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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**HOUSE OF REPRESENTATIVES**

**HEALTH INSURANCE AMENDMENT (ENHANCING THE BONDED MEDICAL  
PROGRAM AND OTHER MEASURES) BILL 2021**

EXPLANATORY MEMORANDUM

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



# **HEALTH INSURANCE AMENDMENT (ENHANCING THE BONDED MEDICAL PROGRAM AND OTHER MEASURES) BILL 2021**

## **OUTLINE**

### **Purpose of the Bill**

The purpose of the Health Insurance Amendment (Enhancing the Bonded Medical Program and Other Measures) Bill 2021 (the Bill) is to amend the *Health Insurance Act 1973* (the Act) to enhance implementation of the Bonded Medical Program (the Program) established under Part VD of the Act and to the administration of Medical Rural Bonded Scholarship (MRBS) contracts under section 19 of the Act.

### **Objective of the Bill**

The Bill amends the Act to provide the necessary flexibility to enhance implementation of the Program. The proposed amendments address unintended consequences in the interests of participants and will also support achievement of the Commonwealth's Program objectives.

### **Overview of the Bill**

Part VD of the Act establishes the Program, which 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 service commitment to work in regional, rural and remote areas and areas of workforce shortage, referred to as the Return of Service Obligation (RoSO).

Existing participants in two legacy schemes, the MRBS Scheme and the Bonded Medical Places (BMP) Scheme (legacy scheme participants), may also voluntarily opt in to the Program and, if the Secretary agrees to their participation, they also become Bonded Participants. The Program offers a number of advantages to Bonded Participants compared with legacy schemes, including a three year RoSO rather than up to six years, and more flexibility in completing the RoSO.

Since the Program commenced on 1 January 2020, it has become evident that some of its elements have not achieved the intended aims, particularly in relation to the flexibility needed to administer the Program and to meet the needs of a modern rural workforce.

The Bill allows the option for legacy scheme participants, who wish to opt in to the Program, to apply for an 'extended compliance determination' if the legacy scheme participant may otherwise not be able to complete their RoSO in the specified timeframe. If granted, the legacy scheme participant would have up to a maximum of six additional years to complete the RoSO, should they proceed to become a bonded participant under the Program.

The Bill allows a person, in the event of serious disability or death, to cease to be a Bonded Participant under the Program, without penalty.

The Bill amends the administrative penalty so that an appropriate penalty is applied under the Program when Bonded Participants fail to give information or documents to the Department within prescribed timeframes.

The Bill amends section 19ABA of the Act and inserts new provisions to allow for more appropriate administration of inadvertent and minor breaches of an MRBS Scheme contract with the Commonwealth. This will remove an automatic period of up to 6 years, during which a medicare benefit is not payable in respect of professional services rendered.

**FINANCIAL IMPACT STATEMENT**

NIL

## **Statement of Compatibility with Human Rights**

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

### **HEALTH INSURANCE AMENDMENT (ENHANCING THE BONDED MEDICAL PROGRAM AND OTHER MEASURES) BILL 2021**

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 amends the *Health Insurance Act 1973* (the Act) to implement improvements to the Bonded Medical Program (the Program) established under Part VD of the Act and to the administration of Medical Rural Bonded Scholarship (MRBS) contracts under section 19 of the Act.

The Government is committed to better distributing the medical workforce to regional, rural and remote communities, which on average have less access to doctors than people in metropolitan areas.

The Program provides a Commonwealth-supported place in a course of study in medicine at an Australian university in exchange for a participant completing a Return of Service Obligation (RoSO) working as a doctor in a regional, rural or remote community.

The Program commenced on 1 January 2020, replacing legacy contract-based schemes with new, simpler arrangements. In 2020 and 2021, new medical students at Australian universities have entered into this new Program. It is intended that participants in two legacy schemes, the MRBS Scheme and the Bonded Medical Places (BMP) Scheme can decide whether to opt in to the Program.

Amending the Act will provide the flexibility necessary to enhance implementation of the Program. The proposed amendments will address unintended consequences in the interests of participants and will also support achievement of the Commonwealth's Program objectives.

#### **Human rights implications**

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 ideal 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.

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

#### ***The Right to Work***

The right to work is contained in Part III, Article 6 (1 and 2) of the ICESCR.

In accordance with the ICESCR, it is the right of everyone to the opportunity to gain a living by work which is freely chosen or accepted, and will take appropriate steps to safeguard this right.

## Analysis

In this context, the current Program provides participants with flexibility to work with limited restriction. The Program provides full opportunity for entrants to voluntarily apply to register in the program or for legacy scheme participants (includes existing MRBS Scheme and BMP Scheme participants) to voluntarily opt in.

The amendments proposed in the Bill address unintended consequences for participants and provide opportunities to seek additional time to complete their return of service obligation and/or to have exceptional circumstances, that they may be experiencing, considered.

It is considered that due to the options that will be available to participants to choose which eligible location and when to work across a broad timeframe of 18 years, there would be very limited restriction on the participant's right to work. The limited restriction that will exist is in keeping with the benefit provided to participants of a Commonwealth supported place in a course of study in medicine at an Australian university and a medical career.

## ***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 enhances the implementation of the Program. It further promotes equity of access to health services and, as such, supports the right to health by facilitating more access to essential medical services in geographic areas in Australia identified as having less access to services.

Participants will be required to complete their return of service obligation in a regional, rural or remote area or an area of workforce shortage which will improve health service delivery in these areas and, in turn, this will provide greater opportunity for people in these areas to access health services.

The requirement to complete the return of service obligation is a limitation that is considered minimal and well balanced with the benefits to those living in regional, rural or remote areas and the objective of the Program to provide more access to medical services in those 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 and Aged Care**

# HEALTH INSURANCE AMENDMENT (ENHANCING THE BONDED MEDICAL PROGRAM AND OTHER MEASURES) BILL 2021

## NOTES ON CLAUSES

### Abbreviations and terms used in this explanatory memorandum

- **Act** means the *Health Insurance Act 1973*
- **MRBS Scheme** means the Medical Rural Bonded Scholarship Scheme
- **MRBS contract** means the Medical Rural Bonded Scholarship Contract
- **Program** means the Bonded Medical Program
- **Program rules** means the *Health Insurance (Bonded Medical Program) Rule 2020*
- **RoSO** means Return of Service Obligation

### **Clause 1 – Short title**

Clause 1 provides for the short title of the Act to be the *Health Insurance Amendment (Enhancing the Bonded Medical Program and Other Measures) Act 2021*.

### **Clause 2 – Commencement**

The table in this clause sets out the commencement dates for when the provisions of the Bill are scheduled to commence:

- Sections 1 to 3 of the Act, and anything in the Act not elsewhere covered by the commencement table, commence the day that the Act receives Royal Assent.
- Schedule 1 of the Act commences on a day to be fixed by Proclamation or on the day after six months after the day the Act receives Royal Assent.
- Schedule 2 of the Act commences on the day after the Act receives Royal Assent.

### **Clause 3 – Schedule**

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 Schedule(s). Schedule 1 and Schedule 2 amend the *Health Insurance Act 1973* (the HI Act).

## **Schedule 1—Amendments relating to the Bonded Medical Program**

### ***Health Insurance Act 1973***

#### **Item 1 – Subsection 3(1)**

Item 1 amends subsection 3(1) by inserting a number of new definitions. These terms are defined by reference to other provisions in the legislation, including ‘extended compliance determination’ and ‘RoSO compliance period’.

‘Extended compliance determination’ has the meaning given by subsection 124ZUA(1) of the HI Act. In essence, an extended compliance determination made, in relation to a person, will allow that person an additional period of time to complete their Return of Services Obligation (RoSO). The new section 124ZUA establishes the mechanism for eligible legacy scheme participants to be able to apply for an extended compliance determination and it prescribes the form that the application must take.

‘RoSO compliance period’ means the period referred to in paragraph 124ZF(2)(a) of the HI Act. It is the standard period allowed for bonded participants to complete their RoSO, being 18 years from the completion of their course of study in medicine at an Australian university.

#### **124ZF Return of service obligation**

##### **Item 2 - Subsection 124ZE(4)**

Item 2 replaces subsection 124ZE(4) of the HI Act to more appropriately describe when a person ceases to be a bonded participant under the program.

Most importantly, subparagraph 124ZE(4)(b)(v) has been included to ensure that, in the event of their death, a person would cease to be a ‘bonded participant’, as defined in section 124ZE of the HI Act.

Under the current provision, a bonded participant did not cease to be a bonded participant under the Program in the event of their death, which would have led to them breaching the conditions of the Program and likely incurring a debt to the Commonwealth. This was an unintended consequence and has been corrected.

The paragraphs of current section 124ZE(4) identify the circumstance when a person ceases to be a bonded participant under the Program. 124ZE(4)(c) provides that the person ceases to be a bonded participants if the person breaches the condition mentioned in paragraph 124ZG(1)(c), and section 124ZJ does not apply to the person. 124ZE(4)(d) provides that the person ceases to be a bonded participant if section 124ZJ applies to the person and the period during which medicare benefits are not payable, as mentioned in that section, ends.

The **new subparagraph 124ZE(4)(b)(iii)** replaces these provisions and provides that if a person breaches the condition mentioned in paragraph 124ZG(1)(c) of the HI Act, that is, the bonded participant is to complete their RoSO within the period allowed, then they will continue to be subject to the consequence associated with that breach of condition and also cease to be a bonded participant.



The current paragraphs 124ZE(4)(e) and (f) provide that a person ceases to be a bonded participant when: a person withdraws from the Bonded Medical Program in accordance with section 124ZP, and subsection 124ZQ(3) does not apply to the person (124ZE(4)(e)); subsection 124ZQ(3) applies to a person and the period during which the medicare benefits are not payable, and mentioned in subsection 124ZQ(4), ends (124ZE(4)(f)).

The **new subparagraph 124ZE(4)(b)(iv)** replaces these provisions and provides that if a person withdraws from the Program in accordance with section 124ZP of the HI Act, they will cease to be a bonded participant.

The **new subparagraph 124ZE(4)(b)(vi)** has been included to give effect to the new provisions included at the **new section 124ZEA**. If the Secretary makes an ‘exceptional circumstances determination’ in relation to an affected person, that person will cease to be a bonded participant.

### **Item 3 - 124ZEA Determination that exceptional circumstances apply in relation to a person**

Item 3 inserts a **new section 124ZEA**, which sets out how a person (the ‘affected person’) who is or was a bonded participant can make an application for an exceptional circumstances determination. The new section provides, at different subsections, that the Program rules prescribe additional requirements.

If the Secretary makes an exceptional circumstances determination in relation to an affected person, the affected person will cease to be a bonded participant and exit the Program, without penalty.

**The new subsection 124ZEA(1)** provides for an affected person, or a person who is the legal personal representative of an affected person, to be able to apply to the Secretary to make a determination that exceptional circumstances apply in relation to the affected person. This recognises that there may be circumstances in which the affected person is not able to make the required application in their own right, and that in such circumstances it is appropriate for a legal personal representative to make the required application on behalf of the affected person.

**The new subsection 124ZEA(2)** specifies the form that the application must take, the content of the application and provides that the Program rules may impose additional requirements on the information and/or documents to be provided in support of the application.

**New subsection 124ZEA(3)** provides that the Secretary, having considered the application submitted in accordance with **new subsection 124ZEA(1)**, has the discretion to determine whether exceptional circumstances apply in relation to the affected person.

**New subsection 124ZEA(4)** provides that, for the Secretary to determine that exceptional circumstances apply in relation to the affected person, that the Secretary must have had regard to any matter specified in the Program rules.

**New subsection 124ZEA(5)** provides that, if the Secretary makes an exceptional circumstances determination in relation to the affected person under **subsection 124ZEA(3)**,

than the Secretary must give the applicant written notice outlining that the Secretary is satisfied that because of exceptional circumstances the person cannot meet certain conditions; or has breached a condition of the Program; or withdrew from the Program as a result of the exceptional circumstances. Importantly, as provided for in the **new paragraph 124ZEA(5)(c)** the notice must identify the provisions applicable in relation to the affected person as these have a direct linkage to and provide relief from the consequences of a breach of condition under the Program.

Whilst the inclusion of **new subparagraph 124ZE(4)(b)(vi)** provides that a person ceases to be a bonded participant if the Secretary makes a determination that exceptional circumstances apply in relation to the person, the provisions applicable in relation to the affected person – identified in the notice as per **new paragraph 124ZEA(5)(c)** – provide the foundation to ensure that the affected person will cease to be a bonded participant without penalty (i.e. not be subject to the consequences of a breach of condition under the Program).

**New subsection 124ZEA(6)** provides that a statement made under **new subparagraph 124ZEA(5)(b)(ii)** – in relation to a breach of a condition outlined at paragraphs 124ZG(1)(a) or (c) of the HI Act – or in relation to **new subparagraph 124ZEA(5)(b)(iii)** – in relation to a withdrawal outlined at section 124ZP – may relate to a breach of condition or a withdrawal that occurs before or after the commencement of this new section. This means that provided the Secretary is satisfied that exceptional circumstances apply in relation to the affected person, the person will cease to be a bonded participant under the Program without penalty.

**New subsection 124ZEA(7)** provides that if the Secretary refuses to make the exceptional circumstances determination in relation to the affected person, the Secretary must give the applicant a written notice that outlines the decision, the reasons for the decision, and how the applicant may apply for review of the decision.

### ***124ZEB Secretary may request further information***

Item 3 also inserts **new section 124ZEB** which provides that if a person makes an exceptional circumstances application under **new subsection 124ZEA(1)**, and the Secretary needs further information to consider the application, the Secretary may request additional information from the applicant to be provided within a specified period of time.

The **new subsection 124ZEB(2)** provides that the specified period of time must be at least 28 days after the notice is given to the applicant.

In order to allow the applicant with enough time to provide the requested information, **new subsection 124ZEB(3)** provides that the applicant may seek an extension to the specified period of time, provided that the requested extension is made in writing and received before the end of the period advised under **new subsection 124ZEB(2)**.

**New subsection 124ZEB(4)** provides that if the requested information is not provided within the specified period, or within the extended period, the application for an exceptional circumstances determination is taken to be withdrawn at the end of the period.

**New subsection 124ZEB(5)** provides that the notice issued under new subsection 124ZEB(1) requesting that further information be provided, must advise the person that, if the person

fails to provide the information requested, within the period (or within the period as so extended) the application will be taken to have been withdrawn.

### **124ZH Breach of condition of Bonded Medical Program—repayment of education costs**

#### **Item 4 - Subsection 124ZH(2)**

#### **Item 5 - At the end of section 124ZH**

Item 4 amends subsection 124ZH(2) of the HI Act to remove the words “The person must pay” and substitute them with “Subject to subsection (4), the person must pay”, with the effect that subsection (2) will not apply to a person if subsection (4) applies.

Subsection 124ZH(2) of the HI Act provides that, having breached a condition of the Program as provided for in section 124ZH(1), the person must repay education costs received by the person as a benefit.

Item 5 amends current subsection 124ZH to add a new subsection (4). The new subsection 124ZH(4) provides that subsection (2) does not apply to a person if the Secretary has made a determination that exceptional circumstances apply in relation to an affected person under **new subsection 124ZEA(3)**, and that the exceptional circumstances determination issued includes a statement that the Secretary is satisfied that the affected person breached the condition mentioned in paragraph 124ZG(1)(a) or (c) (as applicable) as a result of those exceptional circumstances.

The effect of the amendment is that if an exceptional circumstances determination is made in relation to an affected person, and that person had breached the requirement to either complete their course of study in medicine (as per 124ZG(1)(a)), or complete their return of services obligation (as per 124ZG(1)(c)),— then that person would not be liable to repay the Commonwealth funded education costs associated with their course of study in medicine at an Australian university as would otherwise be required under subsection 124ZH(2) of the HI Act.

### **124ZJ Breach of condition of Bonded Medical Program—medicare benefits not payable**

#### **Item 6 - Subsection 124ZJ(1)**

#### **Item 7 - Paragraph 124ZJ(1)(a)**

#### **Item 8 - Paragraph 124ZJ(1)(b)**

Item 6 amends subsection 124ZJ(1) of the HI Act for the purposes of giving effect to **new subsection 124ZJ(4)**. See explanation provided in relation to **new subsection 124ZJ(4)** below.

As outlined above, Item 2 replaces subsection 124ZE(4) to more appropriately describe when a person ceases to be a bonded participant under the Program. The repeal of subsection

124ZE(4) and substitution of **new subsection 124ZE(4)** has implications for the operation of subsection 124ZJ(1).

**New subparagraph 124ZE(4)(b)(iii)** provides that, if a person breaches the condition which requires the person to complete their RoSO in the period allowed, they will cease to be a bonded participant.

The amendments to paragraph 124ZJ(1)(a) – at Item 7 – and repeal and substitution of **new paragraph 124ZJ(1)(b)** – at Item 8 – in combination, are consequential to the amendments to **new subparagraph 124ZE(4)(b)(iii)**.

#### **Item 9 - At the end of section 124ZJ**

Item 9 amends current section 124ZJ to insert **new subsection 124ZJ(4)**, which provides that section 124ZJ does not apply to a person who is a medical practitioner if an exceptional circumstances determination is made in relation to the person, and the written notice of the determination given to the person includes a statement that the Secretary is satisfied that the person breached the condition mentioned in s 124ZG(1)(c) as a result of those exceptional circumstances.

#### **124ZK Breach of condition of Bonded Medical Program—administrative penalty**

##### **Item 10 - Subsection 124ZK(2)**

Item 10 amends subsection 124ZK(2) of the HI Act for the purposes of amending the amount of the administrative penalty that applies to a bonded participant for breach of a condition of the Program. The amount of the penalty that will be applied in those circumstances will be reduced from \$10,000 to \$1,000. The amendment will ensure that the administrative penalty applied under the Program – when bonded participants fail to give information or documents to the Department within prescribed timeframes in accordance with paragraphs 124ZG(1)(d) and (e) – is appropriate and proportionate in the circumstances.

The operation of the administrative penalty, as provided for in section 124ZK remains unchanged.

#### **124ZN Review by Administrative Appeals Tribunal**

##### **Item 11 - Before paragraph 124ZN(a)**

##### **Item 12 - After paragraph 124ZN(b)**

Item 11 and Item 12 inserts **new paragraphs 124ZN(aa)** and **124ZN(ba)** to provide that, where an application for an exceptional circumstances determination or extended compliance determination has been refused, the applicant can make an application to the Administrative Appeals Tribunal to have that decision reviewed.

## **124ZQ Consequences of withdrawal**

### **Item 13 - Subsection 124ZQ(1)**

### **Item 14 - Subsection 124ZQ(3)**

### **Item 15 - At the end of section 124ZQ**

Items 13 and 14 amend current subsections 124ZQ(1) and (3) for the purpose of giving effect to the inclusion of **new section 124ZEA**.

Item 15 amends section 124ZQ to insert a new subsection (6), which provides that if the Secretary has made a determination that exceptional circumstances apply in relation to an affected person, and that the exceptional circumstances determination issued in accordance with **new subsection 124ZEA(5)** includes a statement that the Secretary is satisfied that the affected person's withdrawal from the Program under section 124ZP was as a result of those exceptional circumstances, then **new subsection 124ZQ(6)** provides that section 124ZQ will not apply to that person.

The effect of the amendment is that if an exceptional circumstances determination is made in relation to an affected person, and that person withdraws from the Program, then that person would not be required to repay the Commonwealth funded education costs associated with their course of study in medicine at an Australian university as would otherwise be required under subsection 124ZQ(1) of the HI Act.

Furthermore, if, in the same circumstances, the affected person was a former MRBS Scheme participant, then that person would also not be the subject of a period during which medicare benefits are not payable, as would otherwise be required under subsection 124ZQ(3) of the HI Act.

## **124ZU Opt in process for participating in the Bonded Medical Program**

### **Item 16 - At the end of section 124ZU**

Item 16 inserts **new subsection 124ZU(4)** for the purpose of giving effect to **new section 124ZUA**. **New paragraph 124ZU(4)** requires that the outcome of the person's application for an extended compliance determination – including the outcome of any review and appeal being exhausted – is known, prior to the person advising the Department, in writing, that they voluntarily wish to opt in to the Program under subsection 124ZU(2).

If an extended compliance determination is made by the Secretary in relation to the person under **new subsection 124ZUA(3)**, then the person will know the amount of time that they will have to complete the RoSO should they become a bonded participant.

If an extended compliance determination is refused by the Secretary under new subsection **124ZUA(6)** – and any subsequent review and appeal under **new paragraph 124ZN(ba)** is unsuccessful – the person will be able to take this into account when considering whether or not to seek to opt in to the Program.

## **Item 17 - 124ZUA Extended compliance determination for certain BMP and MRBS participants**

Item 17 inserts a **new section 124ZUA** for the purposes of allowing for a person, in certain circumstances, to apply for an extended compliance determination.

Section 124ZUA recognises that, if some legacy scheme participants were to become bonded participants, they may not have sufficient time to complete the RoSO within the timeframe allowed under paragraph 124ZF(2)(a) of the HI Act, that is “within 18 years of the day on which a bonded participant completes their course of study in medicine at an Australian university”.

**New section 124ZUA(1)(b)** provides that the applicant must meet the requirements specified in the Program rules. In practice, this means that the Minister has the power to amend the eligibility requirements for a person to apply for an extended compliance determination through the rules.

**New subsection 124ZUA(1)** has been constructed in a manner that, if circumstances should change, the Minister could amend the eligibility by amending the Program rules as provided for under subsection 124ZT(1).

Rather than excluding some legacy scheme participants from being able to opt in to the Program, the Commonwealth has provided that they be able to apply for an extended compliance determination. An extended compliance determination would afford that person more time to complete the RoSO (i.e. a period longer than the RoSO compliance period), should they become a bonded participant.

**New section 124ZUA** establishes the mechanism for eligible legacy scheme participants – being the MRBS Scheme or the Bonded Medical Places Scheme – to be able to apply for an extended compliance determination and it prescribes the form that the application must take.

**New subsection 124ZUA(1)** specifies the eligibility requirements that need to be met in order for a person to apply to the Secretary for an extended compliance determination.

**Subsection 124ZUA(2)** specifies the form that the application must take, and the timing of submission of the application. Importantly, **new paragraph 124ZUA(2)(b)** provides that the application must be made before the person advises the Department of the matters mentioned in subsection 124ZUA(2) – being that the person voluntarily wishes to opt in to the Program – to ensure that the person is clear on the amount of time that they will have to complete the RoSO should they become a bonded participant under the Program.

**New paragraph 124ZUA(2)(c)** provides that the application must be made within the time specified in the Program rules as it relates to the eligible person. Noting the purpose of the extended compliance determination is to allow legacy scheme participants that may otherwise not have enough time to complete the RoSO within the RoSO compliance period, there is a transitional element to this provision.

**New paragraph 124ZUA(2)(d)** provides that the application must specify the amount of time the person would require to complete the RoSO, should they become a bonded participant. Note that the new paragraph limits the amount of time that can be applied for, and

approved by the Secretary in making an extended compliance determination, to be a maximum of 6 years.

**New paragraph 124ZUA(2)(e)** provides that the application must be supported by a written plan that outlines how the person proposes to complete the RoSO within the time that they have applied for under new paragraph 124ZU(2)(d) and also address any other matters that are specified in the Program rules

**New subsection 124ZUA(3)** provides that the Secretary may make an extended compliance determination, if the Secretary is satisfied that the person is eligible, and that the timeframe – subject to the qualification provided for at **new subsection 124ZUA(5)** below - and plan outlined by the person will allow them to complete the RoSO, should they become a bonded participant.

**New subsection 124ZUA(4)** provides that, if the Secretary makes an extended compliance determination in relation to the person, that the Secretary must give the person written notice of the determination and, in that notice, specify the amount of extra time that the person would get to complete the RoSO – being the period longer than the RoSO compliance period – if they were to become a bonded participant.

**New subsection 124ZUA(5)** provides that the amount of extra time granted under the extended compliance determination can be the same period or a different period – being a shorter or longer period – as specified in the application at **new paragraph 124ZUA(2)(d)**. The period must be equal to or less than 6 years longer than the RoSO compliance period.

It is intended that once an extended compliance determination has been made in relation to a person, should that person become a bonded participant, then that person would be subject to all of the same conditions and consequences provided for under the Program with the exception that they would have a period of time longer than the RoSO Compliance Period – as provided for in the extended compliance determination – to complete the RoSO.

It is also intended that, once an extended compliance determination has been made in relation to a person, should that person become a bonded participant, then that person would remain eligible for any other provisions provided for under the Program, including but not limited to the exceptional circumstances determination provided for under **new section 124ZEA** and the possible extension of time to complete the RoSO under subsection 124ZF(3).

**New subsection 124ZUA(6)** provides that, if the Secretary refuses to make the extended compliance determination in relation to the person, the Secretary must give the applicant a written notice that outlines the decision; the reasons for the decision and how the person may apply for review of the decision.

### ***124ZUB - Secretary may request further information***

Item 17 also inserts **new section 124ZUB** for the purposes of supporting the Secretary to consider an application for an extended compliance determination. The amendment provides that, in considering an application for an extended compliance determination, the Secretary may request additional information from the applicant, in order to make a decision.

This provision provides the mechanism for the Secretary to request, in a written notice, that the applicant provide further information. It provides that the written request must advise the applicant on the timeframe for the additional information to be provided – with that timeframe being not shorter than 28 days after the notice is given, but, upon request from the applicant, an extended period – and the effect of not complying with the request within the specified timeframe, in order for the application to continue.

In order to allow the applicant with enough time to provide the requested information, **new subsection 124ZUB(3)** provides that the applicant may seek an extension to the amount of time allowed, provided that the requested extension is made in writing and received before the end of the period advised under **new subsection 124ZUB(2)**.

**New subsection 124ZUB(4)** provides that if the requested information is not provided within the specified period – or within the extended period – the application for an *extended compliance determination* is taken to be withdrawn at the end of the period.

**New subsection 124ZUB(5)** provides that the notice issued under new subsection 124ZUB(1) requesting that further information be provided, must advise the person that, if the person fails to provide the information requested, within the period (or within the period as so extended) the application will be taken to have been withdrawn.

## **124ZV Effect of opting in to the Bonded Medical Program—BMP participants**

### **Item 18 - At the end of subsection 124ZV(2)**

Item 18 inserts **new paragraph 124ZV(2)(d)** for the purpose of giving effect to an extended compliance determination that has been made under **new subsection 124ZUA(3)** in relation to a person party to a deed of agreement with the Commonwealth for funding of a place in the Bonded Medical Places Scheme. **New paragraph 124ZV(2)(d)** provides that, the timeframe available to complete the RoSO will be the timeframe specified in the extended compliance determination made in relation to a person, should that person become a bonded participant.

As outlined above, it is intended that once an extended compliance determination has been made in relation to a person, should that person become a bonded participant, then that person would be subject to all of the same conditions and consequences provided for under the Program, with the exception that they would have a period of time longer than the RoSO Compliance Period – as provided for in the extended compliance determination – to complete the RoSO.

It is also intended that once an extended compliance determination has been made in relation to a person, should that person become a bonded participant, then that person would remain eligible for any other provisions provided for under the Program, including but not limited to: the application for an exceptional circumstances determination provided for under **new section 124ZEA**; and/or the application for an extension of time to complete the RoSO provided for under subsection 124ZF(3) (i.e. if the bonded participant, or a member of the bonded participant's family, has a medical condition that prevents the bonded participant from completing their RoSO).



## **124ZW Effect of opting in to the Bonded Medical Program—MRBS participants**

### **Item 19 - At the end of subsection 124ZW(2)**

Item 19 inserts **new paragraph 124ZW(2)(d)** for the purpose of giving effect to an extended compliance determination that has been made under **new subsection 124ZUA(3)** in relation to a person party to a contract with the Commonwealth for a Medical Rural Bonded Scholarship. **New paragraph 124ZW(2)(d)** provides that, the timeframe available to complete the RoSO, will be the timeframe specified in the extended compliance determination made in relation to a person, should that person become a bonded participant.

As outlined above, it is intended that once an extended compliance determination has been made in relation to a person, should that person become a bonded participant, then that person would be subject to all of the same conditions and consequences provided for under the Program with the exception that they would have a period of time longer than the RoSO Compliance Period – as provided for in the extended compliance determination – to complete the RoSO.

It is also intended that once an extended compliance determination has been made in relation to a person, should that person become a bonded participant, then that person would remain eligible for any other provisions provided for under the Program, including but not limited to the exceptional circumstances determination provided for under **new section 124ZEA** and the possible extension of time to complete the RoSO under subsection 124ZF(3).

## Schedule 2—Amendments relating to MRBS contracts

### *Health Insurance Act 1973*

#### **19ABA Medicare benefits not payable in respect of services rendered by doctors who breach certain contracts with the Commonwealth**

##### **Item 1 - At the end of section 19ABA**

Section 19ABA currently applies to any contract that requires a medical practitioner to work in a rural or remote area. The proposed amendments included in **Schedule 2** apply only to MRBS contracts and therefore will not impact other relevant contracts with the Commonwealth in operation from time to time.

The amendments in **Schedule 2** allow for more appropriate administration of breaches of MRBS contracts.

The current operation of section 19ABA, as it relates to MRBS contracts, has unintended consequences for MRBS Scheme participants.

If a participant breaches their MRBS contract, section 19ABA can be automatically triggered and that participant is subject to an automatic ‘medicare ban’ (i.e. a period during which a medicare benefit is not payable for a professional service rendered). In many circumstances, the nature of the breach does not warrant the medicare ban.

Circumstances exist where an MRBS participant can unknowingly breach their contract. For example, under the MRBS contract, a participant breaches their contract if they render a professional service outside an applicable rural or remote area between the time they obtain fellowship and the time they complete their RoSO. Due to the nature of the operation of medical governance arrangements, some participants can obtain fellowship without their knowledge, and may continue to provide professional services under an existing employment contract, inadvertently breaching their MRBS contract, and being automatically subject to a medicare ban under section 19ABA of the HI Act.

There are remedies available under the MRBS contract, for example, the Minister has the power to end the medicare ban and also to reduce the financial liability that would otherwise be owing in relation to the Commonwealth funded scholarship provided as a benefit to the person during their course of study in medicine at an Australian university. However, the amendments are considered a more appropriate means of administering breaches under MRBS contracts, for the reasons provided below.

Item 1 inserts **new subsection 19ABA(5)** for the purposes of ensuring that section 19ABA applies only to a breach of an MRBS contract that occurs before commencement of the provision. To give full effect to the proposed amendments, the operation of **new subsection 19ABA(5)** complements the operation of the **new section 19ABB** – see below – which will apply to a breach of an MRBS contract that occurs after the commencement of that section.

## **Item 2 - Waiver of amounts owing by a person who is or was a party to an MRBS contract**

Item 2 inserts **new section 19ABB** for the purpose of establishing discretionary authority for the Minister, to waive amounts owing to the Commonwealth accrued by MRBS participants due to breaches of their contractual arrangements, where the breach occurred before the commencement of the amended **new subsection 19ABA(5)** and **new section 19ABC** (see explanation below).

As described above, the current operation of section 19ABA has an unintended consequence for MRBS Scheme participants – automatically triggering a medicare ban in relation to breaches of the MRBS contract – and this Bill will rectify that by inserting **new subsection 19ABA(5)** and **new section 19ABC**.

In relation to breaches that occurred prior to the commencement of **new subsection 19ABA(5)**, in accordance with the clauses set out in the MRBS contract, the Minister will remain able to end a medicare ban that was automatically triggered under section 19ABA following a breach of the contract. However, there has previously been no mechanism available under the contract or under the HI Act, to waive an amount owing to the Commonwealth due to an amount of medicare benefit being paid to a person that should not have been paid to that person as section 19ABA applied in relation to the person at that time.

In accordance with **new subsection 19ABB(2)** the Minister will now be able to waive the amount owing. If the Minister does waive an amount owing, **new subsection 19ABB(3)** provides that the Minister then provide written notice of the waiver to the person.

### ***19ABC - Medicare benefits not payable to certain MRBS participants***

As outlined above, the current operation of section 19ABA, as it relates to MRBS contracts, has unintended consequences for MRBS Scheme participants.

Item 2 also inserts **new section 19ABC** for the purposes of establishing a mechanism for the appropriate administration of breaches of MRBS contracts that occur after commencement. In this way, **new section 19ABC** complements section 19ABA as so amended.

**New section 19ABC** establishes a discretionary power for the Minister to determine, if a breach of an MRBS contract occurs after commencement of this section, that a medicare benefit is not payable in respect of a professional service rendered by, or on behalf of, the person as a medical practitioner (i.e. a medicare ban).

A person that breaches an MRBS contract after commencement of **new section 19ABC** will only be subject to a medicare ban if the Minister makes a determination under **new subsection 19ABC(1)**.

**New subsection 19ABC(2)** provides that the Minister must have regard to any matters prescribed by the regulations in making a determination under **new subsection 19ABC(1)**.

**New subsection 19ABC(3)** sets out the period that a medicare benefit is not payable to the person. **New paragraph 19ABC(3)(a)** provides that the medicare ban starts on the day specified in the determination and that day will not be the date that the determination is made

by the Minister. **New paragraph 19ABC(3)(b)** provides that the medicare ban ends after a period double the length of the return of service required under the contract, or a shorter period if specified under the contract.

**New subsection 19ABC(4)** qualifies that **new subsection 19ABC(3)** applies regardless of whether the person subject to the determination made by the Minister under **new subsection 19ABC(1)** was a medical practitioner at the time the contract was entered into or at the time the breach occurred.

**New subsection 19ABC(5)** provides that, if the Minister makes a determination under **new subsection 19ABC(1)**, the Minister must give the applicant a written notice that outlines the decision; the reasons for the decision and how the person may apply for reconsideration or review of the decision (as provided for with the inclusion of the **new section 19ABD**).

***19ABD - Reconsideration and review of determination that medicare benefits are not payable to certain MRBS participants***

Item 2 also inserts new section 19ABD for the purposes of establishing the mechanism for a person to request reconsideration and review of a determination made by the Minister under **new subsection 19ABB(1)** and for providing guidance to the Minister, or a delegate of the Minister, who was not involved in making the decision and occupies a position that is at least the same level as the one occupied by the original decision-maker, on how such a request must be considered.

**New subsections 19ABC(1) and (2)** provide for the eligibility to make the request, and the form and timeframe for the request to be provided to the Minister.

**New subsections 19ABC(3) to (5)** provides who the decision-maker is for the reconsideration decision, \ the actions to be completed, and the form of a written notice to be provided to the affected person that made the request, once the consideration is complete.

**New subsection 19ABC(6)** provides that an affected person, that is subject to a decision made by the Minister (or delegate) under **new subsection 19ABC(4)**, can make an application to the Administrative Appeals Tribunal to have that decision reviewed.

**19CC Offence in relation to a medical practitioner rendering a service covered by section 19AA, 19AB or 19ABA**

**Item 3 - Section 19CC (heading)**

**Item 4 - Paragraph 19CC(1)(a)**

Items 3 and 4 make consequential amendments to section 19CC and paragraph 19CC(1)(a), respectively, as a result of the **new subsection 19ABA(5)** and **new section 19ABC**.

## **124ZU Opt in process for participating in the Bonded Medical Program**

### **Item 5 - After paragraph 124ZU(3)(a)**

Item 5 inserts **new paragraph 124ZU(3)(aa)** for the purpose of giving effect to **new section 19ABC**. **New paragraph 124ZU(3)(aa)** provides that, if a person is subject to a determination made by the Minister under **new subsection 19ABC(1)**, that the person will not be eligible to opt in to the Program – in accordance with subsection 124ZU(2) – until the period of the resulting medicare ban (i.e. the period during which a medicare benefit is not payable to the person) has ended.

## **124ZW Effect of opting in to the Bonded Medical Program—MRBS participants**

### **Item 6 - Subsection 124ZW(3)**

Item 6 makes a consequential amendment to subsection 124ZW(3), as a result of the **new paragraph 19ABA(5)** and **new section 19ABC**.

