

EXPLANATORY STATEMENT

National Health Act 1953

National Health Regulation 2016

Minute No. 25 of 2016

Section 140 of the *National Health Act 1953* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The National Health Regulation 2016 (the Regulation) replaces the *National Health Regulations 1954* (the Principal Regulations), which sunset on 1 October 2016 under subsection 50(2) of the *Legislation Act 2003*. Some provisions in the Principal Regulations were obsolete and have been repealed, while others have been retained or updated to provide continuity and currency in interpreting the Act.

The Principal Regulations contained provisions relating to nursing home care made under sections of the Act that were superseded by provisions in the *Aged Care Act 1997*. While the relevant sections were previously repealed from the Act, the regulations made under those sections were not, leaving behind obsolete regulations which were no longer active.

The Principal Regulations also contained provisions relating to the ‘fees and allowances payable to committees established under the Act’. The provisions made for this purpose (including rates of remuneration) had not been in use for several decades and had not been revised or updated since 1986.

There are currently three types of committees operating under the Act, none of which rely on the Principal Regulations for their remuneration arrangements. These committees are:

- (a) the Pharmaceutical Benefits Advisory Committee (PBAC) operating under section 100A of the Act;
- (b) sub-committees established by the PBAC provided for under section 101A of the Act; and
- (c) Committees of Inquiry operating under Part VIII of the Act.

Remuneration for PBAC members is set by a determination of the Remuneration Tribunal under the *Remuneration Tribunal Act 1973* as prescribed under section 100D of the Act.

Currently, there are two sub-committees of the PBAC. They are the Drug Utilisation Sub-Committee and the Economics Sub-Committee. Remuneration for those committees is prescribed under regulation 48 of the *National Health (Pharmaceutical Benefits) Regulations 1960*.

The remuneration of Committees of Inquiry is dealt with by determination under the *Remuneration Tribunal Act 1973*. The current determination is Remuneration

Tribunal determination 2015/20 (RTD 2015/20), which refers to payment of members of ‘specified professional committees’, one of which is the Pharmaceutical Services Committee of Inquiry.

The Regulation amends provisions prescribing fees and allowances for members of committees to refer all remuneration arrangements for committees established under the Act to the Remuneration Tribunal.

The provisions which prescribed outdated aged care arrangements in the Principal Regulation have been repealed as follows:

- definition of the term ‘approved form’;
- description of the term ‘actuary’;
- a list of goods and services to be provided by nursing homes;
- a list of individual nursing homes that meet the definition of ‘adjusted fee government nursing homes’;
- rules, processes, procedures and functions of Standards Review Panels for nursing homes;
- prescribing the Department of Veterans’ Affairs (DVA) as an approved authority to whom personal nursing home patient information may be provided;
- prescribing both the broad categories of information and the specific information that may be provided to DVA for the purposes of ascertaining whether the Repatriation Commission is responsible for some of the cost of nursing home care.

As no significant changes have been made, there were no matters requiring consultation with consumers or suppliers. Stakeholders who were consulted to ensure that the provisions would continue to work as intended included the DVA, and areas of the Australian Government Department of Health responsible for administering Ageing and Aged Care; Health Services (including Medicare and Pharmaceutical Benefits), Health Workforce, Indigenous Health, Population Health and committees (including Committees of Inquiry). The outcome was that stakeholders agreed that provisions no longer in use should be repealed, and that the minor amendments to those provisions which have been retained would support the regulation and administration of current policies and programs.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislations Act 2003*.

The Regulation commences the day after registration.

Authority: Section 140 of the *National Health Act 1953*

Statement of Compatibility with Human Rights

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

National Health Regulation 2016

This 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 Legislative Instrument

The National Health Regulation 2016 revokes, amends and replaces in entirety the *National Health Regulations 1954* which sunset on 1 October 2016.

Obsolete provisions relating to nursing home care have been removed. These provisions operated under sections of the *National Health Act 1953* (the Act) which were superseded and repealed by various provisions in the *Aged Care Act 1997*.

Provisions relating to fees and allowances for members of committees established under the *National Health Act 1953* (the Act), have been amended to refer all remuneration decisions for committees to the Remuneration Tribunal.

The amendments retain provisions still required for consistent interpretation of the Act and delivery of current programs and services under the Act. This includes provisions for supply of medical and surgical aids and equipment.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

It does not engage or interfere with the right of individuals to the enjoyment of the highest attainable standard of physical and mental health (Articles 2 or 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)).

This is because the amendment maintains provisions to ensure ongoing and unchanged access for Australians to medical and surgical aids, equipment and appliances supplied through the National Diabetes Services Scheme, the Stoma Appliance Scheme, and the National Epidermolysis Bullosa Dressing Scheme. The amendments made no changes to the operation of these programs, including entitlements, eligibility or cost to consumers for accessing the schemes.

The amendment regarding remuneration for committees pertains only to the remuneration arrangements for members of committees established under the Act. The amendment clarifies that consistent with other similar committees, all remuneration arrangements for committees under the Act are to be referred to the Remuneration Tribunal, an independent statutory body that specialises in the remuneration of public office-holders. Members of committees are not disadvantaged, as this process is already in place under administrative arrangements for the committees.

All provisions that have been removed from this Regulation were already rendered obsolete by the repeal of their enabling sections of primary legislation following development of comparable provisions covered by the *Quality of Care Principles 2014*, developed under section 96-1 of the *Aged Care Act 1997*. There is

no effect on the operation of programs, entitlements, eligibility or cost to users associated with the removal of any of these provisions.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Sussan Ley MP, Minister for Health and Aged Care