

# EXPLANATORY STATEMENT

*National Health Act 1953*

## ***National Health (Closing the Gap – PBS Co-payment Program) Amendment (ACSS Eligible Supplies) Special Arrangement 2024***

***PB 123 of 2024***

### **Purpose**

The *National Health (Closing the Gap – PBS Co-payment Program) Amendment (ACSS Eligible Supplies) Special Arrangement 2024* (Amending Instrument) makes minor amendments to the *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2016* (CTG Special Arrangement) to clarify that approved pharmacists who make eligible supplies of pharmaceutical benefits under the CTG Special Arrangement may also be entitled to the Additional Community Supply Support (ACSS) payment.

### **Background**

#### *CTG Special Arrangement*

The CTG Special Arrangement supports affordable access to PBS medicines for eligible First Nations people and continues to benefit First Nations people who, in the opinion of their PBS prescriber or First Nations health practitioner:

- would experience setbacks in the prevention or ongoing management of a medical condition if the patient did not adhere to a course of treatment (involving a pharmaceutical benefit) for that medical condition; and
- is unlikely to adhere to the course of treatment without assistance under the CTG Special Arrangement.

The CTG Special Arrangement provides for a reduction of the usual PBS patient co-payment for First Nations people registered for the CTG PBS Co-payment Program. Those patients who would normally pay the general rate will receive their PBS medicines at the concessional rate and concessional patients will receive their PBS medicines without making a patient co-payment. For a small number of PBS medicines, mandatory brand price premiums, which are special patient contributions, may still need to be paid by the patient. The amount of the PBS patient co-payment is indexed annually under the Act and is published on the Department of Health and Aged Care's PBS website at [www.pbs.gov.au](http://www.pbs.gov.au).

#### *ACSS Payment*

In July 2024, the *National Health Act 1953* (Act) was amended to give effect to the agreement between the Minister for Health and Aged Care (on behalf of the Commonwealth) and the Pharmacy Guild of Australia (Guild) made under the Eighth Community Pharmacy Agreement (8CPA) to introduce a new ACSS payment for eligible supplies made by approved pharmacists. New section 99AAAA of the Act establishes approved pharmacists' entitlement to ACSS payments.

The 8CPA took effect on 1 July 2024 and will remain in effect until 30 June 2029. A copy of the 8CPA can be found on the Department of Health and Aged Care's website at: <https://www.health.gov.au/resources/publications/eighth-community-pharmacy-agreement>.

Supplies eligible for the ACSS payment and the amount of the payment are determined in the *National Health (Additional Community Supply Support Payment) Determination 2024*.

The *National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Amendment (ACSS Eligible Supplies) Rules 2024* makes amendments to

the *National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Rules 2022* to support arrangements for the processing and determination of claims by approved pharmacists for payment of the new ACSS payment.

### **Authority**

This Amending Instrument is made under subsection 100(2) of the Act.

### **Consultation**

Consultation was not required for the amendments made by this Amending Instrument.

### **Commencement**

This Amending Instrument commences on the day after it is registered.

### **General**

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

Details of this Amending Instrument are outlined in **Attachment A**.

This Amending 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 (Closing the Gap – PBS Co-payment Program) Amendment (ACSS Eligible Supplies) Special Arrangement 2024***

**Section 1 – Name**

Section 1 provides that the name of the instrument is the *National Health (Closing the Gap – PBS Co-payment Program) Amendment (ACSS Eligible Supplies) Special Arrangement 2024* (Amending Instrument), which may also be cited as PB 123 of 2024.

**Section 2 – Commencement**

Section 2 provides that the Amending Instrument commences on the day after it is registered.

**Section 3 – Authority**

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

**Section 4 – Schedules**

Section 4 provides that each instrument specified in a Schedule to the Amending Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in that Schedule has effect according to its terms. The Schedule amends the *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2016* (CTG Special Arrangement).

**Schedule 1—Amendments**

**Item 1 – Section 4 (note at the end)**

Item 1 inserts the expressions *ACSS eligible supply* and *ACSS payment* in the note at the end of section 4 of the CTG Special Arrangement. The note provides that expressions used in the CTG Special Arrangement that are defined for the Act have the same meaning as they have in the Act.

**Item 2 – Section 13 (at the end of the heading)**

**Item 3 – At the end of section 13**

Items 2 and 3 amend section 13 of the CTG Special Arrangement.

Subsection 13(1) provides that section 99 of the Act applies, but with the modifications set out in section 13. Section 99 of the Act deals with an approved supplier's entitlement to payment by the Commonwealth for the supply of pharmaceutical benefits. Payments made under section 99 of the Act are based on the 'Commonwealth price' of the pharmaceutical benefit supplied. The new ACSS payment is made under section 99AAAA of the Act.

Item 2 adds "**under section 99 of the Act —modification**" to the end of the heading to section 13 to make clear to readers that section 13 only relates to payments under section 99 of the Act and does not limit an approved supplier's ability to receive payments under other sections of the Act for supplies made under the CTG Special Arrangement. This assists to clarify that approved pharmacists who make ACSS eligible supplies under the CTG Special Arrangement may also be entitled to ACSS payments under section 99AAAA of the Act.

Item 3 adds a note at the end of section 13 to inform readers that approved pharmacists who make ACSS eligible supplies under the CTG Special Arrangement may also be entitled to ACSS payments under section 99AAAA of the Act.

## Statement of Compatibility with Human Rights

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

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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**

The *National Health (Closing the Gap – PBS Co-payment Program) Amendment (ACSS Eligible Supplies) Special Arrangement 2024* (Amending Instrument) makes minor amendments to the *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2016* (CTG Special Arrangement) to clarify that approved pharmacists who make eligible supplies of pharmaceutical benefits under the CTG Special Arrangement may also be entitled to the Additional Community Supply Support (ACSS) payment.

In July 2024, the *National Health Act 1953* (Act) was amended to give effect to the agreement between the Minister for Health and Aged Care (on behalf of the Commonwealth) and the Pharmacy Guild of Australia (Guild) made under the Eighth Community Pharmacy Agreement (8CPA) to introduce the new ACSS payment for eligible supplies made by approved pharmacists. New section 99AAAA of the Act establishes approved pharmacists' entitlement to ACSS payments.

The 8CPA took effect on 1 July 2024 and will remain in effect until 30 June 2029. A copy of the 8CPA can be found on the Department of Health and Aged Care's website at: <https://www.health.gov.au/resources/publications/eighth-community-pharmacy-agreement>.

The *National Health (Additional Community Supply Support Payment) Determination 2024*, which commenced in October 2024, determines supplies eligible for the new ACSS payment and the amount of the payment, giving effect to the agreement in the 8CPA.

The *National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Amendment (ACSS Eligible Supplies) Rules 2024*, which similarly commenced in October 2024, makes amendments to the *National Health (Supply of Pharmaceutical Benefits—Under Co-payment Data and Claims for Payment) Rules 2022* to support arrangements for the processing and determination of claims by approved pharmacists for payment of the new ACSS payment.

#### **Human rights implications**

This Amending Instrument engages Articles 2, 7, 9, and 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). It supports the rights to health and social security and assisting in realisation of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. It also supports the right to just and favourable conditions at work, specifically to fair wages.

The Pharmaceutical Benefits Scheme (PBS) established under Part VII of the Act assists with the advancement of the rights to health and social security by providing Commonwealth subsidised access to necessary and cost-effective medicines for Australians.

The new ACSS payment will positively affect an individual's rights to health, social security, and favourable conditions of work by supporting the continued supply of Commonwealth subsidised pharmaceutical benefits by approved pharmacists. This will further support patient access to PBS medicines through community pharmacies and will provide a means through which the Commonwealth is able to provide the necessary level of financial support to community pharmacies for the dispensing of PBS medicines, without increasing the costs of medicines for patients.

This Amending Instrument makes clear that approved pharmacists who make ACSS eligible supplies under the CTG Special Arrangement may also be entitled to ACSS payments under section 99AAAA of the Act.

This Amending Instrument does not affect patient entitlement to the subsidised supply of pharmaceutical benefits under the PBS. This includes in relation to which pharmaceutical benefits may be supplied to the patient under the PBS, the amount a patient may be required to pay for a PBS supply and the amount of patient co-payment that will count towards their PBS safety-net.

### **Conclusion**

This legislative instrument is compatible with human rights because it promotes the protection of human rights to health and social security, and favourable conditions of work as outlined above.

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