

EXPLANATORY STATEMENT

National Health Act 1953

Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2020

PB 122 of 2020

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 of pharmaceutical benefits.

Subsection 98BAA(1) of the Act requires that, where the Commonwealth and the Pharmacy Guild of Australia or another pharmacists' organisation that represents a majority of approved pharmacists have entered 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.

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.

Purpose

The *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2020* (Amendment Determination) amends the *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2020*, in respect of changes to the wholesale mark-up component of the Commonwealth price from 1 January 2021, as agreed under the Seventh Community Pharmacy Agreement (Seventh Agreement).

The Seventh Agreement between the Commonwealth, the Pharmacy Guild of Australia and the Pharmaceutical Society of Australia Limited, which commenced on 1 July 2020 and is due to expire on 30 June 2025, includes an agreement between the Commonwealth and the Pharmacy Guild of Australia for the purposes of subsection 98BAA(1) of the Act, setting out the manner in which the Commonwealth price for pharmaceutical benefits is to be calculated.

This agreement included an agreement that the wholesale mark-up component of the Commonwealth price applying for the period 1 July 2020 to 31 December 2020 would be as applied under the (previous) Sixth Community Pharmacy Agreement made between the Commonwealth and the Pharmacy Guild of Australia, and which expired on 30 June 2020. Under that same agreement new wholesale mark-up arrangements will commence from 1 January 2021.

This Amendment Determination thus introduces, from 1 January 2021, the following changes to the wholesale mark-up component of the Commonwealth price:

- (a) introduction of a fixed \$0.41 wholesale mark-up for pharmaceutical items for which the ex-manufacturer price is up to and including \$5.50, in place of the current mark-up of 7.52 per cent of the ex-manufacturer price; and
- (b) replacement of the current fixed \$69.94 wholesale mark-up, for pharmaceutical items for which the ex-manufacturer price is more than \$930.06, by a fixed amount of \$54.14, for pharmaceutical items for which the ex-manufacturer price is more than \$720.00.

This Amendment Determination also includes a minor administrative amendment to another component of the Commonwealth price, in respect of the Administration Handling and Infrastructure

fee. This change relates only to the way in which calculation of the third tier of this fee is expressed, in keeping with the Seventh Agreement, and does not change the value of this fee as currently applies.

Consultation

The Seventh Agreement includes an agreement between the Commonwealth and the Pharmacy Guild of Australia for the purposes of subsection 98BAA(1) of the Act. The Pharmacy Guild of Australia has been consulted in relation to the changes made by this Amendment Determination as they relate to that agreement. Services Australia has also been consulted in relation to implementation of payment systems changes supporting the changes made by this Amendment Determination.

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

Statement of Compatibility with Human Rights

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

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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 *Commonwealth price (Pharmaceutical benefits supplied by approved pharmacists) Amendment Determination 2020*, made by the Pharmaceutical Benefits Remuneration Tribunal (the Tribunal) on 25 June 2020. This legislative instrument gives effect to the changes to the wholesale mark-up component of the Commonwealth price paid to approved pharmacists for the supply of pharmaceutical benefits.

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 an agreement between the Commonwealth and the Pharmacy Guild of Australia for the purposes of subsection 98BAA(1) of the Act, as currently applies under the Seventh Community Pharmacy Agreement.

This legislative instrument amends, with effect from 1 January 2021, the wholesale mark-up component of the Commonwealth price to introduce a fixed wholesale mark-up of \$0.41 for pharmaceutical items for which the ex-manufacturer price is up to and including \$5.50; and to introduce a fixed amount of \$54.14, for pharmaceutical items for which the ex-manufacturer price is more than \$720.00. These amounts are as agreed with the Pharmacy Guild of Australia for the purposes of subsection 98BAA(1) of the Act under the Seventh Community Pharmacy Agreement.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms. This legislative instrument assists with the provision of favourable conditions of work to ensure remuneration for workers with fair wages. In addition, it 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 statutory benefit scheme which assists with providing subsidised access for people to medicines. This is a positive and supportive step towards attaining the highest standard of health for all Australians. Efficient operational arrangements for the PBS support effective administration of the scheme.

The amendment made by this legislative instrument does not change the protection of human rights to health for all Australians in relation to implementation of the PBS.

Conclusion

This legislative instrument is compatible with human rights because it maintains the protection of human rights to health.

Abbeygail Beaumont
Chairperson
Pharmaceutical Benefits Remuneration Tribunal