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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HEALTH INSURANCE AMENDMENT (BONDED MEDICAL PROGRAMS
REFORM) BILL 2019**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health, the Hon Greg Hunt MP)

HEALTH INSURANCE AMENDMENT (BONDED MEDICAL PROGRAMS REFORMS) BILL 2019

OUTLINE

This Bill introduces a statutory scheme to administer the *Bonded Medical Program* and includes the existing Bonded Medical Places (BMP) and the Medical Rural Bonded Scholarship (MRBS) schemes (current schemes). The statutory scheme provides a legislative basis for the Bonded Medical Program; that is, it requires participants to complete a return of service obligation (i.e. working in regional, rural and remote areas and areas of workforce shortage as defined in the Bonded Medical Program rules to be made under the Act) in return for a bonded Commonwealth supported place in a course of study in medicine at an Australian university.

The legislative amendments are intended to streamline and modernise the Bonded Medical Program.

The purpose of the Bill is to implement a statutory scheme which brings the current schemes together under a single legislative framework to progress Government's long term objective to move towards a single bonded medical scheme in future years.

The statutory scheme will, over time, replace the need for individual contracts or deeds of agreement with each participant of the Bonded Medical Program, which is the existing administrative arrangement.

The statutory scheme aims to reduce administrative burden by reducing and standardising the number of conditions and sanctions, better target the bonded medical workforce to changing workforce distribution requirements and requires the use of a web-portal to improve administrative management of the program.

Under the statutory scheme, participants will continue to have the right to internal review in relation to specified decisions by the Secretary and will now be able to seek review of certain decisions by the Administrative Appeals Tribunal.

The Minister has the power to make Bonded Medical Program rules to ensure the Bonded Medical Program remains up-to-date and respond to workforce distribution requirements into the future.

Overview of Bonded Medical Program

The Bonded Medical Program is an Australian Government initiative designed to address the doctor shortage across regional, rural and remote areas. Participants receive a Commonwealth supported place in a medical course at an Australian university in return for completion of a return of services commitment to work in regional, rural and remote areas and areas of workforce shortages (referred to as return of services obligations or RoSO).

Persons who are not offered a place to study medicine under another arrangement, such as full fee paying or Commonwealth supported place, may be offered one of the 850 bonded Commonwealth supported places currently offered annually through the Bonded Medical Program. Without the offer of a bonded Commonwealth support

place in a medical course at an Australian university through the Bonded Medical Program the person would not have the opportunity to study medicine.

The current schemes - Medical Rural Bonded Scholarship (MRBS) Scheme

The MRBS Scheme commenced in 2001. It provided up to 100 Commonwealth supported places each year in a medical course at an Australian university with an attached scholarship. Participants signed a contract requiring them to work as a doctor in a rural or remote area for six years once they attained fellowship.

The MRBS Scheme was closed to new entrants after the 2015 academic year. The 100 places reserved for the MRBS Scheme each year were added to the yearly cohort of the Bonded Medical Places (BMP) Scheme from 2016 (without the accompanying scholarship).

The current schemes - Bonded Medical Places (BMP) Scheme

The BMP Scheme commenced in 2004. It provides a Commonwealth supported place in a medical course at an Australian university to a participant in exchange for agreement to work in an underserviced area for a length of time equivalent to the length of the medical degree, i.e. between four (4) and six (6) years. For participants who joined the BMP Scheme in the years from 1 January 2016 to 31 December 2019, the return of service is reduced from the previous 4-6 years to 12 months full time.

Administration of the current schemes

Currently, the Bonded Medical Program is delivered through contracts and deeds of agreements. These arrangements have been in place for up to 18 years, depending upon when a participant entered the program and over time, have become increasingly outdated. Due to policy developments and not all participants taking up offers to update their arrangements, significant differences in contractual arrangements have developed both within and across schemes.

The out-dated nature of provisions has greatest impact on participant's who entered into the program in the earlier years. The majority of participants in the early cohorts of each scheme will commence their return of services obligations over the next five (5) to seven (7) years.

Existing individual deeds of agreement (under the BMP Scheme) or contracts (under the MRBS Scheme) are complex to administer or comply with. There are over 20 different contractual and deed of agreement arrangements currently in place. Any change to participant obligations, including those that would be beneficial, would require individual amendments and agreements to each contract. The purpose of this statutory scheme is to modernise and consolidate the Medical Bonded Programs to ensure the program responds to current and future workforce needs and offers more modern and flexible arrangements needed to support the future rural medical workforce.

It can take a participant about 22 years to complete their obligations under the existing schemes. This is due to the extensive time required to complete a medical degree, carry out internship, attain specialist training (fellowship) and complete their return of service obligation which is, currently up to six (6) years.

Key stakeholder groups, representing previous and current participants of the program, and key professional agencies and support groups have over a number of years raised their concerns that existing arrangements including compliance and reporting requirements are outdated and obstruct, rather than facilitate, support for bonded students and doctors and the delivery of acceptable program outcomes.

Existing participants of the BMP and MRBS scheme who do not choose to opt-in to the statutory scheme will retain their existing contract or deed of agreement arrangements under their current scheme.

The new statutory scheme – The Bonded Medical Program

Under the new statutory framework, existing participants of the BMP and MRBS schemes can voluntarily opt into the statutory scheme. If the Secretary agrees to an existing participant opting in to the Bonded Medical Program, the person is then subject to the provisions of the statutory scheme. Notably, however, a participant of the MRBS scheme may not opt in if section 19ABA of the *Health Insurance Act 1973* applies to the person; that is, where a medical practitioner has breached a contract with the Commonwealth under which the practitioner agreed to work in a rural or remote area.

From 1 January 2020, new participants may voluntarily agree to participate in the Bonded Medical Program.

New participants will enter the statutory scheme as a first year student in a course of study in medicine at an Australian university. To be eligible to participate, a person must have accepted a bonded Commonwealth funded place in a course of study in medicine at an Australian university, be an Australian citizen or permanent visa holder and agree to participate in the program using a web-portal maintained by the Department.

Under the new statutory scheme, participants will be required to work as a medical practitioner in eligible locations for a total period of three (3) years. The three (3) year return of service obligation is half the six years required under the former MRBS scheme and a reduction of between one (1) and three (3) years for former BMP scheme participants who entered the scheme in 2015 or earlier. Former participants of the BMP scheme who entered the scheme in the years 2016-2019 (inclusive) agreed to a 12 month return of service obligation. These participants will retain their 12 month return of service obligation under the statutory scheme should they voluntarily opt-in.

The return of service obligation must be completed within 18 years from when the participant completes their course of study in medicine in an Australian university but may be completed by a series of periods. The 18 year period may be extended in limited circumstances only where a participant or a family member has a medical condition that prevents the participant from completing their return of service obligation.

The participant is subject to a number of conditions including that they must complete their course of study in medicine in an Australian university; the return of service

obligation must be completed in accordance with the rules and the participant must give information or documents to the Department in particular circumstances.

Where a participant withdraws from their course of study in medicine after the census date for the second year of study or does not complete their return of service within 18 years from completion of their course of study, the person must pay the Commonwealth the cost of the person's course of study, less a pro-rata proportion of the return of service obligation completed, plus interest or the cost of the Commonwealth funded scholarship plus interest, as applicable.

Medicare benefits will not be payable to a former MRBS participant who becomes a participant under the statutory scheme and does not complete their return of service within 18 years. Medicare benefits will not be payable from 6 years from the day the breach occurs.

Further a participant may be liable for an administrative penalty of \$10,000 and the person fails to comply with a condition to provide the Department with information or documents. The administrative penalty is a debt due to the Commonwealth and may be recovered by the Commonwealth.

A bonded participant may withdraw from the Bonded Medical Program at any time by notifying the Department using the web portal. If a person withdraws after the census date for the second year of study, the person must pay the Commonwealth either, as applicable, the cost of the person's course of study in medicine, less a pro-rata proportion based on any return of service obligation completed, plus interest, or the amount of the Commonwealth funded scholarship plus interest. This is recoverable as a debt due to the Commonwealth.

In addition to this, for bonded participants who are former MRBS participants and who withdraw from the Bonded Medical Program after the census date for the second year of the person's course of study, a medical benefit is not payable in respect of professional services rendered by that medical practitioner for 6 years from the day the person withdraws.

Under the new statutory scheme, a decision under new Part VD made be reviewed by the Secretary and/or the Administrative Appeals Tribunal.

The Minister may make rules prescribing a number matters. In particular, the rules may prescribe a regional, rural or remote area of Australia or an area of workforce shortage for the purpose of the definition of an eligible location.

Financial Impact Statement

The 2018-19 Federal Budget under the Stronger Rural Health Strategy supported \$20.2 million over four (4) years to June 2022 to implement legislative and administrative reforms.

Statement of Compatibility with Human Rights

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

HEALTH INSURANCE AMENDMENT (BONDED MEDICAL PROGRAMS REFORMS) BILL 2019

This Bill 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 Bill

This Bill introduces a statutory scheme to administer the Bonded Medical Program – the existing Bonded Medical Places (BMP) and the Medical Rural Bonded Scholarship (MRBS) Schemes (current schemes) – and move towards a single bonded medical scheme in future years. The statutory scheme provides a legislative basis for the Medical Bonded Program; that is, it requires participants to complete a return of service obligation (that is, working in regional, rural and remote areas) in return for a bonded Commonwealth supported place in a course of study in medicine at an Australian university.

The purpose of the Bill is to implement a statutory scheme which brings the current schemes together under a single legislative framework to progress Government's long term objective to move towards a single bonded medical scheme in future years.

The statutory scheme aims to reduce administrative burden by reducing and standardising applicable conditions of the Bonded Medical Program and sanctions applying as a consequence to breaches of those conditions, better target the bonded medical workforce to changing workforce distribution requirements and requires the use of a web-portal to improve administrative management of the program.

The Minister has the power to make by legislative instrument, Bonded Medical Program rules to ensure the Bonded Medical Program remain up-to-date, implement the objectives of the program and respond to workforce distribution requirements into the future.

The statutory scheme will come into effect from 1 January 2020 for new entrants to the Bonded Medical Program and existing participants who choose to opt-in to the new arrangements.

Human rights implications

The Bill engages Articles 6 and 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the rights to health.

The right to enjoy economic, social and cultural rights as well as civil rights.

The Right to Work

The right to enjoy economic, social and cultural rights as well as civil and political rights is contained in Part III, Article 6 (1 and 2) of the ICESCR. There is an obligation under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms.

In accordance with the Universal Declaration of Human Rights, the idea of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy economic, social and cultural rights, as well as civil and political rights.

Analysis

In this context, it is considered that the provisions made under the legislative amendments provide participants of the Bonded Medical Program with flexibility to work with limited restriction. The legislative amendments provide full opportunity for entrants to *voluntarily* apply to register in the program or for participants to opt-in.

New participants to the program agree to participate voluntarily and receive a Commonwealth funded place at university in return for fulfilment of a commitment to complete their return of service, that is, work in a regional, rural or remote location or area of workforce shortage. The statutory scheme allows participants to complete three (3) years return of service over a total of 18 years.

Within the 18 year timeframe participants are allowed to start and stop work, change employer and locations, and can choose part-time work. The program restricts the amount of work (50 per cent or 18 months) which can count toward meeting return of service obligations prior to completing specialist training. Whilst the provisions do not restrict where a participant may work when not completing their return of service obligations, the provisions do require the return of service obligations be completed in particular geographic locations.

To meet the objectives of the program, participants are required to complete their return of service obligations in certain geographic areas which include all regional, rural and remote areas and districts of workforce shortage for medical specialities.

Participants are not prohibited from working in areas which do not count towards their return of service whilst they are working in a return of service area nor at any time over the 18 years return of service timeframe. Should a participant delay completion of their return of service until the final three years of the 18 year timeframe, they still have the right to work elsewhere whilst they undertake their return of service obligation. The statutory scheme allows return of service obligations to be worked part-time to enable this flexibility in employment.

The only exception to this arrangement, is the 2016-2019 cohorts of the Bonded Medical Places (BMP) Scheme who as part of their opt-in arrangements retain their 12 month return of service obligation. In return, these cohorts are required to work full-time whilst they undertake their return of service. These participants have access to all other flexible work options granted under the statutory scheme regarding when,

where and how return of service is completed, including the option to concurrently work elsewhere.

The full-time requirement placed on participants with a 12 month return of service obligation is considered reasonable given the considerably reduced length of return of service (reduced to 12 months from four (4) to six (6) years), the substantial commitment of Government to fund a Commonwealth supported place enabling the participant to gain a medical career and the objective of the program to deliver more medical services to areas of shortage.

The rules to be made would ensure some stability in relation to the eligible locations, requirements for completing the return of service and other requirements that are to be detailed in the rules, by allowing the rules to limit variation or future changes to these requirements in relation to a particular class of participant (refer to new paragraph 124ZT(2)(b) and new subsection 124ZT(4)). For example, a participant may have already commenced their return of service obligation in a particular district of workforce shortage, but the rules have prescribed areas of workforce shortage excluding that location. The rules allow for varying the application of the new eligible locations to specified participants only, excluding from its operation in this particular example, that particular participant who has already commenced their return of service in the particular location. Thereby allowing that participant to continue their return of service in the particular location which was a previous eligible location.

It is considered that due to the statutory arrangements available to participants to choose where and when to work across a broad timeframe under the program within the obligations set out in the legislation, there is very limited restriction on civil liberty and the limited restriction that does exist is in keeping with the benefit provided to the participants of a medical career and the objectives of the program.

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.

Analysis

The Bill promotes access and equity to health services and as such supports rights to health by facilitating more access to essential medical services in geographic areas in Australia identified as having less than adequate access to services. Whilst a participant of the program, the choice of work location and type is unrestricted except for the purposes of completing return of service obligations.

This limitation is considered minimal and well balanced with the benefits provided to the participant (that is. a Commonwealth funded place in a medical course at university), the flexibility and long timeframe in which to complete the return of service, and the objective of the program to provide more access to medical services in non-metropolitan areas.

Conclusion

The legislative amendments are compatible with human rights, noting that the limitations placed on voluntary participants of the program is considered reasonable, necessary and proportionate to the objectives of the program and benefits to the participant and the Australian public.

The Hon Greg Hunt MP, Minister for Health

HEALTH INSURANCE AMENDMENT (BONDED MEDICAL PROGRAMS REFORMS) BILL 2019

Clause 1 – Short Title

Clause 1 provides for the short title of the Act, once enacted, to be the *Health Insurance Amendment (Bonded Medical Programs Reform) Act 2019*.

Clause 2 – Commencement

This clause sets out when the Bill commences as follows:

- Sections 1 to 3 and anything in the Bill not elsewhere covered by this table – the day this Bill receives Royal Assent.
- Schedule 1 – 1 January 2020.

Clause 3 – Schedule(s)

This clause provides that each Act that is specified in a Schedule to this Bill is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item has effect according to its terms. This is a technical provision which gives operational effect to the amendments contained in the Schedules. Schedule 1 amends the *Health Insurance Act 1973* by introducing new Part VD.

SCHEDULE 1 – AMENDMENT OF THE *HEALTH INSURANCE ACT 1973*

Item 1 Subsection 3(1)

This item amends subsection 3(1) of the Act to introduce a number of definitions in the *Health Insurance Act 1973*. A number of terms are defined by reference to definitions in other legislation (such as Australian university and permanent visa) and a number of terms are defined by reference to another provision in the legislation (such as bonded participant and return of service obligation).

Census date

The *census date* is the final date by which universities accept student entry into a course. It has historically been used by the Bonded Medical Program as a threshold date to manage bonded student timeframes for entry and withdrawal of their medical course due to this alignment. Census date is 30 March of each year.

Course of study in medicine

Twenty universities participate in the Bonded Medical Program across 22 campuses by offering a bonded Commonwealth funded place to students across undergraduate and postgraduate medical courses. Each university is responsible for selecting medical students to fill their allocated bonded Commonwealth support places. Course length varies from between four (4) to six (6) years.

A Commonwealth supported place is a type of enrolment where the total cost of the university course is split into two parts, one part paid for by the Australian Government and the other part paid by the student. For the purposes of this Bill, the term, Commonwealth funded place means a place in a medical course for which the university receives Commonwealth funding; and, in the case of a former participant of the MRBS scheme received a scholarship under the Bonded Medical Program.

The Bonded Medical Program relies on the provision to a bonded participant of a Commonwealth funded place in a medical course at an Australian university as a benefit to a student under the student benefits power in section 51(xxiiiA) of the Constitution.

Item 2 After Part VC

This item adds Part VD – Bonded Medical Program. Part VD establishes a single legislative framework for the existing Bonded Medical Places (BMP) and the Medical Rural Bonded Scholarship (MRBS) Schemes (current schemes) and future entrants into the Bonded Medical Program to establish a single Bonded Medical scheme in future years.

New Subdivision A – Introduction

This subdivision sets out the statutory scheme for the *Bonded Medical Program*. It sets out who may participate in the Bonded Medical Program, how a bonded participant (participant) will enter the program and what the requirements of the program are.

Only entrants into the Bonded Medical Program from 1 January 2020 and those existing participants of the Bonded Medical Program under its current schemes, the Bonded Medical Places (BMP) and Medical Rural Bonded Scholarship (MRBS) schemes who voluntarily choose to opt-in to the statutory scheme will be impacted (refer to the outline above for explanation of these existing non-statutory Bonded Medical Program schemes).

The existing deed of agreements under the current Bonded Medical Program will no longer be offered after the 2019 intake of bonded medical students. Non-statutory contracts and deed of agreements will eventually phase out as participants with these arrangements complete their obligations and exit the program, or choose to voluntarily opt-in to the new statutory scheme.

New Section 124ZD Bonded Medical Program

New section 124ZD states the Bill will introduce a statutory scheme for the administration of the Bonded Medical Program (program). This statutory scheme requires participants to complete a return of service obligation in return for a Commonwealth funded place in a course of study in medicine at an Australian university, which is provided as a benefit to bonded participants as students

This statutory scheme will come into effect from 1 January 2020 when this Schedule to the Bill commences. The statutory scheme will be offered to new entrants and existing participants alike from 1 January 2020. Existing participants in the current schemes have an open timeframe to opt-in to the statutory scheme should they wish to do so. Existing participants who choose not to opt-in will retain their existing contracts or deed of agreement until they complete their obligations and exit the program.

New Section 124ZE Bonded participants

New section 124ZE specifies the eligibility requirements for new persons wishing to enter the Bonded Medical Program and those participants of the existing bonded

schemes who wish to opt-in. It describes the eligibility criteria for each category of participant:

- Bonded Medical Program participants;
- former participants of the Bonded Medical Places (BMP) scheme; and,
- former participants of the Medical Rural Bonded Scholarship (MRBS) Scheme.

New section 124ZE outlines the eligibility requirements by defining when a person is and ceases to be a participant.

Under **new section 124ZE** persons who wish to be a participant are required to voluntarily agree to participate in the Bonded Medical Program by using a specifically designed web-portal maintained by the Department (refer to new paragraph 124ZE (1)(f) and new section 124ZU). The web-portal, which may be accessed through the internet or a specific phone application, has been specifically designed for the program to reduce administrative burden for both Government and participants. Participants will benefit by online log-in to check or update their details including milestones, submit evidence, and plan and track their return of service obligations. It will enable participants to self-manage their obligations 24/7.

Bonded Medical Program participants

New subsection 124ZE(1) specifies the eligibility requirements of new persons entering the program. The requirements retain the entry requirements of the current program. That is, to be eligible, a person must reside in Australia, be either an Australian citizen or hold a permanent visa within the meaning of the *Migration Act 1958*, have enrolled in an offered Commonwealth funded place in a medical course at an Australian university and that offered place be subject to the person participating in the Bonded Medical Program.

To be a participant, the person must also voluntarily agree to participate in the Bonded Medical Program using a web portal maintained by the Department. The program is a voluntary program and it is for a prospective participant to choose whether they agree to participate in the program and be bound by the requirements of the scheme in completing the return to service obligations. Agreement to participate in the program is to be notified to the Department using a web portal, which is intended to streamline the administrative arrangements.

If the above eligibility criteria are met by a new person entering the program, that person will be a ‘bonded participant’ from the day the person agrees to participate in the Program (with notice of this given to the Department through the web portal). The participant continues to be a participant until they cease to be a participant – that is, if any of the provisions in new subsection 124ZE (4) applies.

Former Bonded Medical Places (BMP) Scheme

Under **new subsection 124ZE(2)**, a person who was a party to a deed of agreement with the Commonwealth (as represented by the Department of Health) for the funding of a place in the BMP Scheme may become a participant under the Bonded Medical program. That person must advise the Department in writing that they wish to opt-in to the Bonded Medical Program under new section 124ZU, and the Secretary must agree to their participation in the program. The person is then considered a participant

from the day after the Secretary agrees to the person's participation in the program. The person continues to be a participant until they cease to be a participant – that is, if any of the provisions in new subsection 124ZE (4) applies.

The BMP scheme participant is not required to opt in to the Bonded Medical Program. This is optional and the participant may choose if they wish to voluntarily opt in or not.

Former Medical Rural Bonded Scholarship (MRBS) Scheme

Under **new subsection 124ZE(3)**, a person who was a party to a contract with the Commonwealth (as represented by the Department of Health) for the funding of a place in the MRBS scheme including a scholarship may become a participant under the Bonded Medical Program. That person must advise the Department in writing that they wish to opt-in to the Bonded Medical Program under new section 124ZU, and the Secretary must agree to their participation in the program. The person is then considered a participant from the day after the day the Secretary agrees in writing to the person's participation in the program. The person continues to be a participant until they cease to be a participant – that is, if any of the provisions in new subsection 124ZE(4) applies.

The MRBS scheme participant is not required to opt in to the Bonded Medical Program. This is optional and the participant may choose if they wish to voluntarily opt in or not.

However, a participant of the MRBS scheme may not opt-in to the Bonded Medical Program if they are subject to application of a Medicare ban under section 19ABA (refer to new section 124ZU(3)). Participants of the existing MRBS Scheme are subject to s19ABA of the *Health Insurance Act 1973* and will continue to be subject to that provision whilst they remain under their existing arrangements.

Section 19ABA provides that Medicare benefits are not payable in respect of services rendered by or on behalf of, a medical practitioner who has breached a contract with the Commonwealth under which the practitioner agreed to work in a rural or remote area. The period during which medicare benefits are not payable is a period equal to twice the length of the period that the practitioner agreed under the contract, to work in the rural or remote area, or such shorter period as determined in, or in accordance with the contract (refer to subsection 19ABA(2) of the Act).

New subsection 124ZE(4) specifies when a person will cease to be a 'bonded participant' for the purposes of the Bonded Medical Program. The participant ceases to be a participant on the day any of the following events occur: the participant completes their return of service obligations, that is, they have fulfilled their obligations under the program. To complete return of service obligations, a participant must complete three (3) years of work in an eligible location in accordance with new section 124ZF and requirements set out in the prescribed rules;

- the participant withdraws from or is barred from their university medical course at an Australian university;
- the participant fails to comply with the condition that the return of services be completed within a specified time period as outlined in new paragraph 124ZG(1)(c) and new section 124ZJ does not apply to the person, including

- the medicare benefits payment ban (that is, a period during which medical benefits are not payable under new section 124ZJ);
- new section 124ZJ applies and the period when medicare benefits are not payable ends;
- the participant withdraws from the Bonded Medical Program after the census date of the second year of study and that participant is not a former MRBS participant who opted in to the new program;
- the participant withdraws from the Bonded Medical Program after the census date of the second year of study and that participant is a former MRBS participant who opted in to the new program and the period during the medicare benefits are not payable has ended.

New Subdivision B – Conditions of Bonded Medical Program

New Section 124ZF Return of service obligation

New section 124ZF describes the return of service obligation and outlines the requirements that must be met in order to comply with the obligation. The requirements include the location of service and the period of service.

Return of service obligation is the period of work to be undertaken by a participant in return for accepting an offer of a bonded Commonwealth funded place in a medical course at an Australian university. A participant's completion of their return of service obligation is the primary outcome of the Bonded Medical Program to facilitate access to essential medical services by Australians in geographic areas identified as having less than adequate access to services.

New subsection 124ZF(1) prescribes what a return of service obligation is. The obligation requires a participant to work as a medical practitioner in an eligible location for a period of three (3) years.

Eligible location is defined in section 3(1) as an area prescribed in the rules as a regional, rural or remote area or an area prescribed by the rules as an area of workforce shortage. Under the program, participants are fully responsible for choosing where they work within the eligible locations in order to undertake their return of service.

The statutory scheme provides for the Minister to make rules prescribing how workforce distribution mechanisms and their sub-classifications will be applied for purposes of defining regional, rural and remote areas and areas of workforce shortage. The rules will enable existing participants who choose to opt-in to the statutory scheme to complete their return of service in locations which have been informed by up to date workforce distribution mechanisms which are standardised and regularly updated. The rules also provides for the Minister to update or replace the workforce mechanism periodically over future years so bonded doctors are targeted to areas of current shortage. The two current workforce mechanisms are the Modified Monash Model (MMM) classifications of 2 -7 and Districts of Workforce Shortage.

All participants are required to deliver three (3) years return of service obligation under new subsection 124ZF(1) other than former participants of the BMP scheme

who entered the program in the academic years 2016-19 and who retained their 12 month return of service obligation upon entry into the statutory scheme. Provision is made under new paragraph 124ZV(2)(b) to cater for this ‘grandfathered’ arrangement.

The three (3) year return of service obligation is a negotiated position and is one of the key reforms to be introduced by the statutory scheme. It is supported by key stakeholder groups including the Australian Medical Association and the Australian Medical Students Association and will be introduced from 1 January 2020. The three (3) year requirement reflects an increase from the existing 12 months return of service obligation required from cohorts entering the BMP scheme over the period 2016 through to 2019; and a reduction from four (4) to six (6) years for earlier BMP scheme cohorts.

Under the program, the standardisation of return of service obligations to three (3) years is of most benefit to the former MRBS scheme participants, who were required to complete six (6) years of continuous return of service as a specialist. Under new subsection 124ZF(1) and new paragraph 124ZF(2)(e), former participants of the MRBS scheme will now be able to complete a return of service obligation of three (3) years.

Inconsistency in the length of RoSO has attracted substantial criticism from key stakeholders. The 12 month return of service obligation introduced from the 2016 academic year is inadequate to meet the forecasted workforce needs.

A three (3) year RoSO is considered sufficient to address the identified risk of having an inadequate number of bonded doctors to meet workforce shortage needs from 2030.

New subsection 124ZF(2) outlines the requirements of the return of service obligation.

New paragraph 124ZF(2)(a) requires participants to complete their three (3) years return of service within 18 years of the day on which the participant completed their medical course. The completion date of a medical course is the date on which the university provides written notice to a participant that they have successfully completed the medical course.

New paragraph 124ZF(2)(b) states that the return of service obligation must be completed in accordance with any requirements that are prescribed by the Bonded Medical Program rules.

New paragraph 124ZF(2)(c) states that the return of service obligation may be completed by a series of period. That is, the return of service obligation does not need to be completed within a consecutive three (3) year period and instead may be completed by a series of period which equal to three (3) years of service completed within 18 years of the date of completion of the medical course.

New paragraphs 124ZF(2)(d) and (e) enables participants who were former participants of the BMP scheme (2015 or earlier cohorts only) or MRBS scheme,

respectively, to reduce the 3 year return of service obligation by the amount worked under their former scheme (refer new paragraphs 124ZV(2)(a) and 124ZW(2)(a)). Accordingly, prior services towards the return of service obligation will be counted under the new statutory scheme.

New subsection 124ZF(3) enables a participant to apply to the Secretary for an extension of time to complete their return of service obligation if the participant, or a member of the participant's family, has a medical condition that prevents the participant from completing their return of service obligation during the 18 year period. The application must be made before the end of the 18 year period.

A 'medical condition' includes a serious medical condition or illness of the participant or first degree relative that is:

- i. a life threatening illness;
- ii. an illness that could become life-threatening if not treated; and
- iii. a chronic illness or disabling conditions whose treatment or the illness itself creates an insurmountable barrier to working in a regional, rural or remote area.

The Department will consider all applications for an extension of time in which to complete return of service due to a 'medical condition'. Decisions regarding extension will be made on the basis of the medical evidence submitted.

Under **new subsection 124ZF(4)**, the Secretary may make a decision in writing to extend the 18 year timeframe to enable a participant to complete their return of service obligations. This discretion may only be exercised where the participant makes an application before the end of the 18 year period and the Secretary was satisfied a participant was unable to complete their return of service during the 18 year period.

The circumstances in which an extension of time may be granted are limited to where a participant or a member of the participant's family has a medical condition that prevents the participant from completion their return of service obligation. The medical condition would need to be one that is a serious illness causing the participant to be unable to complete their return of service obligation. Not all medical conditions would render the participant unable to complete their return of service.

New Section 124ZG Conditions of the Bonded Medical Program

New section 124ZG specifies the conditions applying to a bonded participant receiving a Commonwealth funded place, provided as a benefit to students.

New paragraph 124ZG(a) requires participants to complete their medical course of study. They must do so within a period of time to be prescribed by the rules.

New paragraph 124ZG(b) and (c) requires participants to complete their return of service within 18 years from completion of their medical studies (refer to new paragraph 124ZF(2)(a)) and work as a medical practitioner in eligible locations which will meet their return of service obligations. Eligible locations for meeting return of service obligations are regional, rural or remote areas and areas or workforce shortage as prescribed in the rules. Note that new section 124ZF allows for the

reduction of the three years return of service obligation and an extension of the period beyond the 18 years.

New paragraphs 124ZG(d) and (e) requires a participant to provide documents and information to the Department as set out in the prescribed rules and in response to a request of the Secretary as soon as practical after a request is made. This condition to provide information to the Department is for the purpose of determining whether a participant is complying with the conditions and the requirements of the Bonded Medical Program.

The kinds of information that may be required include information about the completion of the medical course, completion of milestones such as internship, entering a specialist training program, attainment of fellowship, and information about the period of return of service that has been completed or the location where it has been completed.

Under **new paragraph 124ZG(f)**, the participant must comply with any other condition set out in the prescribed rules. Other conditions may be prescribed in the rules which the participant must also comply with.

New subsection 124ZG(2) clarifies that any breach of requirements as set out in the Bonded Medical Program rules will be taken to be a breach of conditions under paragraph 124ZG(1)(b) of this section.

New Section 124ZH Breach of conditions of Bonded Medical Program – repayment of education costs

New section 124ZH specifies the repayment of the Commonwealth education funding and applicable interests where participants breach a specified condition of the Bonded Medical Program.

New subsection 124ZH(1) specifies breaches of conditions which attract repayment of Commonwealth funding provided to the participant of the Bonded Medical Program during the course of study in medicine at an Australian university. The repayment of the Commonwealth funding applies in the following:

- (a) the participant withdraws, or did not complete their course of study within the period prescribed in the rules, thereby breaching the condition set out in new paragraph 124ZG(1)(a), and the breach occurs, after the person's census date for the second year of the person's course of study in medicine at an Australian university. Thus, if a participant withdraws and is unable to finish the course from the census date of the second year of the participant's study, the participant is required to repay the Commonwealth funding provided to that participant; or
- (b) the person did not complete the required return of service with the time allowed under new section 124ZF. This is a condition set out in new paragraph 124ZG(1)(c).

New subsection 124ZH(2) provides that the person must pay specified amounts and interests on the amount worked out and applied in accordance with the Bonded Medical Program rules.

New paragraph 124ZH(2)(a) provides that a new participant and a former participant of the BMP Scheme must pay 100 per cent of the cost of the person's course of study in medicine, as funded by the Commonwealth as a benefit to the person as a student, less a proportional reduction due to any return of service completed.

New paragraph 124ZH(2)(b) applies only to participants of the former MRBS scheme who as part of those provisions, received a Commonwealth funded place in a medical course with an accompanying scholarship a benefit to the person as a student. Under new paragraph 124ZH(2)(b), former participants of the MRBS scheme are subject to a financial penalty of 100 percent of the cost of the funded scholarship provided to the person under both their former MRBS scheme and this statutory scheme (if applicable), less a proportional reduction due to any return of service completed.

New paragraph 124ZH(c) provides that the repayment also includes interest on the amount worked out under new paragraph 124ZH(2)(a) and if applicable, new paragraph 124ZH(2)(b), applied in accordance with the Bonded Medical Program rules.

New subsection 124ZH(3) provides for the amounts payable under new subsection 124ZH(2) to be recoverable as a debt due to the Commonwealth or the estate of the person.

Under the statutory scheme, financial penalty sanctions under new subsections 124ZH(1) and (2) will operate by force of law and will not be dependent upon the Secretary to determine that a breach has occurred.

New Section 124ZJ Breach of condition of Bonded Medical Program – medicare benefits not payable

New paragraphs 124ZJ(1)(a) and (b) provides that a medicare benefit is not payable in respect of professional services rendered by, or on behalf of, a medical practitioner who is a participant and who also is a former MRBS Scheme participant and who breached a condition in relation to the completion of their return of service obligation under the MRBS Scheme (refer to new paragraph 124ZG(1)(c)).

New subsection 124ZJ(2) provides that medicare benefits will not be paid to a participant for a period of six (6) years from the day the breach occurs, even if this six (6) year period extends beyond the 18 year period provided under the program for completion of return of service obligations (refer to new paragraph 124ZF(2)(a)).

New subsection 124ZJ(3) provides that the medicare benefit payment ban under this section applies irrespective of whether the participant was a medical practitioner at the time the breach occurred.

New Section 124ZK Breach of condition of Bonded Medical Program – administrative penalty

New section 124ZK requires the payment of an administrative penalty by participants of the Bonded Medical Program when they breach specified conditions.

Under **new subsection 124ZK(1)** a participant is liable for an administrative penalty if he or she does not comply with the conditions set out under new paragraphs 124ZG (1)(d) or (e). That is, a participant has not provided documents or information to the Department in accordance with requirements set out in the rules; or as requested by the Secretary and as soon as practical after the Secretary has made the request.

New subsection 124ZK(2) specifies the amount of administrative penalty to be \$10,000 per breach. The scheme requires a participant to complete the return of service obligation within 18 years of completing the medical course at an Australian university.

In between the completion of the course of study and the return of service, a participant is required to complete an internship program and if possible, specialist training. As this period covers at least fifteen years and changes in work addresses, and residency within Australia would inevitably have occurred, non-compliance with the provision of information updating the person's status would mean that the Department would be unable to evaluate the effectiveness of the scheme in meeting the objectives of the program and unable to communicate with the participants. The amount of \$10,000 is insignificant compared to the Commonwealth funding provided to the participant in completing his or her medical degree.

New subsection 124ZK(3) requires the Secretary to provide written notice to a participant of the liability to pay an administrative penalty, the breach of condition to which the administrative penalty relates and the total amount of administrative penalties if there is more one breach of condition and the date on which the penalty becomes due for payment. The penalty is cumulative and is required to be paid within a due date of at least 14 days from when the notice was granted.

New Subdivision C - Review of decisions

New Section 124ZL Application for review

New section 124ZL provides for an internal review of a decision made by a delegate of the Secretary under this Part.

Application may be made

New subsection 124ZL(1) authorises a participant to apply for a review an original decision made by an APS employee, who is delegated by the Secretary to make a decision under this Part, in writing.

New subsection 124ZL(2) requires the application made by the participant in new subsection 124ZL(1) to be in writing, set out reasons for the request and to be made within 14 days or if longer than 14 days as determined by the Secretary.

New subsection 124ZL(3) requires the internal review of an original decision to be undertaken by the Secretary, or a person who has been delegated the power to review the original delegate's decision and was not involved in the original determination. The delegate must occupy a position that is at least at the same level as the person who made the original decision.

Decision on review

New subsection 124ZL(4) requires the person reviewing the original decision to either affirm, vary or set aside the original decision and substitute a new decision. A participant may make an application to the Administrative Appeals Tribunal for a review of a decision made under this section (refer new section 124ZN).

Withdrawal of application

New subsection 124ZL(5) allows a participant to withdraw their request for review of an original decision. Withdrawal can occur at any time before the review has been completed.

New subsection 124ZL(6) provides that an application for review which is withdrawn to be considered as never having been made.

New Section 124ZM Notice of decision on review

New section 124ZM sets out the information required to be provided by a reviewer of an original decision to the participant requesting review.

New subsection 124ZM(1) requires the reviewer to provide written advice on the outcomes of the review and the reasons for the decision to the participant who requested the review. The advice must include any findings on material questions of fact, including references to evidence or other material on which those findings were based.

The written notice must also include notice of any right to have the decision on review reviewed by the Administrative Appeals Tribunal.

New subsection 124ZM(2) requires the Secretary to give written notice of a decision of the review of the original decision under new subsection 124ZL(4) to the Register of the Administrative Appeals Tribunal. This must occur when the decision on review is made after a participant has applied to the Administrative Appeals Tribunal for review of the original decision. Written notice of a decision of review must be provided to the Registrar of the Administrative Appeals Tribunal where a decision of review has been made by the Secretary under new subsection 124ZL(4) and the outcome of the decision of review varied the original decision or set the original decision aside and substitute a new decision.

New Section 124ZN Review by the Administrative Appeals Tribunal

New section 124ZN identifies what decisions are reviewable by the Administrative Appeals Tribunal. These are:

- under new paragraph 124ZN(a) a decision by the Secretary (refer subsection 124ZF(4)) to refuse to extend the timeframe for a participant to complete their return of service obligations;
- under new subsection 124ZL(4) a decision made by a reviewer of an original decision undertaken in response to a request for review of an original decision from a participant; and,
- a decision of the Secretary to refuse to agree to a person's participation in the Bonded Medical Program due to not meeting the requirements under opt-in arrangements stated in new paragraphs 124ZV(1)(c) or 124ZW(1)(c).

It is anticipated that the number of applications for review by the Administrative Appeals Tribunal will be minimal, due to the nature of the two decisions reviewable; the Secretary not agreeing to a person opting in and the Secretary not agreeing to extend the 18 year timeframe for completion of a participant's return of service obligation due to an agreed medical condition.

The Department is undertaking extensive administrative preparation on each participant's records and will be in contact with all participants to ensure each meets opt-in requirements prior to 1 January 2020. Department will work with all participants to ensure any identified issues which may prevent opting-in are addressed, if possible, prior to the commencement of the program on 1 January 2020.

New Subdivision D – Withdrawal from Bonded Medical Program

Section 124ZP Withdrawal from Bonded Medical Program

New subsections 124ZP(1) and (2) allows participants to withdraw from the Bonded Medical Program at any time. Participants may withdraw by notifying the Department using the web-portal maintained by the Department.

New section 124ZQ Consequences of withdrawal

Consequences for all participants

New subsection 124ZQ(1) specifies the consequences if a participant withdraws from the Bonded Medical Program after the participant's census date for the second year of study in medicine at an Australian university.

New paragraph 124ZQ(1)(a) requires participants of the Bonded Medical Program or who were former participants of the BMP Scheme to pay:

- (i) 100 per cent of the cost of the person's course of study in medicine, as funded by the Commonwealth as a benefit to the person as a student, less a proportional reduction due to any return of service completed; and,
- (ii) provides that the repayment also includes interest on the amount worked out under subparagraph (i) and applied in accordance with the Bonded Medical Program rules.

New paragraph 124ZQ(1)(b) requires participants of the former MRBS Scheme to pay:

- (i) 100 percent of the cost of the funded scholarship provided to the person under both their former MRBS scheme and this statutory scheme (if applicable), less a proportional reduction due to any return of service completed; and,
- (ii) interest on the amount worked out under subparagraph (i) and applied in accordance with the Bonded Medical Program rules.

New subsection 124ZQ(2) provides that the amounts payable under new subsection 124ZQ(1) are recoverable as a debt due to the Commonwealth or the estate of the person.

Additional consequences for former Medical Rural Bonded Scholarship (MRBS) participants

New subsection 124ZQ(3) provides that a medicare benefit is not payable in respect of professional services rendered by, or on behalf of, a medical practitioner who is a former MRBS Scheme participant covered by new subsection 124ZE(3) and who withdrew from the Bonded Medical Program after the participant's census date for the second year of their course of study in medical at an Australian university.

New subsection 124ZQ(4) provides that the period in which medicare benefits not payable under subsection (3) is for a period of six (6) years from the day the participant withdrew from the program, (even if this six (6) year period extends beyond the 18 year period mentioned in new paragraph 124ZF(2)(a)).

New subsection 124ZQ(5) provides that the medicare benefit payment ban under this section applies irrespective of whether the participant was a medical practitioner at the time they withdrew from the program.

Subdivision E - Information sharing

New Section 124ZR Authorised collection, use and disclosure

New section 124ZR allows for the Department to collect, use and disclose information including personal information about participants for the purposes of administering the program in accordance with section 130 of the Constitution.

Administration or enforcement of Part

New subsection 124ZR(1) authorises the Secretary or an APS employee (including on-going and non-ongoing employees) to collect, use and disclose information about a participant, including personal information, if the collection, use or disclosure is reasonably necessary for the purpose of administering or enforcing the provisions of this Part.

The prescribed rules will specify the type of personal and sensitive information which the Department will collect from participants and hold for the purposes of monitoring and compliance or the consideration and application of an extension to the return of completion date due to a medical condition; reporting to Government and the evaluation of program outcomes.

New paragraph 124ZR(2)(a) allows for collection, use and disclosure of information within what is reasonably necessary to confirm a participant compliance with the program's eligibility requirements relating to citizenship or the holding of a permanent visa within the meaning of the *Migration Act 1958*. This may include collection advice from universities during the opt-in process which confirms that the person meets citizenship requirements under new paragraph 124ZE(1)(b).

Under new paragraph 124ZR(2)(b) information may be collected, used and disclosed for the purpose of monitoring compliance with the conditions of the program as under section 124ZG. This may include a participant submitting documentary evidence of compliance with prescribed rules; such as, in relation to completion of the required medical course; or, for monitoring purposes or entry into a fellowship training program. It may also include provision of employer documentation or medicare provider information for assessment and monitoring of completion of return of service obligations.

Under new paragraphs 124ZR(2)(c) and (d), collection, use and disclosure of information may include verification of the accuracy of notifications provided by the participant and provision of documents and other information needed in relation to participation in the program and to support that participation.

Compiling and reporting statistical information

New subsection 124ZR(3), authorises the Secretary or an APS employee in the Department to collect, use and disclose information relating to a participant for compiling and reporting a purposes relating to the operation of the program. Data would be de-identified for use under new subsection 124ZP(3). Examples of de-identified data collated and used for this purpose includes periodic reporting to Government and undertaking evaluation of the program outcomes.

New Section 124ZS Interaction with the Privacy Act 1988

New section 124ZS provides that the collection, use or disclosure of information about a participant under this Part is also an authorisation to collect, use or disclose information relating to the participant for the purposes of the Privacy Act 1988.

Subdivision F – Bonded Medical Program Rules

New Section 124ZT – Bonded Medical Program Rules

Content of Rules

New Section 124ZT – The Bonded Medical Program Rules provide for rules to prescribe specified matters in order to give effect to the Bonded Medical Program.

New subsection 124ZT(1) authorises the Minister, by legislative instrument, to make rules prescribing matters and details required or permitted by this Part to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to PartVD.

New subsection 124ZT(2) provides that the rules, for the purposes of the definition of eligible location, must prescribe either or both of the following: a regional, rural or remote area of Australia and an area of workforce shortage. As discussed below, the Modified Monash Model (MMM) classification under the Australian Statistical Geography Standard and published by the Australian Bureau of Statistics at its website will be used in prescribing areas that are regional, rural or remote for the purposes of the return of service obligations under the Program. Definitions of areas of workforce shortage under other instruments made under the Act will be adopted or slightly modified for the purposes of the Program. The rules may prescribe that an

area is prescribed as an eligible location only in relation to a particular class of participants, especially since the eligible location may change over time.

Eligible locations change with time due to changes in the number of residents (population) of particular areas or the change in health workforce distribution in a particular location. Thus, it is possible that a participant who opted in at a particular period of time would be required to carry out their return of service obligations in eligible locations that are slightly different or significantly different from the eligible locations prescribed when they became a participant in the program. Paragraph 124ZT(2)(b), would allow the Minister to make rules prescribing an eligible location to only apply prospectively, ie in relation to new bonded participants. The previous eligible locations can still apply to participants who entered the program prior to the amendments being made.

New subsection 124ZT(3) provides that the rules which may provide for any or all of the following matters that are described in paragraphs 124ZT(3)(a) to 124ZT(3)(g).

Under new paragraph 124ZT(3)(a) the rules will specify the specific events or milestones that the participant must notify the Department to evidence compliance with conditions of the Bonded Medical Program, and the specific evidence supporting compliance of those specific events. The events include but are not limited: acceptance into a medical course as a first year medical student and completion of their medical course, commencement and completion of internship, commencement of vocational training and attainment of fellowship.

New paragraph 124ZT(3)(b) sets out rules detailing the requirements for completion of return of service obligations. These rules will include but are not limited to the number of full-time hours per week that a participant is required to work in areas under Modified Monash Model (MMM) classification system and areas of workforce shortage; the amount of work which meets full-time and part time requirements; possible arrangements enabling a participant to work in more than one location whilst also working in a return of service location.

This rule will also cover the requirements for participant to complete the required approved on-line return of service obligation plan (approved RoSO plan). The approved RoSO plan will specify when it is to be completed on-line, the proposed timing, location and place of return of service, required periodic updates; the level of detail required throughout different program phases of the program; and the rules by which information will be drawn from the approved RoSO plan to inform the Department about a participant's return of service arrangements.

The rules will set out any specific requirement which only relate to former participants of 2016-19 cohorts under the BMP Scheme who have retained their 12 month return of service obligation. These participants are required to work full time during their return of service and are able to complete all return of service obligations prior to becoming a medical specialist.

Rules under **new paragraph 124ZT(3)(c)** set out the requirements of the scaling incentive which may be available to participants who meet specific criteria. The scaling incentive is designed to maximise the objectives of the program by

encouraging participants to work in areas which are more rural or remote, that is in areas which are classified MMM 4-7.

Criteria which a participant must meet to benefit from the scaling incentive will be included in the rules including but not limited to: whether full-time or part-time work will contribute, the locations of work classified under the Modified Monash Model and for how long work must be undertaken at locations for scaling to be applied.

Rules will also include whether completion of specialist training is a requirement and whether a participant must continue to work in MMM 4-7 locations after specialisation to complete return of service obligations. The rules will specify the amount of reduction in return of service a participant may receive under the scaling incentive. The scaling incentive is not available for participants who have a 12 month return of service or participant do not attain specialisation.

New paragraph 124ZT(3)(d) will set out rules related to the circumstances in which work will qualify for completing return of service obligations. These rules will: enable a participant to retain an existing return of service work location for a set time period if the location they are working is no longer classified as an eligible location due to updates in the workforce distribution mechanism agreed by the Minister.

New paragraph 124ZT(3)(e) will set out rules for the purposes of new section 124ZF regarding who is considered a member of a participant's family and the nature of evidence required to be submitted for the establishment of whether a participant or a member of their family as a medical condition. The rules will also cover the level of medical evidence required to be provided and who may or may not provide that information.

Rules will include a detailed timeframe, the period when information is to be submitted, management of requests for additional information from a participant in support of their application and the timeframe the Department is required to respond to an application.

The rules will also set out the type of evidence that is required to be provided for the Department to establish that the identified medical condition prevents a participant from completion of their return of service obligation in the requirement timeframe.

New paragraph 124ZT(3)(f) will set out the rate of interest and how interest will be applied in relation to new paragraph 124ZG(1)(a) or (c). The rate of interest that will be applied and from when and how it will be the rate applied will be the rate, timing and process applied by the Commonwealth to debts owed to it.

New paragraph 124ZR(3)(g) will set the form and way in which information and documents are to be provided to the Department. The rule will specify these requirements for each provision of evidence related to completion of program conditions, tracking of progress, meeting of return of service requirements or applications to the Department.

New subsection 124ZR(4) enables the rules to provide for any matter mentioned in new subsection 124ZR(3) to apply only in relation to a particular class of participants.

This provision would allow the Minister to make rules that only apply to, for example, new participants in the program, and superseded provisions continue to apply to existing participants.

New subsection 124ZR(5) prohibits the rules from providing provisions with regard to the following:

- (a) creation of an offence or civil penalty;
- (b) provide powers of arrest or detention; or entry, search or seizures;
- (c) impose a tax;
- (d) set an amount to be appropriated from the CRF under an appropriation in this Act;
- (e) directly amend the text of the Act.

Incorporation of other instruments

New subsections 124ZT(6) enable the rules to apply, adopt or incorporate, with or without modification, any matter contained in an instrument or other writing as in force at a particular time or from time to time. This would apply, for example, to incorporation of instruments, such as the Modified Monash Model published by the Australian Bureau of Statistics for the purposes of defining an eligible location, that is, what is considered a regional, rural or remote area of Australia or an area of workforce shortage.

Section 14(2) of the *Legislation Act 2003* prohibits a legislative instrument or notifiable instrument from making provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. This prohibition applies unless the contrary intention appears in the legislative instrument.

New subsection 124ZT(7) expresses a contrary intention and, therefore, overrides section 14(2) of the *Legislation Act 2003* as stated in new subsection 124ZR(6).

The purpose of enabling the rules to refer to other instruments by incorporation is to enable the rules to be responsive to changing needs in workforce distribution without any delays and to enable eligible locations to be defined using the workforce distribution mechanism which is currently used. It would effectively enable the Secretary to update the workforce distribution mechanism currently applied by the Secretary. The two current workforce mechanisms are the Modified Monash Model (MMM) classifications of 2 -7 and Districts of Workforce Shortage, used to determine regional, rural and remote areas and other areas of workforce shortage for the purposes of defining locations which are eligible for participants to work for completion of their Return of Service Obligations under the program.

The Australian Statistical Geography Standard, July 2011 edition, published by the Australian Bureau of Statistics defines the Modified Monash Model (MMM) classification. The MMM is available free on the Department of Health's website. The Districts of Workforce Shortage (DWS) are defined in legislative instruments made under the Health Insurance Act 1973 such as the *Health Insurance (Section 19AB Exemptions) Guidelines 2017*. The current DWS status of every location in Australia for the medical specialty of general practice is available through the locator map at www.doctorconnect.gov.au/.

Inconsistency of rules and regulations

New subsection 124ZT(8) provides that rules that are inconsistent with the regulations have no effect to the extent of inconsistency, but the rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.

Division 2 – Transitional arrangements

New Section 124ZU Opt in process for participating in the Bonded Medical Program

New section 124ZU allows for existing participants of the BMP scheme or MRBS scheme to opt-in to the Bonded Medical Program.

New subsection 124ZU(1) provides that persons who are a party to either a deed of agreement under the BMP Scheme or party to a contract under the MRBS Scheme are eligible to opt-in in the Bonded Medical Program.

New subsection 124ZU(2) provides that persons who are a participant of the BMP scheme or the MRBS scheme may opt-in by advising the Department in writing they voluntarily wish to opt-in to the program and voluntarily agree to participate in the program using a web-portal maintained by the Department.

New subsection 124ZU(3) provides that a person may not opt in to the Bonded Medical Program in two circumstances:(a) a medicare ban under section 19ABA of the Act applies in relation to the person, noting that this only applies to participants of the MRBS; or, in the case of an MRBS participant, the person has not completed their course of study in medicine at an Australian university.

New subsection 124ZU(3) does not allow MRBS scheme participants who are still completing their medical course to opt-in. This is due to the provision of scholarship payments under the MRBS scheme's contractual arrangements. MRBS scheme scholarship payments are provided to a participant for each year of study of a medical course and complete towards the end of the final year of study. Once a MRBS scheme participant has completed their medical course, they will be able to approach the Department indicating their wish to opt-in. MRBS scheme participants who are still completing their medical studies are not adversely impacted by this delay in opt-in arrangements to the program.

New Section 124ZV - Effect of opting in to the Bonded Medical Program – BMP participants

New subsection 124ZV(1) provides that where a person, who is a party to a deed of agreement with the Commonwealth for funding of a place in the Bonded Medical Places Scheme, advises the Department in writing that the person wishes to opt in to the Bonded Medical Program (refer to new section 124ZU), the person voluntarily agrees to participate using a web portal maintained by the Department, and the Secretary agrees, in writing, to the person's participation in the program, then the following apply:

- (a) on the day the person becomes a participant, the person's deed of agreement ceases; and,
- (b) on and after that day, the person becomes subject to the provision of Part VD of the Act.

New subsection 124ZV(2) provides that the following provision applies in relation the participant once they opt –in to the new program:

- (a) the three (3) year return of service obligation is to be reduced by any prior service completed in accordance with the provisions of the person’s deed of agreement;
- (b) if the person entered into a deed of agreement during the period beginning on 1 January 2016 and ending on 31 December 2019, then for the purposes of new section 124ZF, a reference to “3 years” is to be read as a reference to “12 months”; and,
- (c) new paragraph 124ZG(1)(a) which relates to the completion of a course of study in medicine at an Australian university applies only if the person has not on the day the person becomes a participant, completed their course of study in medicine at an Australian university.

New Section 124ZW - Effect of opting in to the Bonded Medical Program – MRBS participants

New subsection 124ZW(1) provides that where a person who is a party to a contract with the Commonwealth for a MRBS advises the Department in writing that the person wishes to opt in to the Bonded Medical Program (refer to new section 124ZU), the person voluntarily agrees to participate using a web portal maintained by the Department, and the Secretary agrees, in writing, to the person’s participation in the program, then the following apply:

- (a) on the day the person becomes a participant, the contract ceases; and,
- (b) on and after that day, the person becomes subject to the provision of Part VD of the Act.

New subsection 124ZW(2) provides that the following provision applies in relation the participant once they opt –in to the new program:

- (a) their three (3) year return of service is to be reduced by any previous return of service worked under their MRBS contract.
- (b) the Commonwealth funded scholarship provided under the participant’s former MRBS contract to be the funded scholarship amount identified in the program for the purpose of any payment under new paragraph 124ZH(2)(b); and,
- (c) new paragraph 124ZG(a) relating to the completion of a medical course in an Australian university, only applies if the person has not, on the day the person becomes a participant, completer their course of study in medicine in an Australian university.

New subsection 124ZW(3) provides that nothing in new Part VD of the Act affects the application of section 19ABA of the Act in relation to the person if the person breached their contract before the day the Secretary agreed in writing, to the person’s participation in the Medical Bonded Program, even if the breach of condition which triggers the application of section 19ABA is identified on or after that day.