

EXPLANATORY STATEMENT

NATIONAL HEALTH ACT 1953

COMMONWEALTH PRICE (PHARMACEUTICAL BENEFITS SUPPLIED BY APPROVED PHARMACISTS) AMENDMENT DETERMINATION 2010 (No. 1)

Purpose

This determination amends the determination made under paragraph 98B(1)(a) of the *National Health Act 1953* (“the Act”) consequential to amendments in the Act and legislative instruments related to 2010 Pharmaceutical Benefits Scheme reforms and to new provisions for midwife and nurse practitioner prescribing.

Background

Paragraph 98B(1)(a) of the Act provides that a function of the Pharmaceutical Benefits Remuneration Tribunal (“the PBRT”) is to determine the manner in which the Commonwealth price for all or any pharmaceutical benefits is to be worked out for the purpose of payments to approved pharmacists for the supply of pharmaceutical benefits.

Subsection 98BAA(1) of the Act requires that, where the Commonwealth and the Pharmacy Guild of Australia (or another pharmacists’ organisation representing a majority of approved pharmacists) enter into an agreement relating to the manner in which the Commonwealth price for pharmaceutical benefits is to be calculated, the PBRT, when making a determination pursuant to paragraph 98B(1)(a) of the Act, is to give effect to the terms of that agreement.

The Fifth Community Pharmacy Agreement (“the Fifth Agreement”) between the Commonwealth and the Pharmacy Guild of Australia, signed on 3 May 2010 and due to expire on 30 June 2015, is an agreement for the purposes of subsection 98BAA(1) of the Act. The Fifth Agreement sets out an agreement about the manner in which it is intended the Commonwealth price for pharmaceutical benefits is to be calculated.

The *Commonwealth Price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2010* (the Determination) commenced on 1 July 2010 and gives effect to the terms of the Fifth Community Pharmacy Agreement with respect to calculations for Commonwealth price.

This Determination

The *Commonwealth Price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2010 (No. 1)* (the Amending Determination) amends the Determination to ensure that references to statutory provisions in the Act and references to other legislative instruments made under the Act remain current. The Amending Determination makes minor changes to the Determination to ensure that the Determination continues to give effect to the terms of the Fifth Community Pharmacy Agreement.

The Amending Determination contains consequential changes arising from implementation of the *National Health Amendment (Pharmaceutical Benefits Scheme) Act 2010* which amended the Act and commenced on 1 December 2010. The Amending Determination replaces references to a previous PBS listing instrument (the *Determinations under sections 85, 85A and 88 of the National Health Act 1953*), which was replaced by the *National Health*

(Listing of Pharmaceutical Benefits) Instrument 2010 on 1 December 2010, with equivalent cross-references to determinations under paragraph 85A(2) of the Act to ensure that the Determination continues to work as intended.

The Amending Determination also contains a consequential change to subsection 9(1) of the Determination arising from implementation of the *Health Legislation Amendment (Midwives and Nurse Practitioners) Act 2010*, which enabled authorised midwives and authorised nurse practitioners to prescribe certain pharmaceutical benefits under the Act. From 1 November 2010, under new subsection 88(6A) of the Act and regulation 24 of the *National Health (Pharmaceutical Benefits) Regulations 1960*, an authorised midwife or authorised nurse practitioner may, instead of directing a repeated supply of a pharmaceutical benefit, direct the supply of a quantity or number of units of the benefit on one occasion. The Amending Determination ensures that subsection 9(1), which previously only referred to subsection 88(6) and medical practitioners, also applies when an authorised midwife or authorised nurse practitioner directs supply on one occasion.

The Amending Determination also replaces an incorrect reference to ‘paragraph 31(a)’ in paragraph 30(4)(b) of the Determination with the correct reference to ‘subsection 31(1)’.

Consultation

This Amending Determination has been made in consultation with the Pharmacy Guild of Australia, an organisation representing a majority of approved pharmacists. The Pharmacy Guild of Australia is a party to the Fifth Agreement and supports this Amending Determination. The changes are machinery in nature, being consequential on amendments to other instruments.

The Amending Determination commences the day after it is registered on the Federal Register of Legislative Instruments.

The Amending Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.