

EXPLANATORY STATEMENT

National Health Act 1953

National Health Legislation (Closing the Gap—PBS Co-payment Program) (Repeal and Consequential Amendments) Instrument 2026

Purpose and operation

From 1 April 2026 the *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2016* will be repealed and replaced by the *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2026*. due to the sunseting provisions in section 50 of the *Legislation Act 2003*.

A number of consequential amendments are required to the following other special arrangements made under section 100 of the *National Health Act 1953*:

- *National Health (Botulinum Toxin Program) Special Arrangement 2025*;
- *National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024*;
- *National Health (Growth Hormone Program) Special Arrangement 2025*;
- *National Health (Highly Specialised Drugs Program) Special Arrangement 2021*; and
- *National Health (IVF Program) Special Arrangement 2025*.

The consequential amendments are made through the *National Health Legislation (Closing the Gap—PBS Co-payment Program) (Repeal and Consequential Amendments) Instrument 2026* (this instrument), these amendments reflect the change in name of the principal instrument and the reordering of provisions in the principal instrument.

Authority

This instrument is made under section 100 of the *National Health Act 1953*.

Subsection 100(1) empowers the Minister to make special arrangements for the supply of pharmaceutical benefits.

Subsection 100(2) provides that the Minister may vary or revoke a special arrangement made under subsection 100(1).

Subsection 100(3) 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).

Commencement

This instrument commences on 1 April 2026.

Consultation

Key stakeholders were consulted on the remake of the principle instrument the *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2026* to ensure the principal instrument was functional and fit-for-purpose. Consultation in relation to this

instrument was not conducted because it makes minor technical changes consequential to the remake of the *National Health (Closing the Gap–PBS Co-payment Program) Special Arrangement 2026*.

General

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

Details of this instrument are set out in **Attachment A**.

This instrument is 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 *National Health Legislation (Closing the Gap—PBS Co-payment Program) (Repeal and Consequential Amendments) Instrument 2026*

Section 1 – Name

This section provides that the name of the instrument is the *National Health Legislation (Closing the Gap—PBS Co-payment Program) (Repeal and Consequential Amendments) Instrument 2026* and that it may also be cited as PB 28 of 2026.

Section 2 – Commencement

This section provides that the instrument commences on 1 April 2026.

Section 3 – Authority

This section states that the instrument is made under section 100 of the *National Health Act 1953*.

Section 4 – Schedules

This section provides that each instrument 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 – Repeals

National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2016

Item 1 – The whole of the instrument

This item repeals the *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2016*. The repealed instrument will be replaced from 1 April 2026 with the *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2026* (CTG Special Arrangement 2026).

Schedule 2 – Amendments

National Health (Botulinum Toxin Program) Special Arrangement 2025

Item 1 – Section 6 (definitions of CTG registered patient and CTG Special Arrangement)

This item repeals the existing definitions of CTG registered patient and CTG Special Arrangement in section 6 of the *National Health (Botulinum Toxin Program) Special Arrangement 2025* and substitutes them with updated definitions referring to the CTG Special Arrangement 2026. This ensures the *National Health (Botulinum Toxin Program) Special Arrangement 2025* maintains accurate references to CTG definitions and sections within the remade CTG Special Arrangement 2026 instrument.

Items 2, 3, 4 and 5 – Subsection 18(1), paragraph 18(2)(a), at the end of paragraph 18(2)(b) and subsection 18(3)

Section 18 applies various provisions in the CTG Special Arrangement 2026 relating to patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to special arrangement supplies of chemotherapy pharmaceutical benefits made under the *National Health (Botulinum Toxin) Special Arrangement 2025*, where the supply is made to a CTG registered patient and by an approved supplier who is a CTG supplier.

The amendments made by items 2 – 5 are consequential changes to:

- repeal and substitute subsection 18(1) to replace references to subsections 11(1), (2), (3) and (4) and section 13 of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* with references to corresponding subsections 10(1), (2) and (3) and section 11 of the CTG Special Arrangement 2026;
- update reference in paragraph 18(2)(a) to the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* to reference to the CTG Special Arrangement 2026 and improve clarity around the meaning of a ‘special arrangement supply’ for the purposes of applying the arrangements in the CTG Special Arrangement 2026 around patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to supplies of pharmaceutical benefits made under the *National Health (Botulinum Toxin) Special Arrangement 2024*; and
- make a technical amendment to paragraph 18(2)(b) to improve clarity around the meaning of a ‘special arrangement supply’ for the purposes of applying the arrangements in the CTG Special Arrangement 2026 around patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to supplies made under the *National Health (Botulinum Toxin Program) Special Arrangement 2025*; and
- repeal and replace subsection 18(3) (including the note) so that references to subsections 11(2) and 11(3) of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* are replaced with references to the corresponding subsections 10(2) and 10(3) of the CTG Special Arrangement 2026. The note to subsection 18(3) continues to make clear that the notes relating to CTG suppliers making claims for payment under the CTG Special Arrangement do not apply to special arrangement supplies under the *National Health (Botulinum Toxin Program) Special Arrangement 2025*, as claims for payment are instead made under section 19.

These amendments do not change the operation or policy intent of the provision.

National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024

Item 6 – Section 5 (definitions of CTG registered patient and CTG Special Arrangement)

This item repeals the existing definitions of ‘CTG registered patient’ and ‘CTG Special Arrangement’ in section 5 of the *National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024* and substitutes with updated definitions referring to the CTG Special Arrangement 2026. This ensures the *National Health (Efficient Funding of*

Chemotherapy) Special Arrangement 2024 maintains accurate references to CTG definitions and sections within the remade CTG Special Arrangement 2026 instrument.

Item 7 - Subsections 36(3A) and 37(3A)

This amendment substitutes a reference in subsections 36(3A) and 37(3A) to subsection 11(1) of the *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* to corresponding subsection 10(1) of the remade CTG Special Arrangement 2026.

This amendment is consequential in nature and reflects the reordering of provisions in the remade instrument. It ensures that the correct provision continues to be referenced for the purposes of applying the CTG co-payment reduction when calculating patient contributions for the supplies of chemotherapy drugs. This amendment does not change the operation or policy intent of the provision.

Items 8, 9 and 10 - Subsection 40(2), subsection 40(3) and subsection 40(4)

Section 40 applies various provisions in the CTG Special Arrangement 2026 relating to patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to special arrangement supplies of chemotherapy pharmaceutical benefits made under the *National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024*, where the supply is made to a CTG registered patient and by an approved supplier who is a CTG supplier.

The amendments made by items 8 – 10 are consequential changes to:

- repeal and substitute subsection 40(2) to replace references to subsections 11(1), (2), (3) and (4) and section 11 of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* with references to corresponding subsections 10(1), (2) and (3), section 11 and section 12 of the CTG Special Arrangement 2026;
- update reference in subsection 40(3) to the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* with reference to the CTG Special Arrangement 2026 and improve clarity around the meaning of a ‘special arrangement supply’ for the purposes of applying the arrangements in the CTG Special Arrangement 2026 for the purposes of applying the arrangements in the CTG Special Arrangement 2026 around patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to supplies of chemotherapy pharmaceutical benefits made under the *National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024*; and
- update references in subsection 40(4) to subsections 11(2) and 11(3) of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* to the corresponding subsections 10(2) and 10(3) of the CTG Special Arrangement 2026. The note to subsection 40(4) continues to make clear that the notes relating to CTG suppliers making claims for payment under the CTG Special Arrangement do not apply to special arrangement supplies under the *National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024*, as claims for payment are instead made under section 26.

These amendments do not change the operation or policy intent of the provision.

Items 11, 12, 13 and 14 - Subsection 41(2), subsection 41(4), subsection 41(5), subsection 41(6)

Section 41 applies various provisions in the CTG Special Arrangement 2026 relating to patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to special arrangement supplies of related pharmaceutical benefits made under the *National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024*, where the supply is made to a CTG registered patient and by an approved supplier who is a CTG supplier.

The amendments made by items 11 – 14 are also consequential changes to:

- repeal and substitute subsection 41(2) to replace references to subsections 11(1), (2), (3) and (4) of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* with references to corresponding subsections 10(1), (2) and (3) and section 11 of the CTG Special Arrangement 2026;
- repeal and replace subsection 41(4) to update reference to section 13 of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* to the corresponding section 12 of the CTG Special Arrangement 2026;
- update reference in subsection 41(5) to the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* to the CTG Special Arrangement 2026 and improve clarity of drafting around the meaning of a ‘special arrangement supply’ for the purposes of applying the arrangements in the CTG Special Arrangement 2026 around patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to supplies of related pharmaceutical benefits made under the *National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024*; and
- repeal and replace subsection 41(6) (including the note) so that references to subsections 11(2) and 11(3) of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* are replaced with references to the corresponding subsections 10(2) and 10(3) of the CTG Special Arrangement 2026. The note to subsection 41(6) continues to make clear that the notes relating to CTG suppliers making claims for payment under the CTG Special Arrangement do not apply to special arrangement supplies under the *National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024*, as claims for payment are instead made under section 26.

These amendments do not change the operation or policy of the provisions.

National Health (Growth Hormone Program) Special Arrangement 2025

Item 15 – Section 6 (definitions of CTG registered patient and CTG Special Arrangement)

This item repeals the existing definitions of ‘CTG registered patient’ and ‘CTG Special Arrangement’, which applied the definitions of those terms under the *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016*, and substitutes them with updated definitions that apply those terms as defined in the CTG Special Arrangement 2026. This ensures the *National Health (Growth Hormone Program) Special*

Arrangement 2025 maintains accurate references to CTG definitions and sections within the remade CTG Special Arrangement 2026.

Items 16, 17, 18 and 19 – Subsection 24(2), paragraph 24(3)(a), at the end of paragraph 24(3)(b), subsection 24(4)

Section 24 applies various provisions in the CTG Special Arrangement 2026 relating to patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to special arrangement supplies pharmaceutical benefits made under the *National Health (Growth Hormone Program) Special Arrangement 2025*, where the supply is made to a CTG registered patient and by an approved supplier who is a CTG supplier.

The amendments made by items 16 – 19 are consequential changes to:

- repeal and substitute subsection 24(2) to replace references to subsections 11(1), (2), (3), (3E) and (4) and section 13 of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* with references to corresponding subsections 10(1), (2), (3) and (10) and section 12 of the CTG Special Arrangement 2026;
- repeal and replace paragraph 24(3)(a) to update reference to the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* to the CTG Special Arrangement 2026 and improve clarity around the meaning of a ‘special arrangement supply’ for the purposes of applying the arrangements in the CTG Special Arrangement 2026 around patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to supplies made under the *National Health (Growth Hormone Program) Special Arrangement 2025*;
- make a technical amendment to paragraph 24(3)(b) to improve clarity around the meaning of a ‘special arrangement supply’ for the purposes of applying the arrangements in the CTG Special Arrangement 2026 around patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to supplies made under the *National Health (Growth Hormone Program) Special Arrangement 2025*;
- repeal and replace subsection 24(4) (including the note) so that references to subsections 11(2) and 11(3) of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* are replaced with references to the corresponding subsections 10(2) and 10(3) of the CTG Special Arrangement 2026. The note to subsection 24(4) continues to make clear that the notes relating to CTG suppliers making claims for payment under the CTG Special Arrangement do not apply to special arrangement supplies under the *National Health (Growth Hormone Program) Special Arrangement 2025*, as claims for payment are instead made under section 25.

These amendments do not change the operation or policy of the provisions.

National Health (Highly Specialised Drugs Program) Special Arrangement 2021

Item 20 – Section 6 (definitions of CTG registered patient and CTG Special Arrangement)

This item repeals the existing definitions of ‘CTG registered patient’ and ‘CTG Special Arrangement’, which applied the definitions of those terms under the *National Health*

(Closing the Gap—PBS Co-payment Program) Special Arrangement 2016, and substitutes them with updated definitions that apply those terms as defined in the CTG Special Arrangement 2026. This ensures the *National Health (Highly Specialised Drugs Program) Special Arrangement 2021* maintains accurate references to CTG definitions and sections within the remade CTG Special Arrangement 2026.

Items 21, 22 and 23 – Subsection 34B(1), subsection 34B(2) and subsection 34B(3)

Section 34B applies various provisions in the CTG Special Arrangement 2026 relating to patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to special arrangement supplies pharmaceutical benefits made under the *National Health (Highly Specialised Drugs Program) Special Arrangement 2021*, where the supply is made to a CTG registered patient and by an approved supplier who is a CTG supplier.

The amendments made by items 21– 23 are consequential changes to:

- repeal and substitute subsection 34B(1) to replace references to subsections 11(1), (2), (3), (3E) and (4) and section 13 of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* with references to corresponding subsections 10(1), (2), (3) and (10) and section 11 of the CTG Special Arrangement 2026;
- repeal and replace subsection 34B(2) to update reference to the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* to the CTG Special Arrangement 2026 and improve clarity around the meaning of a ‘special arrangement supply’ for the purposes of applying the arrangements in the CTG Special Arrangement 2026 around patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to supplies made under the *National Health (Highly Specialised Drugs Program) Special Arrangement 2021*;
- repeal and replace subsection 34B(3) (including the note) so that references to subsections 11(2) and 11(3) of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* are replaced with references to the corresponding subsections 10(2) and 10(3) of the CTG Special Arrangement 2026. The note to subsection 34B(3) continues to make clear that the notes relating to CTG suppliers making claims for payment under the CTG Special Arrangement do not apply to special arrangement supplies under the *National Health (Highly Specialised Drugs Program) Special Arrangement 2021*, as claims for payment are instead made under Part 4.

These amendments do not change the operation or policy of the provisions.

National Health (IVF Program) Special Arrangement 2025

Item 24 – Section 6 (definitions of CTG registered patient and CTG Special Arrangement)

This item repeals the existing definitions of ‘CTG registered patient’ and ‘CTG Special Arrangement’ and substitutes with updated definitions in the CTG Special Arrangement 2026. This ensures the *National Health (IVF Program) Special Arrangement 2025* maintains accurate references to CTG definitions and sections within the remade CTG Special Arrangement 2026.

Items 25, 26, 27 and 28 – Subsection 15(2), paragraph 15(3)(a), at the end of paragraph 15(3)(b) and subsection 15(4)

The amendments made by items 25 – 28 are consequential changes to:

- repeal and substitute subsection 15(2) to replace references to subsections 11(1), (2), (3), (3E) and (4) and section 13 of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* with references to corresponding subsections 10(1), (2), (3) and (10) and section 11 of the CTG Special Arrangement 2026;
- repeal and replace paragraph 15(3)(a) to update reference to the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* to the CTG Special Arrangement 2026 and improve clarity around the meaning of a ‘special arrangement supply’ for the purposes of applying the arrangements in the CTG Special Arrangement 2026 around patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to supplies made under the *National Health (IVF Program Program) Special Arrangement 2025*;
- make a technical amendment to paragraph 15(3)(b) to improve clarity around the meaning of a ‘special arrangement supply’ for the purposes of applying the arrangements in the CTG Special Arrangement 2026 around patient co-payments, payments to approved suppliers and amounts counting towards the PBS safety net to supplies made under the *National Health (IVF Program) Special Arrangement 2025*;
- repeal and replace subsection 15(4) (including the note) so that references to subsections 11(2) and 11(3) of the repealed *National Health (Closing the Gap—PBS Co-payment Program) Special Arrangement 2016* are replaced with references to the corresponding subsections 10(2) and 10(3) of the CTG Special Arrangement 2026. The note to subsection 15(4) continues to make clear that the notes relating to CTG suppliers making claims for payment under the CTG Special Arrangement do not apply to special arrangement supplies under the *National Health (IVF Program) Special Arrangement 2025*, as claims for payment are instead applied under section 16.

These amendments do not change the operation or policy of the provisions.

Statement of Compatibility with Human Rights

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

National Health Legislation (Closing the Gap—PBS Co-payment Program) (Repeal and Consequential Amendments) Instrument 2026

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

From 1 April 2026 the *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2016* (the previous instrument) will sunset and be replaced by the *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2026*.

A number of consequential amendments are required to other special arrangement instruments, namely:

- *National Health (Botulinum Toxin Program) Special Arrangement 2025*;
- *National Health (Efficient Funding of Chemotherapy) Special Arrangement 2024*;
- *National Health (Growth Hormone Program) Special Arrangement 2025*;
- *National Health (Highly Specialised Drugs Program) Special Arrangement 2021*; and
- *National Health (IVF Program) Special Arrangement 2025*.

These amendments have been made through the *National Health Legislation (Closing the Gap—PBS Co-payment Program) (Repeal and Consequential Amendments) Instrument 2026* and include amendments to reflect the change in name of the remade *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2026* and reordering of sections in the remade instrument.

The *National Health Legislation (Closing the Gap—PBS Co-payment Program) (Repeal and Consequential Amendments) Instrument 2026* also repeals the previous instrument from 1 April 2026.

The consequential amendments to the 5 special arrangements are not intended to alter their operation.

Human rights implications

This instrument is compatible with human rights because it promotes the right to health and equality under Articles 2 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It does not impose any limitations on rights; rather, it positively advances access to essential medicines for Aboriginal or Torres Strait Islander people.

This legislative instrument engages Articles 2 and 12 of the ICESCR.

The intent of this instrument is to ensure that arrangements in the previous instrument relating to patient co-payments, payments to approved suppliers and amounts that contribute to a

person's PBS safety net for CTG registered patients and CTG suppliers will continue to apply after it is remade as the *National Health (Closing the Gap – PBS Co-payment Program) Special Arrangement 2026*. This continues efforts to remove financial barriers and promote equitable access to essential medicines for eligible Aboriginal or Torres Strait Islander people through reduction or elimination of co-payments for PBS medicines.

Conclusion

This legislative instrument is compatible with human rights because it promotes the right to health and equality. It does not impose any limitations and instead delivers a positive measure to continue to close the health gap for Aboriginal or Torres Strait Islander people.

Sarah Norris
Assistant Secretary
Community Access Programs Branch
Technology Assessment and Access Division
Department of Health, Disability and Ageing