

## EXPLANATORY STATEMENT

Issued by the Minister for Health and Ageing

*Health Insurance Act 1973*

*Health Insurance (Extended Medicare Safety Net) Amendment  
(Indexation No.2) Determination 2025*

Subsection 10B(1) of the *Health Insurance Act 1973* (the Act) provides that the Minister may, by legislative instrument, determine which Medicare Benefit Schedule items subsections 10ACA(7A) and 10ADA(8A) apply and the maximum increases in Medicare benefits payable for those items under the Extended Medicare Safety Net (EMSN).

Subsections 10ACA(7A) and 10ADA(8A) of the Act provide that - where a Medicare item is listed in a determination made under section 10B - the EMSN benefit must not exceed the amount determined as the EMSN benefit cap.

This instrument is made pursuant to 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 EMSN provides an additional benefit for Australian families and singles who incur high out-of-pocket costs for Medicare eligible out-of-hospital services. Once the relevant annual threshold of out-of-pocket costs has been met, Medicare will pay up to 80 per cent of any future out-of-pocket costs for out-of-hospital Medicare services for the remainder of the calendar year.

Under subsection 10B(1) of the Act, the Minister may by legislative instrument apply caps on the maximum additional benefit paid (the EMSN benefit cap) to Medicare items under the EMSN. These items and their relevant EMSN benefit caps are prescribed in the *Health Insurance (Extended Medicare Safety Net) Determination 2017* (the Principal Determination).

The purpose of the *Health Insurance (Extended Medicare Safety Net) Amendment (Indexation No.2) Determination 2025* (the EMSN Amendment Determination No. 2) is to repeal the *Health Insurance (Extended Medicare Safety Net) Amendment (Indexation) Determination 2025* (EMSN Amendment Determination No. 1). The EMSN Amendment Determination No.1 misstated the EMSN caps for eight MBS items (32500, 32520, 32522, 32523, 32526, 32528, 32529, 45560).

The EMSN Amendment Determination No. 2 will also correctly apply EMSN benefit caps as per policy intention from 1 January 2026 if passed by both houses of parliament. Specifically, the EMSN Amendment Determination No. 2 will achieve this by amending the Principal Determination to do the following.

- Index the fixed dollar EMSN benefit cap of 80 items by 3.2 per cent to provide a greater benefit for patients.

- Add an EMSN benefit cap to six newly listed Medicare Benefit Schedule (MBS) items for intravitreal eye injections.
- Remove the EMSN benefit cap from 29 MBS items that are in-hospital only service and therefore, no longer eligible for the EMSN.
- Make other minor administrative amendments, including removing the EMSN benefit cap from now ceased MBS items.

### Consultation

Consultation was not undertaken on the indexation of EMSN fixed benefit caps as it is machinery in nature. Indexation of EMSN fixed benefit caps is a business-as-usual process which is completed on 1 January of each year to ensure the value of the fixed cap remains relative with the value of the respective item's schedule fee, which itself (the fee) is indexed on 1 July of each year.

In the 2012-13 Budget under the *Extended Medicare Safety Net – capping benefits including for items with excessive fees* measure, the Australian Government announced that an EMSN benefit cap would be applied to all attendance items from 1 November 2012. Attendance items are subject to an EMSN benefit cap that is the lower amount of 300 percent of the schedule fee or \$500.00. The specific cap amount for each item – including attendance items - will be listed in the MBS XML data file which will be publicly available for download from the MBS Online website ([www.mbsonline.gov.au](http://www.mbsonline.gov.au)).

In the 2024-25 Budget under the *Strengthening Medicare – an effective and clinically appropriate Medicare Benefits Schedule (MBS)* measure, items 42738, 42739 and 42740 for intravitreal eye injections were replaced by items 43030, 43032, 43034, 43036, 43038 and 43040 to split the original items into Left and Right eye variations. The EMSN Amendment Determination No. 2 makes the necessary changes to reflect the new items implemented on 1 July 2025.

The EMSN Amendment Determination No. 2 is a legislative instrument for the purposes of the *Legislation Act 2003*.

Sections 1 to 4 of the EMSN Amendment Determination No. 2 commence the later of the day after the EMSN Amendment Determination No. 2 is registered on the Federal Register of Legislation and the day after it has been approved by each House of Parliament. Schedule 1 of the EMSN Amendment Determination No. 2 commences the later of 1 January 2026 and the day after it has been approved by each House of Parliament.

The EMSN Amendment Determination No. 2 also repeals the *Health Insurance (Extended Medicare Safety Net) Amendment (Indexation) Determination 2025* (Repealed Determination), as the Repealed Determination contained minor errors in the EMSN caps for eight items.

Details of the EMSN Amendment Determination No. 2 are set out in the [Attachment](#).

Authority: Subsection 10B(1) of the  
*Health Insurance Act 1973*

## ATTACHMENT

**Details of the *Health Insurance (Extended Medicare Safety Net) Amendment (Indexation No.2) Determination 2025***Section 1 – Name

Section 1 provides for the instrument to be referred to as the *Health Insurance (Extended Medicare Safety Net) Amendment (Indexation No.2) Determination 2025* (the EMSN Amendment Determination No. 2).

Section 2 – Commencement

Subject to Parliament's approval, sections 1 to 4 of the EMSN Amendment Determination No. 2 will commence the later of the day after registration of the EMSN Amendment Determination No. 2 on the Federal Register of Legislation and the day after the EMSN Amendment Determination No. 2 has been approved by each House of Parliament.

Subject to Parliament's approval, Schedule 1 of the Amendment Determination will commence the later of 1 January 2026 and the day after the Amendment Determination has been approved by each House of Parliament.

Section 2 provides that the EMSN Amendment Determination No. 2 will not commence if the instrument is not approved by each House of Parliament.

Section 3 – Authority

Section 3 provides that the EMSN Amendment Determination No. 2 is made under subsection 10B(1) of the *Health Insurance Act 1973*.

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to this EMSN Amendment Determination No. 2 is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this EMSN Amendment Determination No. 2 has effect according to its terms.

Schedule 1 – Indexation Amendments

*Health Insurance (Extended Medicare Safety Net) Determination 2017* (the Principal Determination)

**Amendment item 1 – paragraph 4(1)(b) (table)**

This item repeals the table under paragraph 4(1)(b) of the Principal Determination and substitutes a new table of EMSN benefit cap amounts. For the 52 items with fixed (dollar) EMSN benefit cap amounts, the 'maximum increase' amount in column 2 has been replaced with new (indexed) values.

The new amounts have been indexed by an indexation factor of 3.2 per cent. This percentage is the annual All Groups Consumer Price Index as reported in the September quarter of 2025 on [www.abs.gov.au](http://www.abs.gov.au), rounded down to the nearest 10 cents.

The substituted table will also:

- remove EMSN benefit caps for items 16520, 16528, 16564, 16573, 16624, 16627, 35303, 42504, 42702 and 42705 as these services are now in-hospital only services; and
- remove items 11602, 11604, 11607, 11610, 18270, 18272, 30216 and 30219 as these items will be listed in paragraph 4(2)(a), which contains a list of items for which the maximum increase is 80% of the applicable Schedule fee (see **amendment item 2**).

### **Amendment item 2 – paragraph 4(2)(a)**

This item repeals and substitutes paragraph 4(2)(a), which sets out items in the general medical service table (GMST) for which the maximum increase is 80% of the applicable schedule fee.

Specifically, the substituted paragraph:

- applies EMSN benefit caps to new items 43030, 43032, 43034, 43036, 43038, 43040 relating to intravitreal eye injections;
- moves items 11602, 11604, 11607, 11610, 18270, 18272, 30216 and 30219 under paragraph 4(2)(a), instead of the table at paragraph 4(1)(b) (see **amendment item 1**); and
- lists items 14100, 30071, 31560, 32504, 34106, 42590, 45003, 45025, 45026, 45200, 45203, 45206, 45545, 45614, 45617, 45620, 45623, 45624 and 45652, which previously were listed in the paragraph and are appropriate to remain listed.

The substituted paragraph also removes EMSN benefit caps for eight items for the following reasons:

- items 20142, 32507, 37619, 45635 and 45632 are now in hospital only services; and
- items 42738, 42739 and 42740 ceased on 1 July 2025.

It should be noted that the substituted paragraph does not include item 11704, as this item is listed in the table to subsection 4(6) as it is in the diagnostic imaging services table (DIST), not the GMST (see **amendment item 6**).

### **Amendment item 3 – paragraph 4(3)(b) (table)**

This item repeals and substitutes the table at paragraph 4(3)(b) to remove Group A8 and Group A15. This is to effect the changes made by **amendment item 4** below.

### **Amendment item 4 - after subsection 4(3)**

This item adds new subsections 4(3A) and 4(3B) to reflect that the EMSN benefit caps remain for all items in Group A8 (except item 297) and Group A15 (except item 880). This is to reflect that items 297 and 880 are now in hospital only services. Group A8 and Group A15 have now been removed from the table to paragraph 4(3)(b) (see **amendment item 3**).

### **Amendment item 5 – paragraph 4(5)(a)**

This item makes a minor grammatical change to amend the wording to refer to “item” instead of “items”.

### **Amendment item 6 – paragraph 4(6)(b) (table)**

This item repeals the table under paragraph 4(6)(b) of the Principal Determination and substitutes a new table of EMSN benefit cap amounts. For the 28 items with fixed (dollar) EMSN benefit cap amounts that were in the Principal Determination, the ‘maximum increase’ amount in column 2 has been replaced with new values. The new amounts have been indexed by an indexation factor of 3.2 per cent, which is the annual All Groups Consumer Price Index as reported in the September quarter 2024 on [www.abs.gov.au](http://www.abs.gov.au), rounded down to the nearest 10 cents.

This item also makes a minor administrative amendment to move item 11704 from paragraph 4(2)(a) to the table at paragraph 4(6)(b), as this item is contained in the DIST rather than the GMST.

Items 59970, 60024, 60027, 60030, 60033, 60048, 60051, 60054 and 60057 are also being removed from the table to paragraph 4(6)(b), as they are in hospital only services.

### **Schedule 2 – Repeals**

*Health Insurance (Extended Medicare Safety Net) Amendment (Indexation) Determination 2025*  
(Repealed Determination)

### **Amendment item 1 – the whole of the instrument**

This item repeals the entirety of the *Health Insurance (Extended Medicare Safety Net) Amendment (Indexation) Determination 2025*.

## Statement of Compatibility with Human Rights

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

*Health Insurance (Extended Medicare Safety Net) Amendment (Indexation No.2) 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 EMSN provides an additional benefit for Australian families and singles who incur high out-of-pocket costs for Medicare eligible out-of-hospital services. Once the relevant annual threshold of out-of-pocket costs has been met, Medicare will pay up to 80 per cent of any future out-of-pocket costs for out-of-hospital Medicare services for the remainder of the calendar year.

Under subsection 10B(1) of the Act, the Minister may by legislative instrument apply caps on the maximum additional benefit paid (the EMSN benefit cap) to Medicare items under the EMSN. These items and their relevant EMSN benefit caps are prescribed in the *Health Insurance (Extended Medicare Safety Net) Determination 2017* (the Principal Determination).

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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, social security, and equality and non-discrimination.

#### *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

The instrument maintains rights to health, social security, and equality and non-discrimination by ensuring access to publicly subsidised health services which are clinically effective and cost-effective. It does so by applying on 1 January 2026 annual indexation in line with the Consumer Price Index to EMSN fixed benefit caps, thereby increasing benefit amounts to eligible patients.

### **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.

**Mark Butler**  
**Minister for Health and Ageing**