

AUSTRALIAN GOVERNMENT
HEALTH INSURANCE ACT 1973

Health Insurance (Eligible persons holders of temporary visas and de facto partners of Australian citizens) Order 2017

- (1) I, GREG HUNT, Minister for Health, pursuant to subsection 6(1) of the *Health Insurance Act 1973* (the Act), hereby:
- (a) DECLARE that every person included in the class of persons specified in section (2), being a person who, but for this Order, would not be an eligible person, shall be treated as an eligible person for the purposes of the Act.
 - (b) DECLARE that this Order shall have effect from date of signature.
- (2) A person who:
- (a) is lawfully residing in Australia;
 - (b) is, within the meaning of the *Migration Act 1958*, the holder of a temporary visa;
 - (c) is not covered by regulations made under subsection 6A(1) of the Act;
 - (d) has applied for a permanent visa under the *Migration Act 1958* and the application has not been withdrawn or otherwise finally determined;
 - (e) has not, both:
 - (i) on or after the relevant day, made an application for a protection visa under the *Migration Act 1958* (whether or not the person has applied for any other visa), other than an application that has been withdrawn or otherwise finally determined; and
 - (ii) whether before or after the relevant day, made an application for a parent visa under the *Migration Act 1958* (whether or not the person has applied for any other visa and whether or not the application for the parent visa has been withdrawn or otherwise finally determined);
 - (e) has not, whether before or after the relevant day, made an application for a parent visa under the *Migration Act 1958* (whether or not the person has applied for any other visa), other than an application that has been withdrawn or otherwise finally determined; and
 - (f) in respect of whom the person's de facto partner is an Australian citizen or the holder of a permanent visa under the *Migration Act 1958*.
- (3) For section (2):
- (a) the ***relevant day*** is the commencement of paragraph (f) of the definition of ***Australian resident*** in the Act; and
 - (b) ***de facto partner*** has the same meaning as in subsection 4(1) of the *National Health Act 1953*.

Dated this 26th day of October 2017.

GREG HUNT
MINISTER FOR HEALTH

ATTACHMENT - STATEMENT OF REASONS

Health Insurance Act 1973
Class Order under subsection 6(1)

ORDER NO: 806

DATE OF ORDER: 2017

RELATED ORDER: 770, 782

NAME OF PERSON/GROUP: De facto partners of Australian citizens or permanent residents

REASON FOR APPROVAL:

This Order addresses a flaw in the *Health Insurance Act 1973* (the Act) created by consequential amendments in the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008* (the Same-Sex Act) which took effect on 1 January 2009.

The amendment to the Act's definition of "Australian resident" in subsection 3(1)(f)(v)(A) inserted a bracketed phrase after "child" as follows:

another person, being the person's spouse, parent or child (**each having the same meaning as in the *Migration Act 1958***), is an Australian citizen or the holder of a permanent visa under that Act.

The original clause granted Medicare eligibility to foreign applicants for permanent residence who were in married or de facto relationships with Australians.

Under the Act and the *National Health Act 1953* (the NHA), the term "spouse" includes a de facto partner. The Same-Sex Act amended the definition of "de facto" in section 4 of the NHA, which also applies to the Act. This would have been sufficient for the purpose of the Act's subsection 3(1)(f)(v)(A) above.

The amended clause, however, refers to the *Migration Act 1958* for meaning, in which the definitions of "spouse" and "de facto" are mutually exclusive. This definition has priority, and has the effect of denying Medicare eligibility to all de facto partners, both same and opposite sex. This subsection 6(1) Order restores eligibility to the disenfranchised group.

Note: The name of this instrument was amended on registration as the instrument as lodged did not have a unique name (see subsection 10(2), *Legislation Rule 2016*).