EXPLANATORY STATEMENT

MRCA Pharmaceutical Benefits Scheme (Under Co-payment Data Collection) Determination 2012

EMPOWERING PROVISION

Subsection 286(3) of the Military Rehabilitation and Compensation Act 2004 (the Act).

PURPOSE

The attached instrument (M20/2012) amends the MRCA Pharmaceutical Benefits Scheme (the Scheme).

The Scheme is a legislative instrument made under subsection 286(3) of the Act and sets out the circumstances in which the Military Rehabilitation and Compensation Commission (Commission) may accept financial responsibility for pharmaceutical benefits provided to members of the Australian Defence Force or their dependants (eligible person).

The purpose of the attached instrument is to provide a legislative basis for Community Pharmacists to give “under co-payment information” to the Secretary, Department of Health and Ageing (DoHA), for the purposes of the “Under Co-payment” initiative being undertaken by DoHA.

Information known as under co-payment information consists of details of prescription pharmaceuticals that are available under existing pharmaceutical benefits schemes that may be dispensed at a cost less than the relevant pharmaceutical copayment.

Because the price of the pharmaceutical is dispensed at less than the value of the relevant copayment there is no charge against the Commonwealth by the dispensing pharmacy. Instead the cost is borne by the patient who pays the whole charge for the dispensed medicine.

The Commonwealth obtains data from pharmacists for items dispensed as a consequence of the pharmacy making a claim for payment through the Department of Human Services. This requirement is imposed by the National Health Act 1953. But previously pharmacists have not been required to give information about un-subsidised supplies of pharmaceuticals where there is no charge against the Commonwealth, that is, the cost is less than or equal to the co-payment otherwise payable (under co-payment supplies).
Under the Fifth Community Pharmacy Agreement between the Commonwealth and the Pharmacy Guild, it was agreed that pharmacies would provide undercoayment data to DoHA.

The parties considered the information will enhance the Pharmaceutical Benefits Schedule data set and will provide a valuable tool for health policy planning, monitoring and risk management protocols, pharmacovigilance and monitoring the quality use of medicines in the community.

The National Health Act 1953 has been amended to require pharmacists to give information to DoHA in relation to under co-payment supplies. The amendments commence on 1 April 2012.

However because some of the supplies could be made under the Department of Veterans’ Affairs (DVA) pharmaceutical schemes, the protection for pharmacists from privacy violations, provided by the National Health Act 1953, would not apply.

Accordingly DVA’s pharmaceutical schemes have been amended to similarly provide a legislative basis for pharmacists to give information about under co-payment supplies under DVA’s pharmaceutical schemes to DoHA.

CONSULTATION

Yes.

Collection of under copayment prescription data was agreed between the Commonwealth (DoHA) and the Pharmacy Guild of Australia as part of the Fifth Community Pharmacy Agreement. The nature of the consultation leading to the agreement was e-mail correspondence, telephone conversations and meetings.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS


The attached legislative Instrument does engage an applicable right or freedom. It relates to the right to privacy.

The prohibition on interference with privacy and attacks on reputation is contained in article 17 of the International Covenant on Civil and Political Rights.
The UN Human Rights Committee has not defined 'privacy'. According to the Commonwealth Attorney-General’s Department privacy should be understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

The attached instrument is intended to have a positive outcome for the Australian public in relation to the purchase and use of pharmaceuticals. By enabling pharmacists to lawfully supply to Government certain information about pharmaceutical sales to eligible persons, the overall regulation of pharmaceuticals could be enhanced.

The extent to which the attached legislative instrument intrudes on the privacy of an individual (details of pharmaceutical sale) is not considered unreasonable in the context in that the measure is intended to ultimately benefit individuals who purchase and use pharmaceuticals.

Conclusion

The attached legislative instrument is considered to be compatible with the human right of privacy because the extent to which it interacts with that right is considered reasonable in the circumstances.

Warren Snowdon
Minister for Veterans’ Affairs
Rule-Maker

FURTHER EXPLANATION

Attachment A.
Attachment A

<table>
<thead>
<tr>
<th>Items</th>
<th>Explanation</th>
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<tbody>
<tr>
<td>[1]</td>
<td>sets out the name of the instrument.</td>
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<tr>
<td>[2]</td>
<td>provides that the instrument commences on 1 April 2012.</td>
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Schedule

1. is a definition section.

2. inserts a new part in the Scheme – Part 5B

Part 5B provides legislative authority for a Community Pharmacist to disclose certain personal information about an eligible person to the DoHA.

The information will consist of certain details in relation to the supply of a pharmaceutical by the pharmacist to the eligible person. The pharmaceuticals in question are those that are not subsidised by the Commonwealth and are sold at a price less than or equal to the co-payment that would otherwise be payable for the pharmaceutical if it had been sold at a subsidised price.

For the disclosure of the information to be authorised by the Scheme a number of conditions must be met:

- the pharmacist must not have claimed any part of the dispensing price of the pharmaceutical from the Commission or the Department of Veterans’ Affairs; and
- the dispensing price of the pharmaceutical must be less than or equal to the co-payment the Eligible Person would have otherwise needed to pay for the pharmaceutical if it had been sold at the subsidised, instead of discounted, price.
- the information is given in accordance with the requirements of section 98C of the National Health Act 1958, to the extent they can be applied, as if the information being given under the Scheme to the Secretary of the DoHA is being given to the Secretary under that provision.

Section 98C regulates the provision of information by pharmacists to the Secretary of the DoHA in relation to supplies of unsubsidised pharmaceuticals that are dispensed at a price less than or equal to
the price that would be payable had the price of the pharmaceutical been subsidised. It was included in the *National Health Act 1958* for the purpose of the Under Co-payment initiative.