EXPLANATORY STATEMENT

National Health Act 1953

National Health (Pharmaceutical Benefits) (Application to Supply Pharmaceutical Benefits Following the Death of an Approved Pharmacist – Documentary Evidence) Determination 2025

Purpose and operation

The *National Health (Pharmaceutical Benefits) (Application to Supply Pharmaceutical Benefits Following the Death of an Approved Pharmacist – Documentary Evidence) Determination 2025* revokes and remakes the *National Health (Pharmaceutical Benefits (Application to supply pharmaceutical benefits following the death of an approved pharmacist – documentary evidence) 2015* to ensure the continuation of existing administrative arrangements beyond the current sunset date of 1 April 2025.

This instrument sets out evidence that must accompany an application to continue to operate a pharmacy business which is approved to supply Pharmaceutical Benefits Scheme (PBS) medicines, following the death of the approved pharmacist. Specifically, it relates to the identity of the applicant and the nature of their claim and will enable the Secretary to decide whether the applicant is, or is likely to become, the executor or the administrator of the deceased approved pharmacist's estate.

Background

Section 90 of the *National Health Act 1953* (Act) provides for the Secretary to approve a pharmacist to supply PBS medicines at particular premises. Section 91 of the Act provides for the circumstances in which an application may be made to continue the supply of pharmaceutical benefits upon the death of an approved pharmacist. Section 91 of the Act enables a person who is, or is likely to become, an executor or administrator of the estate of a deceased approved pharmacist, to apply for permission to supply PBS medicines at or from the premises in respect of which the deceased pharmacist had been approved. Such an application must be accompanied by documentary evidence, as determined by the Secretary under subsection 91(2)(c) of the Act.

Authority

Subsection 91(2)(c) of the Act provides that an application to supply pharmaceutical benefits following the death of an approved pharmacist must be accompanied by documentary evidence of a kind determined by the Secretary relating to the identity of the applicant and the nature of their claim to be a person eligible to make such an application. Subsection 91(3) provides the kinds of documentary evidence may be determined by the Secretary by legislative instrument.

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

Subsection 33(3) of the *Acts Interpretation Act 1901* 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.

Commencement

This instrument commences the day after registration on the Federal Register of Legislation.

Consultation

Consultation was undertaken with the Pharmacy Guild of Australia and the Pharmaceutical Society of Australia (peak bodies representing pharmacy owners and registered pharmacists respectively) and the Pharmacy Premises Registration Authorities of Australia, the state and territory bodies responsible for licensing of pharmacists under jurisdictional legislation to operate pharmacies at specific locations.

These bodies were advised by letter of the intention to remake the *National Health (Pharmaceutical Benefits) (Application to supply pharmaceutical benefits following the death of an approved pharmacist – documentary evidence) 2015* with no substantial changes as it was believed to continue to be fit for purpose. Comments and questions were invited, along with an opportunity to discuss the proposal in more detail if required at a meeting they were all scheduled to attend in February 2025.

Responses were received from the Pharmacy Guild of Australia, the Pharmaceutical Society of Australia and some members of the Pharmacy Premises Registration Authorities of Australia. All advised that they had no concerns with the proposal to remake the determination.

General

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

Details of this instrument are set out in **Attachment A**.

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 B**.

ATTACHMENT A

Details of the *National Health (Pharmaceutical Benefits) (Application to Supply Pharmaceutical Benefits Following the Death of an Approved Pharmacist – Documentary Evidence) Determination 2025*

Part 1—Preliminary

Section 1 – Name

Section 1 provides that the name of the instrument is the *National Health (Pharmaceutical Benefits) (Application to Supply Pharmaceutical Benefits Following the Death of an Approved Pharmacist – Documentary Evidence) Determination 2025.*

Section 2 – Commencement

Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the instrument is made under subsection 91(3) 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.

Part 2— Documentary Evidence

Section 5 – Definitions

Section 5 provides that where the term 'approved pharmacist' is used, it has the same meaning as defined in section 84 of the Act. Section 5 also contains definitions of other words and phrases used throughout the instrument.

Section 6 – Documentary evidence

Section 6 sets out the types of documents that are necessary to support an application under section 91 of the Act. This includes:

- documents providing evidence that the applicant is named as the executor or administrator of the estate of the deceased approved pharmacist; and documents to prove their identity as that named person;
- the death certificate of the deceased approved pharmacist;
- a full copy of the deceased approved pharmacist's will (if they died testate), to demonstrate that the applicant is eligible to make the application, and there are no other persons mentioned elsewhere in the will that may have a claim to be executor or administrator of the deceased estate;

- a Commonwealth statutory declaration that the will is the last will and testament of the deceased approved pharmacist, to satisfy the Secretary that no other person is likely to claim to be the executor or administrator of the deceased estate;
- where there is no will, evidence that the applicant has either applied for letters of administration, or intends to do so. This is to satisfy the Secretary that the applicant is eligible to submit the application, and that no other person is likely to claim to be eligible.

Schedule 1 -Repeals

Item 1 repeals the *National Health (Pharmaceutical Benefits (Application to supply pharmaceutical benefits following the death of an approved pharmacist – documentary evidence) Determination 2015.*

ATTACHMENT B

Statement of Compatibility with Human Rights

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

National Health (Pharmaceutical Benefits) (Application to Supply Pharmaceutical Benefits Following the Death of an Approved Pharmacist – Documentary Evidence) Determination 2025

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*.

Overview of the Disallowable Legislative Instrument

The Disallowable Legislative Instrument sets out evidence which must accompany an application under section 91 of the *National Health Act 1953* (Act) to continue to operate a pharmacy business which is approved to supply Pharmaceutical Benefits Scheme (PBS) medicines, following the death of the approved pharmacist. Specifically, it relates to the identity of the applicant and the nature of their claim and will enable the Secretary to decide whether the applicant is, or is likely to become, the executor or the administrator of the deceased approved pharmacist's estate.

Allowing an executor or administrator of the deceased estate to continue to supply PBS medicines, as if they were the approved pharmacist, ensures that the community serviced by the pharmacy continues to have access to PBS medicines. It also allows for the business to remain viable while arrangements are made for the sale or otherwise of the business. Requiring evidence of both the death of the approved pharmacist and the claims of the applicant to be eligible to make the application ensures that the approval continues to be held by someone who is legally entitled to do so.

Human rights implications

The right to privacy related to protection from arbitrary or unlawful interference with privacy is contained in Article 17 of the International Covenant on Civil and Political Rights. This Disallowable Legislative Instrument engages with the right to privacy by requiring documents identifying the applicant, certifying the death of the approved pharmacist and demonstrating that the applicant is eligible to apply (as set out in the deceased approved pharmacist's will).

The personal information will be collected, handled and stored in a manner consistent with the department's privacy policy which is publicly available on the department's website.

The purpose of collecting, handling and storing the personal information is to protect the business interests of the deceased approved pharmacist and to ensure that these business interests are transferred to the person or persons legally entitled to receive them.

The personal information is used by the decision maker to ensure that the applicant should be granted permission to supply PBS medicines and receive reimbursement from Government for the purposes of section 91 of the *National Health Act 1953*.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because personal information will be treated in manner consistent department's privacy policy to avoid arbitrary or unlawful interference with privacy and therefore, the instrument is compatible with the human right to privacy.

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