

EXPLANATORY STATEMENT

Health Insurance Act 1973 Health Insurance (Section 19AB Exemptions) Guidelines 2015

Authority

Section 19AB(1) and 19AB(2) of the *Health Insurance Act 1973* (the Act) prevents the payment of Medicare benefits for services provided by or on behalf of an overseas trained doctor (OTD) or foreign graduate of an accredited medical school (FGAMS), except where:

- the person was first recognised as a medical practitioner in Australia before 1997;
- the person was an OTD prior to 1 January 1997 and before that date had applied to undertake examinations to become a medical practitioner; or
- the relevant medical service is provided more than 10 years after the person first became a medical practitioner, and the person either first became a medical practitioner before 18 October 2001, was a permanent Australian at the time of becoming a medical practitioner, or became a permanent Australian after first becoming a medical practitioner.

For the purpose of section 19AB(1) and 19AB(2):

- accredited medical school means a medical school that is
 - (a) accredited by the Australian Medical Council; and
 - (b) located in Australia or New Zealand.
- FGAMS means a person:
 - (a) whose primary medical qualification was obtained from an accredited medical school; and
 - (b) who was not one of the following when he or she first enrolled at an accredited medical school:
 - (i) a permanent Australian;
 - (ii) a New Zealand citizen;
 - (iii) a permanent resident of New Zealand.
- OTD means a person whose primary medical qualification was not obtained from an accredited medical school.

Under subsection 19AB(3) of the Act, the Minister for Health has the power to grant an exemption from the restrictions in sections 19AB(1) and 19AB(2) of the Act (an exemption). An exemption may be granted in respect of one person or a class of persons. The Minister also has the power under subsection 19AB(4) of the Act to make exemptions subject to any conditions he or she considers fit.

Subsection 19AB(4B) of the Act provides that the Minister must, in writing, determine guidelines that apply to:

- the granting of exemptions to allow OTDs and FGAMS subject to restrictions under section 19AB to access the Medicare benefits arrangements for their professional medical services; and
- the imposition of conditions on such exemptions.

Purpose

Guidelines made under subsection 19AB(4B) of the Act, the *Health Insurance Act 19AB Guidelines*, commenced in October 2001. These Guidelines were revoked on 3 September 2012 when the *Health Insurance (Section 19AB Exemptions) Guidelines 2012* (the Previous Guidelines) were signed into effect.

The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* (the Guidelines) revoke and replace the Previous Guidelines.

The Guidelines provide:

- an updated definition of district of workforce shortage (DWS) that will apply when assessing section 19AB(3) exemption requests from 2 February 2015;
- references to the current information sources and geographical classification systems that are used to inform the DWS determinations for each of the medical specialties that are used to assess section 19AB(3) exemption requests; and
- minor amendments to the existing locum exemption provisions to clarify their intended operation.

Background

Districts of workforce shortage (DWS)

The Guidelines provide a framework for considering requests for exemptions under section 19AB(3) and applying conditions to such exemptions. An exemption enables a doctor who is an OTD or FGAMS and who would otherwise be prevented from providing Medicare-eligible services by the operation of sections 19AB(1) and 19AB(2) to provide such services.

The Guidelines provide that the key consideration when assessing an exemption request is whether the applicant is seeking to practise privately in a recognised DWS area for their medical specialty (their field of medical practice). For example, where the applicant is a registered specialist cardiologist, the primary consideration for granting an exemption will be whether they are seeking Medicare access at a service location that falls within a recognised DWS for the specialty of cardiology. Where the applicant is a general practitioner or other non-specialist for Medicare purposes (GP or other non-specialist), the primary consideration will be whether the applicant is seeking to practise in a DWS area for general practice.

The requirement that DWS serves as the primary consideration for most exemption decisions is intended to affect a more equitable distribution of the private medical workforce across Australia. This requirement aims to alleviate medical workforce shortages in recognised DWS areas, particularly in regional and remote communities that experience difficulties in accessing medical services due to their distance from the capital cities.

The Guidelines also provide for circumstances where DWS will not be the primary consideration; for example, where the applicant for an exemption will be providing locum services at an Aboriginal and Torres Strait Islander primary health care service in respect of which a direction under subsection 19(2) of the Act is in force.

DWS areas are identified for each of the medical specialties using the latest Medicare billing statistics and Australian Bureau of Statistics (ABS) estimated residential population data. These information sources are used to determine the level of Medicare-subsidised medical service provision for each medical specialty in each geographical area of Australia.

A map showing the DWS status of every Australian street address for GPs, specialists and consultant physicians is provided on the DoctorConnect website at:
www.doctorconnect.gov.au/.

Commencement

The Guidelines commence on 2 February 2015.

Documents Incorporated by Reference

The following documents are incorporated within the Guidelines by reference

- *Acts Interpretation Act 1901*;
- *Health Insurance Regulations 1975*; and
- *Migration Regulations 1994*.

Consultation

The Department has not formally consulted external stakeholders during the process of revising the Guidelines. The revisions that have been made under the *Health Insurance (Section 19AB Exemptions) Guidelines 2015* are limited in scope and focused on updating the definition of DWS so that it accurately represents the:

- method that will be used by the Department to identify DWS areas for GPs, specialists and consultant physicians; and
- information sources that will be used when determining which geographical areas qualify as DWS for each of the medical specialties.

Several key external stakeholders were consulted by the Department during the processes of developing an updated DWS methodology and identifying information sources that would produce DWS determinations that are indicative of local unmet needs for private medical services across Australia. This consultation process commenced as part of an Independent Review of Australian Government Health Workforce Programmes that was announced as part of the 2012-13 Budget. Consultations with a number of stakeholders, including the Australian Medical Association, Rural Health Workforce Australia, Rural Doctors Association of Australia and the Australian Medical Local Alliance, were held in October, November and December 2012 as part of this review process.

When making revisions to the DWS definition in the Guidelines, the Department has referred to the recommendations final report for this review dated 24 May 2013 that were based on several submissions provided by individual stakeholders.

Key recommendations were that the Australian Government improve the DWS definition by:

- using the latest Australian Bureau of Statistics (ABS) census data to accurately measure the size and geographic distribution of the Australian population and use this information as a basis for measuring local medical service needs for each medical specialty;
- moving to the latest Australian Statistical Geography Standard (ASGS) as introduced by the ABS in 2011 to inform DWS determinations for medical specialties other than general practice; and
- introducing an additional measure of the full time workload equivalent services being provided by GPs and other non-specialists in communities that fall marginally outside of the requirements for being DWS (i.e. have Medicare billing statistics that fall within ten per cent of the national average).

The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* provide an amended DWS definition that is a direct response to these recommendations.

The Guidelines are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Health Insurance (Section 19AB Exemptions) Guidelines 2015

Part 1 Preliminary

Section 1 Name of Guidelines

Section 1 provides that the name of the instrument is the *Health Insurance (Section 19AB Exemptions) Guidelines 2015* (the Guidelines).

Section 2 Commencement

Section 2 provides that the Guidelines commence on 2 February 2015.

Section 3 Object

Section 3 provides that the objective of the Guidelines is to provide a more equitable distribution of medical services in Australia by increasing the supply of medical practitioners in areas of most need, specifically regional and remote areas.

Section 4 Revocation

Section 4 provides that the *Health Insurance (Section 19AB Exemptions) Guidelines 2012* are revoked.

Section 5 Definitions and interpretation

Definitions

Subsection 5(1) defines terms used in the Guidelines. The Guidelines include an amended definition of DWS from that appearing in the Previous Guidelines. This definition provides a clear statement of how the Department identifies DWS areas for GPs, specialists and consultant physicians.

ASGS – the definition of the ‘Australian Statistical Geography Standard (ASGS)’ has been included to replace the definition of Australian Standard Geographical Classification – Remoteness Areas (ASGC-RA) that was provided in the Previous Guidelines. The ASGS replaces the ASGC-RA as an information source that used to inform DWS determinations. The ASGS will serve this function upon commencement of the Guidelines. This definition identifies the ASGS as a geographical remoteness area classification system that was introduced by the Australian Bureau of Statistics in July 2011.

District of workforce shortage - the definition of ‘district of workforce shortage’ (DWS) has been altered from that appearing in the Previous Guidelines. This is the result of an alteration in the method for determining DWS and updates to the information sources that are consulted for the purpose of identifying DWS areas for GPs, specialists and consultant physicians.

As was previously the case, there are separate methods for identifying DWS areas in respect of GPs and other non-specialists for Medicare purposes (non-specialists) and for specialists in a particular specialty (including consultant physicians). For the purposes of the Act (and accordingly these Guidelines), medical practitioners who are recognised by the Medical Board of Australia as specialists in the specialty of general practice are not classed as ‘specialists’ for the purposes of Medicare. Instead they are included in the separate class of ‘general practitioner’.

For GPs and other non-specialists, a DWS is a geographical area that satisfies either of the following conditions:

- (i) a geographical area, determined by the Department, in which the number of full-time equivalent (FTE) non-specialists, per person in the geographical area, is less than the current national average (*determined area*); or
- (ii) a determined area where, using the same data used for the purposes of subparagraph (i), the number of FTE GPs and other non-specialist, per person in the determined area, is:
 - (A) within 10 % (inclusive) of the current national average; and
 - (B) the non-specialists practising in the geographical area have a full time workload equivalent to full time equivalent doctor-population ratio of 1:3 or more.

The key amendment to the DWS definition as it applies to general practice that is being introduced as part of these Guidelines is the inclusion of subparagraph (ii) above. The objective of this amendment is to recognise as DWS those geographical areas that are being serviced by a small number of GPs and other non-specialists who are providing, on average, significantly more services than the national average to meet patient demand. The full time workload equivalent to FTE doctor-population ratio is used to identify geographical areas that will qualify as DWS for general practice under this measure. A ratio of 1:3 is set as a benchmark because it identifies those geographical areas that are serviced by GPs and other specialists who are providing, on average, 30% more than the normal full-time level of medical service provision (represented by FTE) to meet community demand.

For medical practitioners who are specialists in a particular specialty, a DWS is a geographical area in which the number of full time equivalent specialists in that specialty is less than the national average. An area that is classified by the Department, using the Australian Statistical Geography Standard, as outer regional (RA-3), Rural (RA-4) or Remote (RA-5) is also a DWS in respect of medical practitioners who are specialists. The method used to identify DWS areas for specialists remains largely unchanged; the key amendment is references to the updated information sources that will be used to ensure that the system provides accurate determinations of workforce shortage.

Notes to the definition of ‘district of workforce shortage’ indicate that:

- the Department identifies DWS areas using Medicare billing data and also estimated resident population data, based on 2013 data from the ABS;
- maps of current DWS areas can be accessed at www.doctorconnect.gov.au/; and
- the Department uses the ASGS system published by the ABS in 2011, but has a different numbering system. The Department’s remoteness area classifications can be accessed at www.doctorconnect.gov.au/.

General skilled migration visa, migration occupation in demand (as that definition was before repeal), *relevant assessing authority and skilled occupation* - each of these terms is specified as having the same meaning as under the *Migration Regulations 1994*. The terms are relevant for the consideration of the granting of an exemption to an applicant who is the spouse of a person who has migrated to Australia to work in an occupation in which Australia is suffering a skills shortage (see Section 8).

- ‘General skilled migration visas’ are currently Subclass 175, 176, 189, 190, 475, 476, 485, 487, 489, 885, 886 or 887 visas as provided by the *Migration Regulations 1994*;
- a ‘skilled occupation’ is an occupation specified in an instrument made by the Minister for Immigration and Citizenship under regulation 1.15I of the *Migration Regulations 1994*. Lists of skilled occupations are available from www.immi.gov.au/skilled;
- a ‘migration occupation in demand’ has the meaning given in the *Migration Regulations 1994* immediately before repeal of that definition by the Migration Amendment Regulation 2012 (No.2); and
- a ‘*relevant assessing authority*’ is a person or body specified in regulation 2.26B of the *Migration Regulations 1994*.

Service location – the definition of ‘service location’ has been updated in the Guidelines to mean the location of the practice, by street address, to which an application relates. The updated definition places an emphasis on street address that was not included in the Previous Guidelines

Interpretation

Subsection 5(2) clarifies that a service location is in a DWS for a particular type of practitioner if:

- for a GP or other non-specialist, the location is in a DWS for GPs and other non-specialists; and
- for a specialist in a particular specialty, the location is in a DWS for specialists in that specialty.

Subsection 5(3) provides that a reference throughout the Guidelines to a specialist includes a reference to a consultant physician. This is to increase readability of the Guidelines.

Subsection 5(4) provides references throughout the Guidelines to ‘the type of practitioner to which an application relates’ means a reference to either specialists in a particular specialty, or to GPs and other non-specialists.

The Note to section 5 indicates to readers that certain terms used in the Guidelines take their definition from the *Health Insurance Act 1973*. These include ‘general practitioner’, ‘specialist’ and ‘consultant physician’.

Section 6 Considerations for exemptions – general

Section 6 sets out the matters the Minister for Health is to take into consideration when deciding on most applications for exemptions.

Subsection 6(1) provides that the section is subject to sections 7 – 10 of the Guidelines. Those sections set out considerations that are to apply in particular circumstances, for example where the applicant will be providing short-term locum services or will be providing services at an Aboriginal and Torres Strait Islander specific primary health care service.

Subsection 6(2) provides that the primary consideration for making decisions on applications for exemptions is whether the location for which the exemption is sought is in a DWS for the type of medical practitioner applying for the exemption (namely a specialist in a particular specialty, or a GP or other non-specialist).

Subsection 6(3) provides that the following may also be considered when assessing an application for an exemption under this section:

- whether the applicant's registration as a medical practitioner is subject to any conditions (paragraph 6(3)(a));
- whether the applicant's visa allows them to practise medicine or undertake clinical training as a medical practitioner (paragraph 6(3)(b));
- whether the applicant has entered into, or commenced negotiations to enter into, an agreement to provide professional services at the relevant location (paragraph 6(3)(c));
- whether the applicant is seeking to replace another OTD or FGAMS who practised privately at the location and held an exemption for the location, and whose Medicare provider number for the location has been cancelled. The other OTD or FGAMS must have provided services at the location within the last 12 months (paragraph 6(3)(d));
- whether the applicant is seeking to provide private medical services at a location during the after-hours period (paragraph 6(3)(e));
- if the location to which the application relates is not in a DWS in respect of the type of practitioner applying for an exemption, whether the applicant commenced negotiations to provide services at the practice location while the location was considered to be a DWS (paragraph 6(3)(f); and
- any other matters the Minister considers relevant (paragraph 6(3)(g)).

Subsection 6(4) provides that in section 6 a reference to a person who held an exemption for the location includes a reference to a person to whom a class exemption applied. This subsection is for the avoidance of doubt.

Section 7 – Considerations for exemption – provision of services at Commonwealth funded Aboriginal and Torres Strait Islander primary health care service

Subsection 7(1) provides that section 7 applies where the applicant for an exemption will be providing, or has commenced negotiations to provide, services at an Aboriginal and Torres Strait Islander specific primary health care service. These are primary health care organisations that predominantly service Aboriginal and Torres Strait Islander clients. A direction under subsection 19(2) of the Act must be in force in respect of the organisation (see subsection 5(1) of the Guidelines).

Where section 7 applies, subsection 7(2) provides that application for exemptions may not be assessed according to whether the Aboriginal and Torres Strait Islander specific primary health care service is in a DWS for the type of medical practitioner seeking the exemption. The subsection also provides that the Minister may take into account those matters set out in paragraphs 6(3)(a)-(e) of the Guidelines and any other matters he or she considers relevant.

This section aims to increase the number of medical practitioners providing private services to Aboriginal and Torres Strait Islander populations, even where those populations are located in major cities or are not otherwise located in areas of medical workforce shortage.

Section 8 – Considerations for exemption – spouses

Subsection 8(1) provides that the section applies where the applicant is the spouse of:

- a medical practitioner who is not prevented from providing Medicare-eligible services by section 19AB of the Act – in other words a medical practitioner who is not an OTD or FGAMS, or an OTD or FGAMS who has a current section 19AB exemption or who falls into one of the classes to which the prohibition on payments does not apply, for example OTDs or FGAMS who first became medical practitioners before 1 January 1997; or
- a person who:
 - holds a General skilled migration visa following assessment by a relevant assessing authority as having a skilled occupation or a migration occupation in demand (at the relevant time);
 - migrated to Australia within the last 10 years with the intention of working in that occupation; and
 - is currently employed in, volunteers in or is undertaking training in that occupation.

In all cases the spouse of the applicant must ordinarily reside in Australia.

Where this section applies, subsection 8(2) provides that when assessing an application for an exemption, whether the location to which the application relates is in a DWS for the relevant type of medical practitioner is not to be taken into account. The Minister may take into account the matters set out in paragraphs 6(3)(a)-(e) of the Guidelines and any other matters he or she considers relevant.

Section 9 – Considerations for exemption – provision of locum services

Subsection 9(1) provides that section 9 applies where the applicant for an exemption has entered into, or has started negotiations to enter into, an agreement to provide locum services at a particular location for a maximum period of six months and the applicant has not previously provided locum services at the same practice under a section 19AB(3) exemption related to the provision of locum services.

The addition of paragraph 9(1)(c) clarifies that a doctor may not have multiple locum placements at any one practice.

Where a locum arrangement or proposed locum arrangement would be for more than six months, the general considerations at section 6 of the Guidelines apply unless one of the other ‘exceptions’ to section 6 such as provision of services at an Aboriginal and Torres Strait Islander primary health care service applies.

Subsection 9(2) provides that in deciding whether to grant an exemption to such an applicant, whether the location is in a DWS for the relevant type of medical practitioner is not to be taken into account.

Subsection 9(2) also provides that the Minister may take into account the matters set out in paragraphs 6(3)(a) – (e) of the Guidelines and any other matters the Minister considers relevant.

Section 10 – Considerations for class exemptions

Subsection 19AB(3) of the Act provides that an exemption may be granted to a class of persons.

Subsection 10(1) of the Guidelines provides that section 10 applies to decisions in respect of exemptions for a class of persons. In these circumstances, subsection 10(2) provides that the Minister is not required to consider whether members of the class will be providing services within a DWS, and can take into account any matters he or she considers relevant.

Section 11 – Conditions

Subsection 19AB(4) of the Act provides that the Minister may make exemptions subject to any conditions he or she thinks fit.

Subsection 11(1) provides that except in special circumstances, all exemptions must be subject to the condition that they will only be applicable to a particular practice location, for example a particular medical practice, health centre or hospital. However, subsection 11(2) provides that this does not apply to exemptions made in respect of a class of practitioners.

Subsection 11(3) provides that an exemption may be made subject to the condition that it only applies after hours. ‘After hours’ is defined in subsection 5(1) of the Guidelines as all day Saturday, Sunday or public holidays and before 8:00 a.m. and after 6:00 p.m. on any other day.

Subsections 11(4) and (5) provide that the Minister is not limited in the conditions that he or she may place on an exemption by subsections 11(1) or 11(3), and that in making decisions about imposing conditions on an exemption the Minister may take into account any matters he or she considers relevant.

Section 12 – Period of Exemption

Subsection 12(1) provides that applications for exemptions cannot be backdated and may be time limited to cease on a date specified in the exemption instrument.

Subsection 12(2) provides that where an exemption is granted to a person to provide locum services, the exemption must be specified to cease on a day no later than six months from the date of commencement of the exemption.

Section 13 – Delegation

Subsection 13(1) provides that the Minister may delegate some or all of his or her powers or functions under the Guidelines, other than the delegation power, to an officer.

Subsection 13(2) provides that ‘officer’ has the same meaning as in subsection 131(4) of the Act, namely:

- an officer of the Department of Health;
- a person performing the duties of an office in the Department of Health;
- the Chief Executive Medicare; or
- an APS employee within the Department of Human Services.

**STATEMENT OF COMPATIBILITY FOR A BILL OR LEGISLATIVE
INSTRUMENT THAT RAISES HUMAN RIGHTS ISSUES**

Statement of Compatibility with Human Rights

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

Health Insurance (Section 19AB Exemptions) Guidelines 2015

This Bill/Legislative Instrument 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 Health Insurance (Section 19AB Exemptions) Guidelines 2015

The *Health Insurance Act 1973* (the Act) provides the conditions for medical practitioners to provide medical services that are subsidised by Medicare rebates. Section 19AB (1) of the Act restricts the eligibility of two cohorts of medical practitioners who were registered in Australia after 1 January 1997 to claim Medicare rebates for their services. These cohorts are:

- overseas trained doctors (OTDs) – medical practitioners who did not obtain their primary medical degree (Bachelor of Surgery/Bachelor of Medicine or equivalent) at an Australian Medical Council (AMC) accredited medical school located in Australia or New Zealand; and
- foreign graduates of an accredited medical school (FGAMS) – medical practitioners who did obtain their primary medical degree at an AMC accredited medical school in Australia or New Zealand but who were not permanent residents or citizens of either country on the day they enrolled in their degree.

Section 19AB(2) of the Act restricts the payment of Medicare rebates for services provided on behalf of an OTD or FGAMS.

The restrictions that apply under section 19AB(1) and 19AB(2) remain in effect for a minimum period of ten years commencing on the date of a restricted medical practitioner's first Australian medical registration. These restrictions are referred to as the 'ten year moratorium requirement'.

Section 19AB(3) of the Act provides that the Minister for Health or their delegate may grant an exemption from section 19AB(1) and 19AB(2) so that an OTD or FGAMS may provide services that attract Medicare rebates before they complete the ten year moratorium requirement. These exemptions are referred to as section 19AB(3) exemptions and, once granted, allow the Department of Human Services – Medicare to issue a Medicare provider number to an OTD or FGAMS and pay Medicare rebates for the services they provide.

Section 19AB(4B) provides that the Minister for Health must make written guidelines that provide the considerations for assessing section 19AB(3) exemption requests. The legislative Guidelines made under Section 19AB(4B) and introduced on 19 September 2001. They were last updated on 3 September 2012.

Like the previous versions of these Guidelines, the *Health Insurance (Section 19AB Exemptions) Guidelines 2015* provide that the primary consideration for the Minister for Health, or their delegate, when assessing a section 19AB(3) request is whether the applicant medical practitioner is seeking to practise in a district of workforce shortage (DWS) for their medical specialty.

A DWS is defined by the Australian Government as a geographical area that has less access to Medicare-subsidised medical services than the national average with reference to the latest Medicare billing statistics. A lack of access to Medicare-subsidised services is indicative of unmet local needs for medical services. The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* provide that OTDs and FGAMS are likely to be granted a section 19AB(3) exemption if they practise in a DWS area.

The purpose of the *Health Insurance (Section 19AB Exemptions) Guidelines 2015* is to amend and repeal the *Health Insurance (Section 19AB Exemptions) Guidelines 2012*. The revised Guidelines are being introduced to provide:

- an updated definition of DWS that includes detailed information regarding the method used by the Australian Government to identify geographic areas that experience workforce shortage. This updated definition will be used by the Australian Government when assessing section 19AB(3) exemption requests from OTDs and FGAMS who seek Medicare access prior to the completion of their ten year moratorium requirement.
- updated references the information sources and geographic classification systems that are used when assessing section 19AB(3) exemption requests.
- a minor amendment to the existing locum exemption provision to clarify its intended operation. This amendment does not change the way this provision is being applied when assessing section 19AB(3) exemption requests.

With these amendments, the Guidelines will continue to function as an important mechanism for the Australian Government to achieve a targeted increase in the availability of Government subsidised medical services in geographic areas that experience the greatest need. By providing a mechanism for encouraging doctors to practise in DWS areas, the *Health Insurance (Section 19AB Exemptions) Guidelines 2015* are of particular benefit to Australians who reside in regional and remote areas and who face difficulties with accessing appropriate medical services because of their distance from the capital cities.

Human rights implications

Right to Health

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 International Covenant on Economic Social and Cultural Rights (ICESCR). Whilst the UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not to be understood as a right to be healthy, it does entail a right to a system of health protection that provides equality of opportunity for people to enjoy the highest attainable level of health.

The Act underpins the Medicare system, which was implemented by the Australian Government to subsidise the cost of medical services for Australian citizens and permanent residents. Under this system, Medicare rebates function as a payment to patients so that they may meet the costs of medical services. The ten year moratorium requirement under section 19AB functions as a control that enables the Australian Government to:

- identify medical services that will be subsidised by a Medicare rebate; and
- influence the distribution of the private medical workforce with a view to ensuring Medicare-subsidised medical services are accessible to all Australian citizens and permanent residents.

The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* are instrumental in defining the workforce distribution intent of section 19AB because they define DWS and identify it as being the key consideration for the Australian Government when assessing section 19AB(3) exemption requests. In this way, the the Guidelines promote the right to health for all Australians by including a number of provisions that have a direct effect on medical workforce distribution, specifically the private medical workforce.

The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* also recognise that Aboriginal and Torres Strait Islander persons may be marginalised in terms of their ability to access appropriate medical services for a number of reasons. The *Health Insurance (Section 19AB Exemption) Guidelines 2015* retain special provisions that enable OTDs and FGAMS to obtain a section 19AB(3) exemption and provide affordable medical care through Aboriginal and Torres Strait Islander Primary Health Care services across Australia.

The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* also do not include any clause that prevent Australians residing in areas that are not considered to be DWS from being able to access medical services, including services that are subsidised through the Medicare system. All Australians continue to have the right to choose their doctor and to receive a Medicare rebate for any service provide by a Medicare eligible doctor.

The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* improve the ability of all Australians to maximise their enjoyment of their right to health. There is no incompatibility with the right engaged because the Guidelines serve a legitimate objective that is reasonable, necessary and proportionate in the circumstances.

Right to Social Security

The right to social security is contained in Article 9 of the ICESCR. The right requires that a country must, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care. Countries are obliged to demonstrate that every effort has been made to use all resources that are at their disposal in an effort to satisfy, as a matter of priority, this minimum obligation.

Medicare is a social security system that enables the Australian Government to ensure access to affordable health services to all Australians. The operation of section 19AB of the Act ensures more equitable access to Medicare as a social security system and therefore promotes a minimum essential level of benefits for all Australians. The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* enable the Australian Government to support the provision of Medicare subsidised medical services within areas where they are most needed, particularly regional and remote areas.

There is no incompatibility with the right engaged because the *Health Insurance (Section 19AB Exemptions) Guidelines 2015* serve a legitimate objective that is reasonable, necessary and proportionate in the circumstances. Further there is no clause in the Guidelines that contradicts the right to freedom of movement.

Right to Freedom of Movement

The right to freedom of movement is contained in articles 12 and 13 of the International Covenant on Civil and Political Rights. The right to freedom of movement includes the right to move freely within a country for persons who are lawfully within a country. The right to freedom of movement also includes a right to enter a country for persons who are citizens of that country and the right to leave any country.

The Australian Government is not directly responsible for determining where any doctor (Australian or overseas trained) may practise medicine. Eligibility to practise Medicine in Australia is determined through the medical registration process. A doctor may only practise medicine once they are registered with the Medical Board of Australia (MBA). The MBA imposes conditions or restrictions on the practice of some doctors, which in some cases will restrict them to working in particular practices.

Section 19AB of the Act places a restriction on OTDs and FGAMS in terms of access to a Medicare provider number for the purpose of accessing Medicare rebates for their professional services. The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* establish that a key consideration for the Department when assessing section 19AB(3) exemption requests is whether the applicant is seeking to practise in a DWS area for their specialty.

The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* do not necessarily establish a direct requirement for OTDs or FAGMS to practise in a DWS in order for Medicare rebates to be payable for their services while they are subject to the ten year moratorium requirement. A doctor who belongs to the OTD or FGAMS cohorts may be exempted from the operation of sections 19AB(1) and 19AB(2) of the Act using the provisions of section 19AB(3) of the Act and the related Guidelines.

This is because DWS is not the only matter that is a relevant consideration for the Australian Government when assessing a section 19AB(3) exemption request. The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* include a number of other bases for granting an exemption to an OTR of FGAMS. These include considerations of whether the applicant doctor is:

- seeking short term locum or after-hours employment in a non-DWS area;
- being employed at a non-DWS medical practice to replace one of their counterparts;
- seeking employment in a position that was negotiated with their prospective employer while the local area was considered to be a DWS for their specialty;
- seeking employment at a Commonwealth funded Aboriginal and Torres Strait Islander primary health care service; or
- seeking employment at a location close to their spouse's place of employment in some cases.

It should also be noted that OTDs or FGAMS can provide professional medical services that are not subsidised by the Medicare scheme. A section 19AB(3) exemption is not required for this purpose and the provisions of the *Health Insurance (Section 19AB Exemptions) Guidelines 2015* do not prevent any doctor from entering this type of employment arrangement.

No provision within the *Health Insurance (Section 19AB Exemptions) Guidelines 2015* forces OTDs and FGAMS to provide medical services in a DWS or any particular area in Australia. The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* do not require medical practitioners who meet the definition of an OTD or FGAMS to service a particular group of patients or to provide a particular set of medical services within their medical specialty.

The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* also do not place any restriction on ability of OTDs or FGAMS to either enter or leave Australia.

The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* are not incompatible with the right to freedom of movement.

Rights of Equality and Non-Discrimination

The rights of equality and non-discrimination are contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights. The rights of equality and non-discrimination provide that laws, policies and programs should not be discriminatory and also that public authorities should not apply or enforce laws, policies or programs in a discriminatory or arbitrary manner.

The provisions of the *Health Insurance (Section 19AB Exemptions) Guidelines 2015* are intended to serve an important medical workforce distribution function. While the Guidelines and the related section 19AB restrictions may limit OTDs and FGAMS in their eligibility to claim Medicare rebates for their services, the Australian Government does not apply these restrictions in a prejudicial manner.

OTDs and FGAMS are not identified on the basis of their race, their descent, or their national or ethnic origin. These doctors are identified according to the location at which they obtained their primary medical degree.

The ten year moratorium requirement is applied uniformly to all medical practitioners who belong to the OTDs and FGAMS cohorts. Australian citizens, permanent residents and temporary residents who fall into these cohorts are all subject to the same restrictions under the ten year moratorium requirement and receive the same treatment by each of the provisions of the *Health Insurance (Section 19AB Exemptions) Guidelines 2015*. The Australian Government does not consider or record the race, decent, place of birth or ethnicity of any doctor when considering their request for a section 19AB(3) exemption.

The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* are not incompatible with the rights of equity and non-discrimination.

Conclusion

The *Health Insurance (Section 19AB Exemptions) Guidelines 2015* are compatible with human rights because the provisions contained within the Guidelines advance the protection of human rights by enabling limited resources (Medicare benefits) to be spent more effectively and for the benefit of all Australians. To the extent that the *Health Insurance (Section 19AB Exemptions) Guidelines 2015* may limit human rights, those limitations are reasonable, necessary and proportionate.

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