

EXPLANATORY STATEMENT

National Health Act 1953

National Health (Price and Special Patient Contribution)

Amendment Determination 2011 (No. 7)

PB 75 of 2011

Purpose

The purpose of this legislative instrument, made under section 85B of the *National Health Act 1953* (the Act) is to amend the *National Health (Price and Special Patient Contribution) Determination 2010* (PB 109 of 2010) to make changes to both the brands of pharmaceutical items that have a determined price and a claimed price and to the amount of the claimed price for certain brands of pharmaceutical items.

PB 109 of 2010 provides for price determinations in relation to brands of pharmaceutical items for which the Minister and the responsible person have not been able to make a price agreement. It also provides for the circumstances in which the Commonwealth will pay the special patient contribution resulting from these price determinations.

Authority

The Act provides for the Minister and the responsible person to agree a price that is taken to be the appropriate maximum price for sales of a brand of a pharmaceutical item to approved pharmacists (section 85AD). Section 85B of the Act applies if the Minister and the responsible person have been unable to reach an agreement.

Subsection 85B(2) provides that the Minister may determine an amount that is taken to be the appropriate maximum price for sales of a brand of a pharmaceutical item to approved pharmacists. This is termed the 'Determined Price'.

Subsection 85B(3) provides that the Minister may determine an amount that is taken to be the price claimed by the responsible person as the appropriate maximum price for sales of the brand of the pharmaceutical item to approved pharmacists. This is termed the 'Claimed Price'.

The Determined Price is the *approved price to pharmacists* (subsection 98B(3) of the Act) and is used as the basis for working out the Commonwealth price for the brand of the pharmaceutical item (subsection 98B(2) of the Act). Approved pharmacists are entitled to payment from the Commonwealth equal to the Commonwealth price less the applicable patient co-payment (section 99 of the Act).

The difference between the responsible person's Commonwealth price (ie, the price that would be the Commonwealth price if the responsible person's claimed price had become the approved price to pharmacists) and the Commonwealth price for the brand is defined in subsection 85B(4) of the Act as the *special patient contribution*. An approved pharmacist may charge a patient an amount equal to the special patient contribution, in addition to any applicable patient co-payment (subsection 87(2A) of the Act).

Subsection 85B(5) of the Act provides that the Minister may determine the circumstances in which the Commonwealth, rather than the patient, is to pay the special patient contribution for a brand of a pharmaceutical item.

Changes to PB 109 of 2010 made by this instrument

This instrument amends PB 109 of 2010 by:

- omitting one pharmaceutical item as a result of the deletion of the brand of that pharmaceutical item to which a special patient contribution applies.

Consultation

This determination affects certain responsible persons with medicines listed on the PBS. Before a pharmaceutical benefit is listed on the PBS, and from time to time thereafter, price negotiations occur between the responsible person and the Minister for the purpose of reaching a price agreement for section 85AD of the Act. If the Minister and the responsible person cannot agree on a price, further consultation occurs with the responsible person, and thereafter the Minister determines the price that will be the approved price to pharmacists for the brand. The Minister also determines the corresponding price claimed by the responsible person which is used to calculate the special patient contribution that will apply to the brand.

General

A provision by provision description of the Determination is contained in the Attachment.

The instrument commences on 1 November 2011.

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

**PROVISION BY PROVISION DESCRIPTION OF THE NATIONAL HEALTH
(PRICE AND SPECIAL PATIENT CONTRIBUTION) AMENDMENT
DETERMINATION 2011 (No. 7)**

Section 1 Name of Instrument

This section provides that this instrument is the *National Health (Price and Special Patient Contribution) Amendment Determination 2011 (No. 7)* and may also be cited as PB 75 of 2011.

Section 2 Commencement

This section provides that this instrument commences on 1 November 2011.

Section 3 Amendment of PB 109 of 2010

This section provides that Schedule 1 of the Instrument amends the *National Health (Price and Special Patient Contribution) Determination 2010* (PB 109 of 2010) ('the Principal Instrument').

Schedule 1 Amendments

Schedule 1 sets out the amendments to Determination PB 109 of 2010 as follows:

Item 1 amends Schedule 1 of the Principal Instrument to remove the entry for the listed drug 'Dothiepin'.