

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Relevant Professional Bodies) Repeal Declaration 2023

Purpose and operation

The *Health Insurance (Relevant Professional Bodies) Repeal Declaration 2023* (the Instrument) repeals the *Health Insurance (Relevant Professional Bodies) Declaration 2021* (the Declaration).

Background

Section 129AAD of the *Health Insurance Act 1973* (the HI Act) empowers the Chief Executive Medicare (CEM) to issue notices to produce documents. Under paragraph 129AAD(1)(c), before issuing a notice to produce, the CEM must take reasonable steps to consult with a relevant professional body. Subsection 129AAD(12) of the HI Act provides that a relevant professional body means a body declared by the Minister by a legislative instrument made under subsection 129AAD(13). The Declaration made under subsection 129AAD(13) of the HI Act lists the relevant professional bodies the CEM can consult with for the purposes of paragraph 129AAD(1)(c).

Once the Health Insurance Amendment (Professional Services Review Scheme) Bill 2023 (Bill) is enacted, paragraph 129AAD(1)(c), and subsections 129AAD(12) and 129AAD(13) of the HI Act will be repealed. The repeal of these provisions will remove the requirement to consult with a relevant professional body and the Minister's power to declare relevant professional bodies. Therefore, the Declaration will no longer be required and can be actively repealed. The purpose of the Instrument is to repeal the Declaration.

The Bill implements changes recommended by the Independent Review of Medicare Integrity and Compliance undertaken by Dr Pradeep Philip (the Philip Review). The Philip Review commenced in November 2022, and the final report was released on 4 April 2023. The Philip Review found that including specific requirements for consultation in the legislation might be restrictive to the compliance activities, burdensome to the professional bodies, and unintentionally increase the timeframes for activities such as audits. Accordingly, the Bill removes the requirement to engage with professional bodies prior to issuing a notice to produce. This amendment will streamline the audit process without changing procedural fairness requirements during an audit or limiting the documents or other information that a person may provide.

Authority

The Instrument is made under subsection 129AAD(13) of the HI Act.

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

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.

Commencement

The Instrument commences when the *Health Insurance Amendment (Professional Services Review Scheme) Act 2023* receives Royal Assent.

Consultation

Consultation was not considered necessary as the repeal of the Declaration by this instrument is a consequential change arising from the repeal of the Declaration's authorising provision via the Bill.

General

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

Details of this instrument are set out in **Attachment A**.

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment B**.

Details of the *Health Insurance (Relevant Professional Bodies) Repeal Declaration 2023*

Section 1 – Name

This section provides that the name of the instrument is the *Health Insurance (Relevant Professional Bodies) Repeal Declaration 2023* (the Instrument).

Section 2 – Commencement

This section provides that the Instrument commences when the *Health Insurance Amendment (Professional Services Review Scheme) Act 2023* receives Royal Assent.

Section 3 – Authority

This section provides that the Instrument is made under subsection 129AAD(13) of the *Health Insurance Act 1973*.

Section 4 – Schedules

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

Schedule 1—Repeals

Health Insurance (Relevant Professional Bodies) Declaration 2021

Item 1

This item repeals the *Health Insurance (Relevant Professional Bodies) Declaration 2021* in its entirety.

Statement of Compatibility with Human Rights

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

Health Insurance (Relevant Professional Bodies) Repeal Declaration 2023

This Disallowable 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 Disallowable Legislative Instrument

The *Health Insurance (Relevant Professional Bodies) Repeal Declaration 2023* (the Instrument) repeals the *Health Insurance (Relevant Professional Bodies) Declaration 2021* (the Declaration).

Section 129AAD of the *Health Insurance Act 1973* (the HI Act) empowers the Chief Executive Medicare (CEM) to issue notices to produce documents. Under paragraph 129AAD(1)(c), before issuing a notice to produce, the CEM must take reasonable steps to consult with a relevant professional body. Subsection 129AAD(12) of the HI Act provides that a relevant professional body means a body declared by the Minister by a legislative instrument made under subsection 129AAD(13). The Declaration made under subsection 129AAD(13) of the HI Act lists the relevant professional bodies the CEM can consult with for the purposes of paragraph 129AAD(1)(c).

Once the Health Insurance Amendment (Professional Services Review Scheme) Bill 2023 (the Bill) is enacted, paragraph 129AAD(1)(c) and subsections 129AAD(12) and 129AAD(13) of the HI Act will be repealed. The repeal of these provisions will remove the requirement to consult with a relevant professional body and the Minister's power to declare relevant professional bodies. Therefore, the Declaration will no longer be required and can be actively repealed. The purpose of the Instrument is to repeal the Declaration.

The Bill implements changes recommended by the Independent Review of Medicare Integrity and Compliance undertaken by Dr Pradeep Philip (the Philip Review). The Philip Review commenced in November 2022, and the final report was released on 4 April 2023. The Philip Review found that including specific requirements for consultation in the legislation might be restrictive to the compliance activities, burdensome to the professional bodies, and unintentionally increase the timeframes for activities such as audits. Accordingly, the Bill removes the requirement to engage with professional bodies prior to issuing a notice to produce. This amendment will streamline the audit process without changing procedural fairness requirements during an audit or limiting the documents or other information that a person may provide.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

The repeal of paragraph 129AAD(1)(c) and subsections 129AAD(12) and 129AAD(13) of the HI Act engages with article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* which promotes the right of all individuals to enjoy the highest attainable standard of physical and mental health. The CEM has a role in supporting the integrity of Medicare by identifying non-compliance by health professionals and recovering benefits that should not have been paid under the Act. Removing the requirement to engage with stakeholder groups prior to issuing a notice to produce documents streamlines the audit process, enabling the CEM to address non-compliance more efficiently. This better supports the integrity of the Medicare program to ensure that health expenditure remains sustainable and continues to be accessed and enjoyed by the community. Accordingly, the amendments to the HI Act are compatible with human rights as they maintain the right to health.

However, the repeal of paragraph 129AAD(1)(c) and subsections 129AAD(12) and 129AAD(13) of the HI Act is separate from the repeal of the Declaration. The Instrument merely reflects a consequential change arising from the repeal of the Declaration's authorising provision in the HI Act by enactment of the Bill.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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