

## **National Health Amendment (Pharmaceutical Benefits) Bill 2014**

*Portfolio: Health*

*Introduced: House of Representatives, 18 June 2014*

### **Purpose**

1.104 The National Health Amendment (Pharmaceutical Benefits) Bill 2014 (the bill) amends the *National Health Act 1953* (the Act) to increase patient co-payments and safety net thresholds for the Pharmaceutical Benefits Scheme (PBS) and the Repatriation Pharmaceutical Benefits Scheme (RPBS).

1.105 The amendments would (from 1 January 2015):

- increase the concessional patient co-payment by 80 cents;
- increase the general patient co-payment by \$5.00;
- increase the concessional safety net threshold by two prescriptions each year for four years (2015 to 2018); and
- increase the general patient safety net threshold by 10 per cent each year for four years, from 2015 to 2018.

1.106 These increases are in addition to the usual Consumer Price Index (CPI) indexation on 1 January each year under the Act. The increases in co-payments apply for prescriptions for which a PBS or RPBS subsidy is payable.

### **Committee view on compatibility**

#### ***Right to health and a healthy environment***

1.107 The right to health is guaranteed by article 12(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR), and is fundamental to the exercise of other human rights.

1.108 The right to health is understood as the right to enjoy the highest attainable standard of physical and mental health, and to have access to adequate health care and live in conditions that promote a healthy life (including, for example, safe and healthy working conditions; access to safe drinking water; adequate sanitation; adequate supply of safe food, nutrition and housing; healthy occupational and environmental conditions; and access to health-related education and information).

1.109 The right is not, however, a right to be healthy, as such, given that individual health is not something wholly within the ability of the State to control.

1.110 Under article 2(1) of ICESCR, Australia has certain obligations in relation to the right to health. These include:

- the immediate obligation to satisfy certain minimum aspects of the right;

- the obligation not to unjustifiably take any backwards steps that might affect the right;
- the obligation to ensure the right is made available in a non-discriminatory way; and
- the obligation to take reasonable measures within its available resources to progressively secure broader enjoyment of the right.

*Increasing co-payments for access to medicines*

1.111 As noted above, the bill would increase the amount payable by patients for medicines listed on the PBS and RPBS. The bill would also limit access to the safety net. The statement of compatibility notes that the bill engages the right to health and specifically notes that the measures assist:

...with the progressive realisation by all appropriate means of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>1</sup>

1.112 However, the committee notes that the effect of the bill will be to increase the cost of medications for all consumers, including those reliant on social security payments. This represents a limitation on the right to health and/or a retrogressive measure, which is not explicitly addressed in the statement of compatibility for the bill.

1.113 The committee's usual expectation where a limitation on a right is proposed is that the statement of compatibility provides an assessment of whether the limitation is reasonable, necessary, and proportionate to achieving a legitimate objective.

1.114 While the statement of compatibility for the bill generally asserts that co-payments have been a feature of the PBS and RPBS for many years, the committee notes that, to demonstrate that a limitation is permissible, legislation proponents must provide reasoned and evidence-based explanations of why the measures are necessary in pursuit of a legitimate objective. For example, the committee would expect the statement of compatibility to provide an economic assessment of the impact of the bill on individuals and their capacity to bear the additional upfront payments for medicines.

**1.115 The committee therefore seeks the Minister for Health's advice as to whether the increase in co-payments for medicines under the PPBS and RPBS is compatible with the right to health, and particularly:**

- **whether the proposed changes are aimed at achieving a legitimate objective;**

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1 Explanatory memorandum (EM), p. 2.

- **whether there is a rational connection between the limitation and that objective; and**
- **whether the limitation is reasonable and proportionate measure for the achievement of that objective.**