSS payment will have two components:

- an amount (\$0.78) for all general PBS supplies (ie those made under section 85 of the NH Act);
- an additional amount (\$4.79) for all general PBS supplies where the supply is made on the basis of an increased maximum quantity prescription. These are generally supplies made where the prescription allows for 60 days/2 months’ supply of pharmaceutical benefits to be dispensed without needing a repeat prescription. These increased quantity supplies are still standard supplies of PBS pharmaceutical benefits, but can only be made if the treated condition is stable.

Consultation

This instrument ensures that the new ACSS, which applies to prescriptions provided under the PBS, also flows through to prescriptions provided under the MRCA PBS and MRCA TP. This ensures consistency for community pharmacists who dispense prescriptions to the general community under the PBS, and to veterans under the MRCA PBS and MRCA TP.

The ACSS payment was negotiated as part of the 8CPA. In developing the 8CPA, the Department of Health and Aged Care (*Health*) undertook extensive consultations with community pharmacy owners, pharmacist organisations, rural pharmacy organisations, wholesalers, consumer organisations and medical professional organisations. Given the extensive consultation by Health, the instrument’s purpose to provide consistency for community pharmacists, and its alignment between the PBS and MRCA PBS, further consultation was considered unnecessary. DVA has consulted with Health about implementation.

Human rights implications

This 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 A**.

Making the instrument

Subsection 286(6A) of the MRCA provides that this instrument is a legislative instrument made by the Minister for Veterans' Affairs after the Military Rehabilitation and Compensation Commission makes the determination forming the instrument.

Attachment A

Statement of Compatibility with Human Rights

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

Military Rehabilitation and Compensation (MRCA Pharmaceutical Benefits Scheme) Amendment (Additional Community Supply Support Payment) Determination 2024

This Disallowable 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* (the **recognised rights**).

Overview of the Disallowable Legislative Instrument

The *Military Rehabilitation and Compensation (MRCA Pharmaceutical Benefits Scheme) Amendment (Additional Community Supply Support Payment) Determination 2024* (the **Instrument**) amends the *MRCA Pharmaceutical Benefits Scheme* (the **Principal Instrument**).

Veterans access subsidised pharmaceuticals under the MRCA through the MRCA PBS and the *MRCA Treatment Principles* (the **MRCA TP**). The MRCA PBS provides veterans with subsidised access to medicines on the Pharmaceutical Benefits Schedule (the **PBS**), and a broader range of listed and unlisted pharmaceuticals. The MRCA PBS-only listed and unlisted items are available to veterans who have a Department of Veterans' Affairs (**DVA**) health care card. All medicines supplied under the MRCA PBS are dispensed at the concessional rate (or free if the patient has reached their Safety Net threshold).

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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 social security

The right to social security is contained in Article 9 of the International Covenant on Economic Social and Cultural Rights (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 UN 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 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 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 realization of the highest attainable standard of health.

Analysis

This Instrument promotes the right to health and the right to social security by increasing the fees paid to pharmacists for dispensing pharmaceuticals, to ensure that veterans continue to receive equal levels of pharmaceuticals as the general population. This is to ensure that DVA’s Instruments mirror any changes made by the Department of Health and Aged Care in the *National Health Act 1953*. If amendments to the MRCA PBS are not made, the ACSS payment will not be able to be paid to pharmacists as part of the dispensed price for dispensing pharmaceuticals to veterans. Without these amendments, pharmacists may decline to dispense pharmaceuticals to DVA clients, potentially leaving them without access to necessary medications.

Conclusion

The legislative instrument is compatible with human rights as it advances the rights to health and social security.

Minister for Veterans’ Affairs
Rule-Maker