

## EXPLANATORY STATEMENT

### *Health Insurance Act 1973*

#### *Health Insurance Legislation Amendment (2025 Measures No. 3) Determination 2025*

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 diagnostic imaging services table (the DIST) shall, in specified circumstances and for specified statutory provisions, be treated as if it were specified in the DIST.

The DIST is set out in the regulations made under subsection 4AA of the Act. The most recent version of the regulations is the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020*.

Section 16A of the Act specifies that certain requirements have to be met for the payment of Medicare benefits in relation to pathology services, including the requirement for a pathology service to be requested (subsection 16A(3)). Pathologist-determinable services allow Medicare benefits to be paid for pathology services which are requested and performed by an approved pathology practitioner for their own patients, or for certain tests which are not requested, but are performed on the basis of information learned from an originally requested service.

Section 4BA of the Act provides that the Minister for Health and Ageing may determine by legislative instrument, that a particular pathology service, or pathology services included in a class of pathology services, are pathologist-determinable services after consultation with Royal College of Pathologists of Australasia (RCPA).

This instrument relies on subsection 33(3) of the *Acts Interpretation Act 1901* (AIA). Subsection 33(3) of the AIA 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 *Health Insurance Legislation Amendment (2025 Measures No. 3) Determination 2025* (the Amendment Determination) is to amend, as of 1 July 2025, the:

- *Health Insurance (Section 3C Diagnostic Imaging Services – National Lung Cancer Screening Program) Determination 2025* (the NLCSP Determination); and
- *Health Insurance (Pathologist-determinable Services) Determination 2015* (the Pathologist-determinable Determination).

The Amendment Determination makes an administrative amendment by including the name of Subgroup 14 of Group I2 (“Low dose computed tomography”) which is introduced into the Medicare Benefits Schedule (MBS) by the NLCSP Determination.

Additionally, the Amendment Determination amends the Pathologist-determinable Determination to enable item 66842 to be a pathologist-determinable service. Item 66842 will be introduced into the MBS from 1 July 2025 by the *Health Insurance Legislation Amendment (2025 Measures No. 2) Regulations 2025*.

### **Consultation**

No consultation was undertaken for the amendment being made to the NLCSP Determination, as the change is considered administrative in nature and intended to align an MBS subgroup name with original policy intent.

As required under section 4BA of the *Health Insurance Act 1973*, the department consulted with the Royal College of Pathologists of Australasia (RCPA) regarding item 66842 being pathologist determinable. RCPA did not raise concerns about the amendment to the Pathologist-determinable Determination.

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

Section 1 to 4 of the Amendment Determination commence 1 July 2025. Schedule 1 of the Amendment Determination commence immediately after the commencement of the *Health Insurance (Section 3C Diagnostic Imaging Services – National Lung Cancer Screening Program) Determination 2025*. Schedule 2 of the Amendment Determination commence immediately after the commencement of the *Health Insurance Legislation Amendment (2025 Measures No. 2) Regulations 2025*.

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

Authority: Subsection 3C(1) and section 4BA  
of the *Health Insurance Act*  
1973

**Details of the *Health Insurance Legislation Amendment (2025 Measures No. 3) Determination 2025*.**

Section 1 – Name

Section 1 provides for the Amendment Determination to be referred to as the *Health Insurance Legislation Amendment (2025 Measures No. 3) Determination 2025*.

Section 2 – Commencement

Section 2 provides for sections 1 to 4 of the Amendment Determination to commence on 1 July 2025. Section 2 provides for Schedules 1 and 2 of the Amendment Determination to commence immediately after the commencement of the *Health Insurance (Section 3C Diagnostic Imaging Services – National Lung Cancer Screening Program) Determination 2025* and the *Health Insurance Legislation Amendment (2025 Measures No. 2) Regulations 2025*, respectively.

Section 3 – Authority

Section 3 provides that the Amendment Determination is made under subsection 3C(1) and section 4BA of the *Health Insurance Act 1973* (the Act).

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to this Amendment 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 Amendment Determination has effect according to its terms.

Schedule 1 – Diagnostic imaging amendments

*Health Insurance (Section 3C Diagnostic Imaging Services – National Lung Cancer Screening Program) Determination 2025*

**Item 1** amends the table at section 1 of the National Lung Cancer Screening Program Determination to insert the name of Subgroup 14 to the subheading of the table. **Item 1** specifies that Subgroup 14 of Group I2 is “Low dose computed tomography”.

Schedule 2 – Pathology amendments

*Health Insurance (Pathologist-determinable Services) Determination 2015*

**Item 1** amends the table in section 5 to add reference to new item 66842 and its relationship to existing item 66839. The amendment would provide that item 66842 is pathologist determinable and allows the item to be available to patients requiring subsequent pathology testing following inconclusive results from item 66839, without the need for an additional pathology request or specimen collection.

## Statement of Compatibility with Human Rights

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

*Health Insurance Legislation Amendment (2025 Measures No. 3) Determination 2025*

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 *Health Insurance Legislation Amendment (2025 Measures No. 3) Determination 2025* (the Amendment Determination) is to amend, as of 1 July 2025, the:

- *Health Insurance (Section 3C Diagnostic Imaging Services – National Lung Cancer Screening Program) Determination 2025* (the NLCSP Determination); and
- *Health Insurance (Pathologist-determinable Services) Determination 2015* (the Pathologist-determinable Determination).

The Amendment Determination makes an administrative amendment by including the name of Subgroup 14 of Group I2 (“Low dose computed tomography”) which is introduced into the Medicare Benefits Schedule (MBS) by the NLCSP Determination.

Additionally, the Amendment Determination amends the Pathologist-determinable Determination to enable item 66842 to be a pathologist-determinable service. Item 66842 will be introduced into the MBS from 1 July 2025 by the *Health Insurance Legislation Amendment (2025 Measures No. 2) Regulations 2025*.

### 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.

*The right of equality and non-discrimination*

The rights of equality and non-discrimination are contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR). Article 26 of the ICCPR requires that all persons are equal before the law, are entitled without any discrimination to the equal protection of the law and in this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Analysis

This instrument will reflect contemporary clinical practice to ensure that patients continue to have access to health and social security through relevant subsidised pathology services on the MBS.

**Conclusion**

This instrument is compatible with human rights as it maintains the right to health and the right to social security and the right of equality and non-discrimination.

**Mary Warner**  
**Assistant Secretary**  
**Diagnostic Imaging and Pathology Branch**  
**Medicare Benefits and Digital Health Division**  
**Health Resourcing Group**  
**Department of Health, Disability and Ageing**