

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health

*Health Insurance Act 1973*

*Health Insurance (Section 3C – Cataract and Optometric Services) Amendment  
Determination 2018*

Subsection 3C(1) of the *Health Insurance Act 1973* (the Act) authorises the Minister to, by legislative instrument, determine that a health service not specified in an item in the general medical services table (GMST) shall be treated, in specified circumstances for the purpose of specified statutory provisions of the Act, the regulations, the *National Health Act 1953* or the regulations under that Act, as if it were both a professional service and medical service and as if it were an item specified in the GMST.

The GMST is set out in the *Health Insurance (General Medical Services Table) Regulations* made under subsection 4(1) of the Act, which is re-made each year.

### **Purpose**

The purpose of the *Health Insurance (Section 3C – Cataract and Optometric Services) Amendment Determination 2018* (the Amendment Determination) is to amend the *Health Insurance (Section 3C General Medical Services – Cataract) Determination 2017* (Cataract Determination) and the *Health Insurance (Optometric services) Determination 2016* (Optometric Determination).

The Cataract Determination and the Optometric Determination both apply clauses contained in the GMST. The GMST remake, commencing from 1 July 2018 as the *Health Insurance (General Medical Service Table) Regulations 2018*, results in a number of clauses being renumbered.

The Amendment Determination amends the Cataract Determination and the Optometric Determination to reflect the renumbered clauses of the remake GMST in the application of certain items.

### **Consultation**

No consultation was undertaken for this Amendment Determination as the changes are machinery in nature.

### **Commencement**

This Amendment Determination commences immediately after the commencement of the *Health Insurance (General Medical Services Table) Regulations 2018*.

The Act specifies no conditions which need to be met before the power to make the Amendment Determination may be exercised.

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

Details of the Amendment Determination are set out in the [Attachment](#).

**Details of the *Health Insurance (Section 3C – Cataract and Optometric Services) Amendment Determination 2018***

**Section 1 – Name of Determination**

Section 1 provides that the name of the Amendment Determination is the *Health Insurance (Section 3C – Cataract and Optometric Services) Amendment Determination 2018* (the Amendment Determination).

**Section 2 – Commencement**

Section 2 provides that the Amendment Determination commences immediately after the commencement of the *Health Insurance (General Medical Services Table) Regulations 2018*.

**Section 3 – Authority**

Section 3 provides that the Amendment Determination is made under section 3C(1) of the *Health Insurance Act 1973*.

**Section 4 – Schedules**

Section 4 provides that the Schedules to the Amendment Determination amend each instrument specified in the Schedules. The instruments referred to in Schedule 1 and 2 are the *Health Insurance (Section 3C General Medical Services – Cataract) Determination 2017* (Cataract Determination) and the *Health Insurance (Optometric services) Determination 2016* (Optometric Determination).

**Schedule 1 – Amendments**

The Amendment Determination amends the Cataract Determination to reflect the renumbered clauses of the *Health Insurance (General Medical Service Table) Regulations 2018* in the application of certain items.

Items 1 to 3 of Schedule 1 amend the Cataract Determination.

**Schedule 2 – Amendments**

The Amendment Determination amends the Optometric Determination to reflect the renumbered clauses of the *Health Insurance (General Medical Service Table) Regulations 2018* in the application of certain items.

Items 1 and 2 of Schedule 2 amend the Optometric Determination.

## Statement of Compatibility with Human Rights

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

### *Health Insurance (Section 3C – Cataract and Optometric Services) Amendment Determination 2018*

This Amendment Determination 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 Determination**

The Amendment Determination amends the *Health Insurance (Section 3C General Medical Services —Cataract) Determination 2017* and the *Health Insurance (Optometric services) Determination 2016* to reflect the renumbered clauses of the *Health Insurance (General Medical Service Table) Regulations 2018* in the application of certain items in the determinations.

#### **Human rights implications**

The Amendment Determination engages Articles 9 and 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), specifically the rights to health and social security.

##### *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 ICESCR. The UN Committee on Economic Social and Cultural Rights (the Committee) has stated that the right to health is not a right for each individual to be healthy, but is a right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

The Committee reports that the ‘*highest attainable standard of health*’ takes into account the country’s available resources. This right may be understood as a right of access to a variety of public health and health care facilities, goods, services, programs, and conditions necessary for the realisation of the highest attainable standard of health.

##### *The Right to Social Security*

The right to social security is contained in Article 9 of the ICESCR. It 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.

The Committee reports that there is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under ICESCR. In this context, a retrogressive measure would be one taken without adequate justification that had the effect of reducing existing levels of social security benefits, or of denying benefits to persons or groups previously entitled to them. However, it is legitimate for a Government to re-direct its limited resources in ways that it considers to be more effective at meeting the general health needs of all society, particularly the needs of the more disadvantaged members of society.

### Analysis

This Amendment Determination will maintain rights to health and social security by ensuring access to publicly subsidised health services which are clinically effective and cost-effective.

### **Conclusion**

This Amendment Determination is compatible with human rights, in particular, the rights to health and social security.

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