

EXPLANATORY STATEMENT

Health Insurance Act 1973

Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac MRI for Myocarditis) Repeal Determination 2025

Subsection 3C(1) of the *Health Insurance Act 1973* (the Act) enables the Minister to determine, by legislative instrument, that a health service not specified in an item in the diagnostic imaging services table (the Table) is to be treated as if it were listed, under specified circumstances and statutory provisions.

The Table is established under the regulations made pursuant to section 4A of the Act. The current version of the regulations is the *Health Insurance (Diagnostic Imaging Services Table) Regulations (No. 2) 2020* (the DIST).

This instrument is made under subsection 33(3) of the *Acts Interpretation Act 1901* (AIA), which provides that a power to make a legislative or administrative instrument includes the power to repeal, rescind, revoke amend, or vary any that instrument in the same manner and subject to the same conditions.

Purpose

The purpose of the *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac MRI for Myocarditis) Repeal Determination 2025* (the Repeal Determination) is to repeal the *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac MRI for Myocarditis) Determination 2024* (the Principal Determination) from 1 November 2025. The Principal Determination lists Medicare Benefits Schedule (MBS) item 63390 for an MRI scan of the cardiovascular system for the assessment of myocardial structure, function and characterisation.

From 1 November 2025, MBS item 63390 will be incorporated into the DIST via the *Health Insurance Legislation Amendment (2025 Measures No. 3) Regulations 2025* (the Amendment Regulations). As the Principal Determination solely introduced item 63390, it will be repealed in full immediately after the commencement of the Amendment Regulations.

This change is administrative in nature. Patients will continue to have access to services under MBS item 63390.

Consultation

Consultation was not undertaken in relation to this change, as the repeal of the Principal Determination is administrative in nature. There is no impact on the practical arrangements for services provided under item 63390, and Medicare will continue to subsidise these services.

This explanation aligns with principle (d) of the Senate Standing Committee for the Scrutiny of Delegated Legislation, which requires justification where consultation has not occurred with stakeholders likely to be affected.

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

The Repeal Determination commences immediately after the commencement of the Amendment Regulations on 1 November 2025.

Details of the Repeal Determination are set out in the Attachment.

Authority: Subsection 3C(1) of the
Health Insurance Act 1973

ATTACHMENT

Details of the *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac MRI for Myocarditis) Repeal Determination 2025*Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac MRI for Myocarditis) Repeal Determination 2025* (Repeal Determination).

Section 2 – Commencement

Section 2 provides for the Repeal Determination to commence immediately after the commencement of the *Health Insurance Legislation Amendment (2025 Measures No. 3) Regulations 2025*.

Section 3 – Authority

Section 3 provides that the Repeal Determination is made under subsection 3C(1) of the *Health Insurance Act 1973*. This authorises the Minister to determine health services for inclusion in the Medicare Benefits Schedule (MBS) via legislative instrument.

Section 4 – Schedules

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

Schedule 1 – Repeals

Item 1 of Schedule 1 repeals the whole of the *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac MRI for Myocarditis) Determination 2024*. This repeal is necessary as item 63390 will be incorporated into the DIST from 1 November 2025, rendering the Principal Determination redundant.

Statement of Compatibility with Human Rights

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

Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac MRI for Myocarditis) Repeal 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 Repeal Determination

The purpose of the *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac MRI for Myocarditis) Repeal Determination 2025* (the Repeal Determination) is to repeal the *Health Insurance (Section 3C Diagnostic Imaging Services – Cardiac MRI for Myocarditis) Determination 2024* (the Principal Determination) from 1 November 2025. The Principal Determination lists Medicare Benefits Schedule (MBS) item 63390 for an MRI scan of the cardiovascular system for the assessment of myocardial structure, function and characterisation.

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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 does not affect the rights to health and social security or the right of equality and non-discrimination. Patients and medical practitioners will continue to access and provide diagnostic imaging services under MBS item 63390, which will be prescribed in the DIST from 1 November 2025.

Conclusion

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

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