

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

### *Health Insurance Amendment (Workforce Programs) Regulations 2024*

#### **Purpose and operation**

The *Health Insurance Amendment (Workforce Programs) Regulations 2024* (Amending Regulations) amend the *Health Insurance Regulations 2018* (Principal Regulations) to include a new program, the Pre-Fellowship Program (PFP) to replace the More Doctors for Rural Australia Program (MDRAP) as a specified program for the purposes of paragraph 3GA(5)(a) of the *Health Insurance Act 1973* (the Act). The Amending Regulations also amend the Principal Regulations to include the Rural Health West Ltd as a specified body for the purposes of paragraph 3GA(5)(a) of the Act .

#### **Background**

The Act sets out the principles and definitions governing the Medicare Benefits Schedule (MBS). The Act provides for payments by way of medical benefits and for other purposes.

Section 19AA of the Act prevents Medicare benefits from being payable unless services are provided by certain persons. Registered medical practitioners can deliver Medicare rebateable services. This includes a person who has been registered under section 3GA of the Act, that provides for the Register of Approved Placements.

- Section 3GA provides that registered medical practitioners can deliver Medicare rebateable services.
- Paragraph 3GA(5)(a) of the Act provides that a person may be considered registered for the purposes of delivering rebateable services,
  - where they are enrolled in or undertaking a course or program prescribed by the regulations,
  - where a body prescribed by the regulations and,
  - the relevant written notice has been given to the Medicare Chief Executive.

The MDRAP commenced in 2018 to support non-vocationally recognised (non-VR) doctors to gain valuable general practice (GP) experience in rural and remote communities to facilitate their entry onto a college fellowship pathway. An independent evaluation of MDRAP identified areas to be enhanced to support the needs of rural communities and the health workforce. The Government has taken into consideration the recommendations in designing the new PFP trial.

The PFP will support non-VR doctors to gain GP experience in all Distribution Priority Areas prior to joining a GP college fellowship pathway. Doctors who participate on the PFP will transition to a college-led training program. The Department of Health and Aged Care (Department) is working with Rural Workforce Agencies (RWAs) to establish the PFP. RWAs attract, recruit and support health care professionals in rural areas.

Transitional provisions will ensure participants on the MDRAP are able to remain on the Register while they complete their current approved placement.

No new participants will be able to commence on MDRAP once the PFP is established. The MDRAP is administered by the RWAs who would then administer the PFP. When there are no remaining participants on the MDRAP, the Department intends to remove the MDRAP scheme from subsection 26(2) of the Principal Regulations.

The Amending Regulations gives effect to a 2023-24 Budget decision to implement and refocus the PFP, to replace the MDRAP.

### **Authority**

Subsection 133(1) of the *Health Insurance Act 1973* provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the 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 Regulations commence on the day after the Regulations is registered on the Federal Register of Legislation.

### **Consultation**

Throughout implementation of the Pre-Fellowship Program, the Department has engaged with key stakeholders across Government and within the sector.

The Department engaged with the Medical Benefits Division within the Department to understand impacts of implementing the program. Discussion focused on the approach to implementing the PFP and ceasing MDRAP. They assisted in finalising the approach to changing regulations and have agreed to the proposed changes being made. Similarly, throughout the implementation process the internal legal team has been provided advice on the approach to regulatory change and have supported this approach.

Services Australia has been engaged throughout implementation of the Pre-Fellowship program more broadly. A particular discussion item was the intention to make changes to the regulations to include the PFP as an approved 3GA program. Services Australia raised no concerns with the approach being taken to implement regulatory changes.

Further, the Department consulted with the Rural Workforce Agencies (as the grantee for both programs) on the development and implementation of the PFP. They raised no concerns with regards to regulation changes. The RWAs are working with the Department to ensure minimal disruption to existing and new participants throughout this transition in programs.

## **General**

The Amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Amending Regulations are set out in **Attachment A**.

The Amending Regulations are 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 Amendment (Workforce Programs) Regulations 2024**

### **Section 1 – Name**

Section 1 provides that the title of the instrument is the *Health Insurance Amendment (Workforce Programs) Regulations 2024* (Amending Regulations).

### **Section 2 – Commencement**

Section 2 provides the Amending Regulations commence on the day after the Amending Regulations are registered.

### **Section 3 – Authority**

Section 3 provides that the Amending Regulations are made under the *Health Insurance Act 1973* (the Act).

### **Section 4 - Schedule(s)**

Section 4 provides that each instrument that is specified in a Schedule to this 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 – Amendments**

Health Insurance Regulations 2018

#### **Item 1 – Subsection 26(2) (table item 2, column 2, paragraphs (e))**

Item 1 inserts the Pre-Fellowship Program (PFP) into subsection 26 (2) of the *Health Insurance Regulations 2018* (Principal Regulations) to include the PFP on the list of programs for which the Department of Health and Aged Care (Department) and specified bodies are authorised to approve the placement of doctors on these programs, whilst the More Doctors for Rural Australia Program (MDRAP) remains as a listed program.

Subsection 26(2) of the Principal Regulations provides a list of approved programs in which eligible doctors can be placed for the purposes of section 3GA of the Act.

Table 2, columns 1 and 2 list the authorised bodies and approved programs respectively for the purposes of section 3GA(5)(a) of the Act.

Paragraph (e) refers to the More Doctors for Rural Australia Program (MDRAP). The 2023-24 Budget included a decision to establish the PFP to replace and the MDRAP.

#### **Item 2 – Subsection 26(2) (table items 3, 4, 5, 6 and 10, column 2)**

Item 2 inserts the PFP as a second program after the MDRAP in Table 2, Column 2 to enable the following organisations to authorise doctors to be placed on the PFP which includes; the

General Practice Workforce Inc, trading as Health Recruitment Plus, Health Network Northern Territory Ltd, Health Workforce Queensland Ltd and NSW Rural Doctors Network Ltd (Table 2, items 3 to 6, Column 1) and Rural Doctors Workforce Agency Incorporated (Table 2, item 10, Column 1).

**Item 3 – Subsection 26(2) (after table item 10)**

Item 3 inserts a reference to the Rural Health West Ltd (ACN 123 188 367) after table item 10 (Column 1) to remain in alphabetical order to be identified as an authorising body in Table 2, after table item 10 (Column 1) for the PFP and MDRAP (Column 2). This effectively replaces table item 12 Western Australian Centre for Remote and Rural Medicine Ltd to reflect the organisation's name change (see item 5 below).

**Item 4 - Subsection 26(2) (cell at table item 11, column 2)**

Item 4 inserts the PFP as a second program after the MDRAP in Table 2, Column 2 which includes the Rural Workforce Agency, Victoria Limited as an identified authorising body in Table 2, item 11 (Column 1). This change allows this body to authorise the placement of doctors on the PFP.

**Item 5 - Subsection 26(2) (table item 12)**

Item 5 removes the Western Australian Centre for Remote and Rural Medicine Ltd as an authorising body in Table 2, item 12 (Column 1) as the organisation has had a name change. Item 3 updates the authorising body names to Rural Health West Ltd.

## Statement of Compatibility with Human Rights

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

### ***Health Insurance Amendment (Workforce Programs) Regulations 2024***

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 purpose of the *Health Insurance Amendment (Workforce Programs) Regulations 2024* (the Regulations) is to amend the *Health Insurance Regulations 2018* (the Principal Regulations) to include the Pre-Fellowship Program (PFP) as a specified program and Rural Health West Ltd as a specified body for the purposes of paragraph 3GA(5)(a) of the *Health Insurance Act 1973* (the Act).

#### **Human rights implications**

This Disallowable Legislative Instrument engages the following rights to health through the following Articles of the International Covenant on Economic, Social and Cultural Rights (ICESCR):

- Article 12(1): The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- Article 6(1): The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he/she freely chooses or accepts, and will take appropriate steps to safeguard this right.
- Article 7(c): The right of everyone to the enjoyment of just and favourable conditions of work, including equal opportunity for everyone to be promoted in his/her employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

#### *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.

### Analysis

In this context, the requirement for general practitioners (GPs) to be either vocationally recognised or working towards vocational recognition on an approved program results in a higher quality GP workforce for the Australian population to access, promoting the overall quality of healthcare in Australia.

### *The Right to Work*

The right to work is contained in Article 6 of the ICESCR.

In accordance with Article 6, it is the right of everyone to the opportunity to gain a living by work which is freely chosen or accepted, and will take appropriate steps to safeguard this right.

### Analysis

Including the PFP ensures that doctors can participate in a new program to assist with progression towards vocational recognition in accordance with the requirements of section 19AA of the *Health Insurance Act 1973*.

The closure of the MDRAP is expected to occur in the 2023/24 financial year, with a transition period to allow doctors Medicare provider numbers and those on the program a reasonable opportunity to transition to a College-led general practice training program or fellowship pathway.

### *The Right of Everyone to the Enjoyment of Just and Favourable Conditions of Work*

In accordance with Article 7(c) of the ICESCR, it is the right of everyone to enjoyment of just and favourable conditions of work, including equal opportunity for everyone to be promoted in his/her employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

### Analysis

Participation on the PFP, as with participation of the prior program the MDRAP, will allow the progression of participants towards vocational recognition. Non-vocationally recognised general practitioners who participate in an approved fellowship pathway such as those administered by the GP colleges are supported in their pathway to obtaining vocational recognition.

### **Conclusion**

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

**The Hon Mark Butler MP  
Minister for Health and Aged Care**