

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance (Section 3C General Medical Services – Medicare Indexation) Amendment Determination 2019

Subsection 3C(1) of the *Health Insurance Act 1973* (the Act) provides that the Minister may, by legislative instrument, determine that a health service not specified in an item in the general medical services table shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the general medical services table. The general medical services table is set out in the regulations made under subsection 4(1) of the Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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.

Purpose

The purpose of the *Health Insurance (Section 3C General Medical Services – Medicare Indexation) Amendment Determination 2019* (the Determination) is to increase the fees of 32 Medicare Benefits Schedule (MBS) items.

In the 2017-18 Budget, the Government announced the re-commencement of indexation of Medicare benefits under the *Guaranteeing Medicare - Medicare Benefits Schedule - indexation* measure. Under the third phase of this measure, indexation of allied health, procedural and therapeutic items will commence from 1 July 2019. In the 2019-20 Budget, the Government announced indexation of all remaining GP services would re-commence from 1 July 2019 under the *Guaranteeing Medicare – strengthening primary care* measure. Most of the indexed items will be implemented by the *Health Insurance (General Medical Services Table) Regulations 2019*.

This Determination will amend the fees of 32 items which are listed under instruments made under subsection 3C(1) of the Act.

Consultation

Consultation was undertaken on indexation as part of the compacts negotiated between the Government and the Australian Medical Association and the Royal Australian College of General Practitioners.

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

The Determination commences on 1 July 2019.

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

Authority: Subsection 3C(1) of the
Health Insurance Act 1973

ATTACHMENT**Details of the *Health Insurance (Section 3C General Medical Services – Medicare Indexation) Amendment Determination 2019***Section 1 – Name

Section 1 provides for the Determination to be referred to as the *Health Insurance (Section 3C General Medical Services – Medicare Indexation) Amendment Determination 2019*.

Section 2 – Commencement

Section 2 provides that the Determination commences on 1 July 2019.

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

The Determination will amend the fees of 32 items covering consultation, procedural and therapeutic services which are made under ministerial determinations.

The Determination will also make consequential changes to clauses in certain instruments to reflect the renumbering of referenced clauses in the *Health Insurance (General Medical Services Table) Regulations 2019*.

Statement of Compatibility with Human Rights

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

Health Insurance (Section 3C General Medical Services – Medicare Indexation) Amendment Determination 2019

This 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 Determination

The purpose of the *Health Insurance (Section 3C General Medical Services – Medicare Indexation) Amendment Determination 2019* (the Determination) is to increase the fees of 32 Medicare Benefits Schedule (MBS) items.

In the 2017-18 Budget, the Government announced the re-commencement of indexation of Medicare benefits under the *Guaranteeing Medicare - Medicare Benefits Schedule - indexation* measure. Under the third phase of this measure, indexation of allied health, procedural and therapeutic items will commence from 1 July 2019. In the 2019-20 Budget, the Government announced indexation of all remaining GP services would re-commence from 1 July 2019 under the *Guaranteeing Medicare — strengthening primary care* measure. Most of the indexed items will be implemented by the *Health Insurance (General Medical Services Table) Regulations 2019*.

This Determination will amend the fees of 32 items which are listed under instruments made under subsection 3C(1) of the Act.

Human rights implications

This instrument 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 instrument will maintain rights to health and social security by increasing the Government contribution towards the cost of publicly subsidised general practitioner, specialist and allied health services on the MBS.

Conclusion

This instrument is compatible with human rights as it has a positive effect on the right to health and the right to social security.

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