**EXPLANATORY STATEMENT**

***NATIONAL HEALTH ACT 1953***

***NATIONAL HEALTH (EFFICIENT FUNDING OF CHEMOTHERAPY)
SPECIAL ARRANGEMENT AMENDMENT (JULY UPDATE) INSTRUMENT 2025***

**PB 78 of 2025**

**Purpose**

This is the *National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment (July Update) Instrument 2025* (PB 78 of 2025) (this Instrument). The purpose of this Instrument, made under subsection 100(2) of the *National Health Act 1953* (the Act), is to amend the *National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024* (PB 31 of 2024) (the Special Arrangement) to make changes relating to the Efficient Funding of Chemotherapy Program.

The Special Arrangement achieves greater efficiency in payment for the supply of injected or infused chemotherapy medicines (‘chemotherapy pharmaceutical benefits’) to eligible patients being treated for cancer, to reflect the 2010 Budget measure titled ‘Revised arrangements for the efficient funding of chemotherapy drugs’. The Special Arrangement also relates to the supply of medicines associated with the side-effects of cancer and cancer treatment (‘related pharmaceutical benefits’) at certain public hospitals.

This Instrument amends the definition for ‘diluent fee’, ‘dispensing fee’, ‘distribution fee’ and ‘preparation fee’ to reflect the indexation of these fees for 1 July 2025. It also makes amendments to the Special Arrangement to reflect changes made to the *National Health (Listing of Pharmaceutical Benefits) Instrument 2024* (PB 26 of 2024) which commences on the same day. The *National Health (Listing of Pharmaceutical Benefits) Instrument 2024* (PB 26 of 2024), and amendments to that instrument, are made under sections 84AF, 84AK, 85, 85A, 88 and 101 of the Act.

Schedule 1 to this Instrument provides for the amendment of the previously mentioned fees, the deletion of a form of the listed drug irinotecan, the addition of a brand of the listed drugs bendamustine and irinotecan, the deletion of brands of the listed drugs doxorubicin and irinotecan, and the alteration of circumstances in which a prescription may be written for the listed drug nivolumab under the Special Arrangement. These changes are summarised, by subject matter, in the Attachment.

**Authority**

Subsection 100(1) of the Act enables the Minister, by legislative instrument, to make special arrangements for the supply of pharmaceutical benefits.

Subsection 100(2) of the Act provides that the Minister, by legislative instrument, may vary or revoke a special arrangement made under subsection 100(1).

Subsection 100(3) of the Act provides that Part VII of the Act, and instruments made for the purposes of Part VII, have effect subject to a special arrangement made under subsection 100(1).

**Consultations**

An ongoing and formal process of consultation in relation to matters relevant to the Special Arrangement includes the involvement of interested parties through the membership of the Pharmaceutical Benefits Advisory Committee (PBAC).

The PBAC is an independent expert body established by section 100A of the Act which makes recommendations to the Minister about which drugs and medicinal preparations should be available as pharmaceutical benefits. Part VII of the Act only applies to drugs or medicinal preparations recommended by the PBAC. When recommending the listing of a medicine on the Pharmaceutical Benefits Scheme (PBS), the PBAC takes into account the medical conditions for which the medicine has been approved for use in Australia and its clinical effectiveness, safety and cost-effectiveness compared with other treatments.

PBAC members are appointed following nomination by prescribed organisations and associations from consumers, health economists, practising community pharmacists, general practitioners, clinical pharmacologists and specialists, with at least one member selected from each of these interests or professions. Remaining members are persons whom the Minister is satisfied have qualifications and experience in a field relevant to the functions of the PBAC, and that would enable them to contribute meaningfully to the deliberations of the PBAC.

Pharmaceutical companies are consulted throughout the process for additions and changes to listings on the PBS, including consultation through the PBAC process and agreement to final listing details.

It was considered that further consultation for this Instrument was unnecessary due to the nature of the consultation that has already taken place.

**General**

A provision-by-provision description of this instrument is contained in the Attachment.

This Instrument commences on 1 July 2025.

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

**ATTACHMENT**

**PROVISION-BY-PROVISION DESCRIPTION OF *NATIONAL HEALTH (EFFICIENT FUNDING OF CHEMOTHERAPY) SPECIAL ARRANGEMENT AMENDMENT (JULY UPDATE) INSTRUMENT 2025***

**Section 1 Name of Instrument**

This section provides that the name of the Instrument is the *National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment (July Update) Instrument 2025* and may also be cited as PB 78 of 2025.

**Section 2 Commencement**

This section provides that this Instrument commences on 1 July 2025.

**Section 3** **Authority**

This section states that this Instrument is made under subsection 100(2) of the *National Health Act 1953*.

**Section 4 Schedules**

Section 4 provides that 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 the Instrument has effect according to its terms.

**Schedule 1 Amendments**

*National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024* (PB 31 of 2024)

**Item 1 Definition for *diluent fee***

This item revises the diluent fee to reflect that due to indexation, the fee is $6.08 on and from 1 July 2025.

**Item 2 Definition for *dispensing fee***

This item revises the dispensing fee to reflect that due to indexation, the fee is $8.88 on and from 1 July 2025.

**Item 3 Definition for *distribution fee***

This item revises the distribution fee to reflect that due to indexation, the fee is $30.71 on and from 1 July 2025.

**Item 4 Definition for *preparation fee***

This item revises the preparation fee to reflect that due to indexation, the fee is $91.23 on and from 1 July 2025.

**Items 5 to 13 Amendments to Schedules 1 and 3**

Items 5 to 13 in Schedule 1 involve the deletion of a form of a listed drug, the addition and deletion of brands of listed drugs, and the alteration of circumstances in which a prescription may be written for a drug listed under the Special Arrangement. These changes are summarised below.

***SUMMARY OF CHANGES TO THE EFFICIENT FUNDING OF CHEMOTHERAPY PROGRAM MADE BY THIS INSTRUMENT***

**Form Deleted**

|  |  |
| --- | --- |
| ***Listed Drug*** | ***Form*** |
| Irinotecan | I.V. injection containing irinotecan hydrochloride trihydrate 40 mg in 2 mL |

**Brand Added**

|  |  |
| --- | --- |
| ***Listed Drug*** | ***Form and Brand*** |
| Bendamustine | Powder for injection containing bendamustine hydrochloride 25 mg *(BENDAMUSTINE EUGIA)* |
|  | Powder for injection containing bendamustine hydrochloride 100 mg *(BENDAMUSTINE EUGIA)* |
| Irinotecan | I.V. injection containing irinotecan hydrochloride trihydrate 100 mg in 5 mL *(IRINOTECAN EUGIA)* |
|  | I.V. injection containing irinotecan hydrochloride trihydrate 500 mg in 25 mL *(IRINOTECAN EUGIA)* |

**Brand Deleted**

|  |  |
| --- | --- |
| ***Listed Drug*** | ***Form and Brand*** |
| Doxorubicin | Solution for I.V. injection or intravesical administration containing doxorubicin hydrochloride 200 mg in 100 mL single dose vial *(Adriamycin)* |
| Irinotecan | I.V. injection containing irinotecan hydrochloride trihydrate 100 mg in 5 mL *(Irinotecan Alphapharm; Omegapharm Irinotecan)* |
|  | I.V. injection containing irinotecan hydrochloride trihydrate 500 mg in 25 mL *(Irinotecan Alphapharm)* |

**Alteration of Circumstances in Which a Prescription May be Written**

|  |
| --- |
| ***Listed Drug*** |
| Nivolumab |

**Documents Incorporated by Reference**

|  |  |  |
| --- | --- | --- |
| ***Listed Drug*** | ***Document incorporated*** | ***Document access*** |
| Nivolumab | **Approved Product Information/Australian Product Information/TGA-approved Product Information.**The document is incorporated as in force on the day this Instrument takes effect, pursuant to paragraph 14(1)(b) of the *Legislation Act 2003.*This document provides health professionals with a summary of the scientific information relevant to the safe and effective use of a prescription medicine. | TGA-approved Product Information is available for download for free from the TGA website: https://www.tga.gov.au/product-information-0 |
| Nivolumab | **World Health Organization (WHO)/Eastern Cooperative Oncology Group (ECOG) Performance Status/Performance Status Score.**The document is incorporated as in force on the day this Instrument takes effect, pursuant to paragraph 14(1)(b) of the *Legislation Act 2003.*The WHO/ECOG performance status is a standard medical diagnostic tool used to measure how cancer impacts a patient’s daily living abilities, by evaluating a patient’s level of functioning in terms of their ability to care for themself, daily activity, and physical ability (walking, working, etc.). | The WHO/ECOG Performance Status is available for download for free from the ECOG-ACRIN Cancer Research Group website: https://ecog-acrin.org/resources/​ecog-performance-status |

**Statement of Compatibility with Human Rights**

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

***National Health (Efficient Funding of Chemotherapy) Special Arrangement
Amendment (July Update) Instrument 2025***

**(PB 78 of 2025)**

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 subsection 100(2) of the *National Health Act 1953* (the Act), is to amend the *National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024* (PB 31 of 2024) (the Special Arrangement) to make changes relating to the Efficient Funding of Chemotherapy Program.

The Special Arrangement achieves greater efficiency in payment for the supply of injected or infused chemotherapy medicines (‘chemotherapy pharmaceutical benefits’) to eligible patients being treated for cancer, to reflect the 2010 Budget measure titled ‘Revised arrangements for the efficient funding of chemotherapy drugs’. The Special Arrangement also relates to the supply of medicines associated with the side-effects of cancer and cancer treatment (‘related pharmaceutical benefits’) at certain public hospitals.

This Instrument provides for amendments to the definitions for ‘diluent fee’, ‘dispensing fee’, ‘distribution fee’ and ‘preparation fee’ to reflect the indexation of these fees for 1 July 2025. It also provides for amendments to the Special Arrangement to ensure that the Special Arrangement accurately reflects changes to the *National Health (Listing of Pharmaceutical Benefits) Instrument 2024* (the Listing Instrument), made under sections 84AF, 84AK, 85, 85A, 88 and 101 of the Act, which commences on the same day.

**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 social security and 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 UN Committee on Economic Social and Cultural Rights 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 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**

This Instrument advances the right to health and the right to social security by ensuring that the amendments to the *National Health (Listing of Pharmaceutical Benefits) Instrument 2024* (the Listing Instrument), that affect the pharmaceutical benefits that may be supplied under the Special Arrangement, are made concurrently. This Instrument provides for the alteration of definitions for a number of fees to reflect annual indexing of these fees for 1 July 2025. It also provides for the deletion of a form of the listed drug irinotecan, the addition of a brand of the listed drugs bendamustine and irinotecan, and the deletion of brands of the listed drugs doxorubicin and irinotecan under the Special Arrangement.

The Listing Instrument determines the pharmaceutical benefits that are on the Pharmaceutical Benefits Scheme (PBS) through declarations of drugs and medicinal preparations, and determinations of forms, manners of administration and brands. The PBS is a benefit scheme which assists with advancement of these human rights by providing for subsidised access by patients to medicines. The recommendatory role of the Pharmaceutical Benefits Advisory Committee (PBAC) ensures that decisions about subsidised access to medicines on the PBS are evidence-based.

The fees being indexed relate to amounts that approved suppliers may claim from the Commonwealth as payment for supply of a chemotherapy drug or related pharmaceutical benefit available under the Special Arrangement. There is no change to the amount patients pay for those drugs and pharmaceutical benefits, ensuring their rights to social security are maintained.

Where there are many brands of a listed drug and form, then the delisting of one brand will not adversely affect members of the public as they will be able to obtain any of the other equivalent brands. The delisting of brands in this Instrument will not affect access to the drugs, as affected patients will be able to access equivalent brands, at the same cost. Consequently, the brand delistings in this instrument do not result in an unmet clinical need. Note that delisting of maximum quantities, number of repeats, and pack sizes are equivalent to brand delistings.

When a sponsor submits a request to delist a drug from the PBS, subsection 101(4AAB) of the *National Health Act 1953* requires that the Minister or their delegate obtain advice from the Pharmaceutical Benefits Advisory Committee (PBAC), an independent and expert advisory body, before varying or revoking declarations under subsection 85(2) so as to delist the drug. In these instances, one of the matters which the PBAC provides advice on is whether the delisting of a drug will result in an unmet clinical need for patients. PBAC also considers whether the delisting of a form of a drug will result in an unmet clinical need for patients.

Written advice from the PBAC is tabled with the monthly amendments to the Listing Instrument. An unmet clinical need would arise when a currently treated patient population would be left without treatment options once a delisting occurs. Alternative treatment options could include using a different: form, strength or drug. It was considered that the delisting of a form of a drug in the above-mentioned instrument would not result in an unmet clinical need. The delisting of this item will not affect access to the drugs (or an alternative treatment if required), as affected patients will be able to access alternative medicines through the PBS, and the delisting is unlikely to have an effect on the amount patients pay for those drugs, as co-payment amounts are capped, ensuring their rights to social security are maintained. From 1 January 2024, these amounts are $31.60 for general patients and $7.70 for concession card holders.

The drug irinotecan in the form I.V. injection containing irinotecan hydrochloride trihydrate 40 mg in 2 mL (Omegapharm Irinotecan) was requested to be delisted from the PBS Schedule by the sponsor. There are other substitutable forms of irinotecan available on the PBS and the delisting of this product will not result in an unmet clinical need.

**Conclusion**

This Legislative Instrument is compatible with human rights because it advances the protection of human rights.

**Rebecca Richardson**

**Assistant Secretary**

**Pricing and PBS Policy Branch**

**Technology Assessment and Access Division**

**Department of Health, Disability and Ageing**