

EXPLANATORY STATEMENT

NATIONAL HEALTH ACT 1953

COMMONWEALTH PRICE (PHARMACEUTICAL BENEFITS SUPPLIED BY APPROVED PHARMACISTS) AMENDMENT DETERMINATION 2017

PB 51 of 2017

Authority

Paragraph 98B(1)(a) of the *National Health Act 1953* (the Act) provides that a function of the Pharmaceutical Benefits Remuneration Tribunal (the Tribunal) 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 by them 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 Tribunal, when making a determination pursuant to paragraph 98B(1)(a) of the Act, is to give effect to the terms of that agreement.

Purpose

The Sixth Community Pharmacy Agreement (the Sixth Agreement) between the Commonwealth and the Pharmacy Guild of Australia, signed on 24 May 2015 and due to expire on 30 June 2020, is an agreement for the purposes of subsection 98BAA(1) of the Act. The Sixth Agreement sets out the manner in which the Commonwealth price for pharmaceutical benefits is to be calculated.

As part of the Sixth Agreement the Commonwealth price structure for wholesale mark-up, dispensing fees for Ready Prepared and Extemporaneously Prepared Pharmaceutical Benefits (RPPBs and EPPBs) and the Dangerous Drug fee remain consistent with the previous Fifth Community Pharmacy Agreement (Fifth Agreement).

The Sixth Agreement includes the three-tiered Administration, Handling and Infrastructure fee (AHI). The AHI fee de-links pharmacy remuneration from the price of medicines and aims to reduce the impact of current and future medicines pricing policies, such as price disclosure, on pharmacy remuneration, thereby providing pharmacists with pricing certainty during the term of the agreement.

The AHI, the dispensing fee for RPPBs (and subsequently the dispensing fee for EPPBs) and the Dangerous Drug fees are all indexed annually for the period of the Sixth Agreement, beginning 1 July 2016. Under the Sixth Agreement, this indexation is based on the Consumer Price Index (CPI).

These arrangements will continue for the period from 1 July 2015 to 30 June 2020.

This Amending Determination amends the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2015* (PB 64 of 2015) (the Principal Determination) to give effect to the recent variation to the Sixth Agreement which comes into effect on 1 July 2017.

Specifically, the Amending Determination ensures that the Principal Determination will index the AHI, the Dispensing fees for RPPBs and EPPBs and the Dangerous Drug fee as specified by the Sixth Agreement.

The Amending Determination will also add an additional amount to the AHI fee, on top of the indexed amount. This amount gives effect to the additional AHI fee that has been included in the Sixth Agreement from 1 July 2017. While the AHI base fee will continue to be indexed annually in line with CPI, the additional AHI fee amounts is not part of the 'base' AHI fee and will not be indexed. The additional AHI fee is being paid in recognition of the lower than expected Pharmaceutical Benefits Scheme (PBS) prescription volumes under the Sixth Agreement.

In line with the Sixth Agreement, the Amending Determination will reduce the amount of RPPBs dispensing fees for 2017, after indexation. This reduction will provide funding to remunerate eligible approved pharmacists for the supply of pharmaceutical benefits to individual patients of remote area Aboriginal Health Services.

The Amending Determination revises AHI fee for tiers 1 and 2 from \$3.54 to \$3.94 (retaining, for tier 2, an additional 3.5% of the amount by which the price to pharmacists exceeds \$180 per dispense) and for tier 3 from \$70.92 to \$72.43, the Dispensing Fees for RPPBs from \$7.02 to \$7.15 and for EPPBs from \$9.06 to \$9.19 and the Dangerous Drug fee from \$2.95 to \$3.01.

The fees compiling the Commonwealth price agreed under the Sixth Agreement are specified below.

PAYMENT TYPE	VALUE OF PAYMENT	
Wholesale mark-up (for RPPBs)	Where the Ex-Manufacturer Price is up to and including \$930.06	7.52% of the Ex-manufacturer Price per dispense
	Where the Ex-Manufacturer Price is over \$930.06	\$69.94 per dispense
Administration, handling and infrastructure fee	For a pack quantity of a listed brand with a price to pharmacists less than \$180.00	\$3.94 per dispense
	For a pack quantity of a listed brand with a price to pharmacists from \$180.00 to \$2,089.71	\$3.94, plus 3.5% of the amount by which the price to pharmacists exceeds \$180.00 per dispense
	For a pack quantity of a listed brand with a price to pharmacists more than \$2,089.71	\$72.43 per dispense
Dispensing fee (for RPPBs)	\$7.15 per dispense	
Dispensing fee (for EPPBs)	Dispensing fee for RPPBs, plus \$2.04 per dispense	
Dangerous Drug fee (for (RPPBs)	\$3.01 per dangerous drug dispensed	

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Details of the Amending Determination are in the Attachment.

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 Sixth Agreement and supports this Amending Determination.

The Amending Determination commences 1 July 2017.

This Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the *Commonwealth Price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2017*

Section 1 Name of the Determination

Section 1 provides that the title of the Amending Determination is the *Commonwealth Price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2017*. It provides that the Amending Determination may also be referred to as PB 51 of 2017.

Section 2 Commencement

Section 2 provides that the Amending Determination is to commence on 1 July 2017.

Section 3 Authority

Section 3 provides that the Amending Determination is made under paragraph 98(1)(a) of the *National Health Act 1953*.

Section 4 Schedules

Section 4 provides that each instrument that is specified in a Schedule to the Amending Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item has effect according to its terms.

Schedule Amendments

Commonwealth Price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2015

Item 1 Part 1, section 6 (definition of *dangerous drug fee*)

This item amends the definition of ‘dangerous drug fee’ in section 6 to increase the amount of the dangerous drug fee, in order to give effect to the indexation arrangements in the Sixth Agreement.

Item 2 Part 1, section 6 (definition of *extemporaneously-prepared dispensing fee*)

This item amends the definition of ‘extemporaneously-prepared dispensing fee’ in section 6 to increase the amount of the extemporaneously-prepared dispensing fee, in order to give effect to the indexation arrangements in the Sixth Agreement.

Item 3 Part 1, section 6, (definition of *ready-prepared dispensing fee*)

This item amends the definition of ‘ready-prepared dispensing fee’ in section 6 to increase the amount of the ready-prepared dispensing fee in order to give effect to the indexation arrangements in the Sixth Agreement. However, this fee has been subject to an agreed one-off reduction, after indexation. The reduction will be used to provide funding to remunerate eligible approved pharmacists for the supply of pharmaceutical benefits to individual patients of remote area Aboriginal Health Services.

Item 4 Part 2, paragraph 13(1)(a) (table)

This item replaces the table to paragraph 13(1)(a) to increase the amount of the AHI fee for ready prepared pharmaceutical benefits for 2017, in order to give effect to the Sixth Agreement. This amount includes both indexation and the additional AHI fee for 2017, as set out in the Sixth Agreement.

Item 5 Part 3, section 21 (table)

This item replaces the table to section 21 to increase the amount of the AHI fee for extemporaneously-prepared pharmaceutical benefits for 2017, in order to give effect to the Sixth Agreement. This amount includes both indexation and the additional AHI fee for 2017, as set out in the Sixth Agreement.

Statement of Compatibility with Human Rights

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

COMMONWEALTH PRICE (PHARMACEUTICAL BENEFITS SUPPLIED BY APPROVED PHARMACISTS) AMENDMENT DETERMINATION 2017

PB 51 of 2017

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 purpose of this legislative instrument, made under paragraph 98B(1)(a) of the *National Health Act 1953* (the Act), is to amend the Administration, Handling and Infrastructure fee (AHI), the dispensing fees for Ready Prepared and Extemporaneously Prepared Pharmaceutical Benefits (RPPBs and EPPBs) and the Dangerous Drug fee for payments to approved pharmacists for the supply of these pharmaceutical benefits.

Payments are calculated in accordance with the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Determination 2015* (the Principal Determination). In accordance with section 98BAA of the Act, the manner in which these payments are calculated must be in accordance with the Sixth Community Pharmacy Agreement (the Sixth Agreement) between the Commonwealth and the Pharmacy Guild of Australia. The Pharmaceutical Benefits Remuneration Tribunal (the Tribunal) makes a determination pursuant to paragraph 98B(1)(a) of the Act to give effect to the terms of the Sixth Agreement with respect to the application of an agreed annual indexation adjustment to these payments.

This instrument gives effect to the annual indexation adjustment and additional AHI fee and 2017 Dispensing fee adjustment for these remuneration payments. The legislative instrument increases tiers 1 and 2 of the AHI fee from \$3.54 to \$3.94 (retaining, for tier 2, an additional 3.5% of the amount by which the price to pharmacists exceeds \$180 per dispense) and tier 3 of the AHI fee from \$70.92 to \$72.43, Dispensing fees for RPPBs from \$7.02 to \$7.15 and EPPBs from \$9.06 to \$9.19 and the Dangerous Drug fee from \$2.95 to \$3.01.

Human rights implications

This legislative instrument engages Articles 2, 7 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by assisting with the provision favourable conditions of work to ensure remuneration for workers with fair wages. In addition it also assists in the progressive realisation by all appropriate means of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Pharmaceutical Benefits Scheme (PBS) is a benefit scheme which assists with providing subsidised access for people to medicines. This is a positive step towards attaining the highest standard of health for all Australians. Efficient operational arrangements for the PBS support effective administration of the scheme.

The Tribunal is an independent statutory body established under section 98A of the Act. The main functions of the Tribunal are to make a determination to give effect to the terms of agreement between the Commonwealth and the Pharmacy Guild of Australia in relation to the remuneration that is to be paid to pharmacists for dispensing pharmaceutical benefits and to perform other functions required by that agreement (currently the Sixth Community Pharmacy Agreement).

Conclusion

The Legislative Instrument is compatible with human rights because it advances the protection of human rights.

Jonathan Hamberger
Chairperson
Pharmaceutical Benefits Remuneration Tribunal