Chapter 2

The need for, and basis of, the bill

2.1 The Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009 places a cap on the public subsidy for various out of hospital medical services under the Extended Medicare Safety Net (EMSN). It is based on evidence that the EMSN has contributed to fee inflation for these services.[1]

2.2 The bill is part of the government's broader efforts to 'reform and modernise' Australia's health system to ensure that 'tax dollars are used efficiently to provide better health outcomes'. By curbing what it terms 'excessive windfalls for medical specialists', the government intends that the measure will support the long-term sustainability of the Medicare safety net.[2]

The current Medicare safety nets

2.3 The current Medicare system has two safety nets whereby the government contributes to patients' out of pocket costs for Medicare services. The first net relates to the gap between the Medicare rebate for a service and its Medicare scheduled fee.[3] The rebate does not cover the full amount of the scheduled fee—hence the 'gap'—and doctors and specialists can, and do, charge more than the scheduled fee. When the gap amounts that a patient has paid within a calendar year exceed a specified dollar threshold (currently $383.90), Medicare pays 100 per cent of the gap that a patient is charged for subsequent medical services in that calendar year.[4]

2.4 The second Medicare safety net—the EMSN—was introduced in 2004 as part of the previous government's *Medicare Plus* package.[5] The EMSN provides individuals and families with a rebate to cover out of pocket costs for out of hospital Medicare services above a set annual threshold. When the threshold is reached, Medicare will pay 80 per cent of any future out of pocket costs for out of hospital

---

1 See The Hon. Nicola Roxon, Second Reading Speech, House of Representatives Hansard, 15 June 2009, p. 5920.

2 The Hon. Nicola Roxon, 'A Sustainable Medicare Safety Net', *Media Release*, 12 May 2009.

3 The schedule fees are set by the federal government.

4 Dr Maurice Rickard, Bills Digest, No. 85, 2003–2004, *Parliamentary Library*, p. 8. http://www.aph.gov.au/library/pubs/bd/2003-04/04bd085.pdf

See also Department of Health and Ageing, *Submission 4*, p. 8.

5 The Health Legislation Amendment (Medicare) Act 2004 gave effect to these provisions. See Dr Maurice Rickard, Bills Digest No. 85, 2003–2004, *Parliamentary Library*, http://www.aph.gov.au/library/pubs/bd/2003-04/04bd085.pdf

services for the remainder of the calendar year. The policy excludes in-hospital services and medical services ineligible for Medicare benefits.

The rising cost of the EMSN

2.5 The EMSN was a policy response to the growing problem of high out of pocket costs for out of hospital services. In December 2003, the Minister for Health and Ageing, the Hon. Tony Abbott, introduced the EMSN legislation noting that 'the Health Insurance Commission will keep track of costs'.[6]

2.6 In February 2004, the Senate Select Committee on Medicare noted its report on the proposed *Medicare Plus* measures that 'a number of submissions' had highlighted the possibility of medical practitioners increasing their charges when they know the patient is close to or has reached the threshold for the relevant safety net.[7] The committee itself observed that the EMSN:

> …a system which includes uncapped out-of pocket benefits exhibits the potential for a relaxation in price discipline by doctors, thereby prices rise under the belief that an uncapped safety net guaranteed by government will be there to catch patients with high costs or needs.[8]

2.7 A year after the introduction of the EMSN, the scheme's expense led the government to increase the thresholds. In June 2005, Minister Abbott explained the reason for the government's decision:

> When first announced, the estimated cost of the extended safety net was just $440 million over the four years to 2006-07. After the safety net came into operation it became clear that these estimates needed to be revised. More people than expected qualified for safety net benefits, out-of-pocket medical expenses turned out to be considerably higher, and some specialties shifted charges onto Medicare out-of-hospital items so that their patients could claim safety net entitlements.[9]

2.8 Table 2.1 shows the lower and general thresholds of the EMSN from its introduction in March 2004 to its current levels. The thresholds were reset on 1 January 2006 and indexed to the Consumer Price Index.[10] The lower thresholds

---

6 The Hon Tony Abbott, *House of Representatives Hansard*, 4 December 2003, p. 2. http://parlinfo/parlInfo/genpdf/chamber/hansardr/2003-12-04/0058/hansard_frag.pdf;fileType=application%2Fpdf (accessed 27 July 2009).

7 Senate Select Committee on Medicare, Second Report, *Medicare Plus: The future for Medicare?*, February 2004, p. 23.

8 Senate Select Committee on Medicare, Second Report, *Medicare Plus: The future for Medicare?*, February 2004, p. 27.

9 The Hon. Tony Abbott, *House of Representatives Hansard*, 23 June 2005, http://parlinfo/parlInfo/genpdf/chamber/hansardr/2005-06-23/0012/hansard_frag.pdf;fileType=application%2Fpdf

10 This decision was announced in the May 2005 federal budget.

relate to Commonwealth concession cardholders and those families who qualified for a Family Tax Benefit Part A payment. The general threshold is for all others.

Table 2.1: Extended Medicare Safety Net thresholds

Date	Lower threshold	General threshold
March 2004	$300	$700
January 2006	$500	$1000
June 2008	$555.70	$1111.60

Source: Centre for Health Economics Research and Evaluation (CHERE), *Extended Medicare Safety Net: Review report 2009*, A report by the Centre for Health Economics Research and Evaluation, Report prepared for the Department of Health and Ageing, University of Technology Sydney, Sydney, 2009, p. v.
The Hon. Nicola Roxon, 'A Sustainable Medicare Safety Net', *Media Release*, 12 May 2009.

2.9 Budget Paper No. 2 (2009–10) notes that expenditure on the EMSN has increased from $302.3 million in 2007 to $414.1 million in 2008. The items that the bill proposes to cap accounted for around 28 per cent of all expenditure on the EMSN in 2008 and the expenditure on these items has grown at an average rate of approximately 50 per cent per year for the past two years.[11] EMSN benefits paid for obstetrics and Assisted Reproductive Technology (ART) services, including IVF, accounted for more than 50 per cent of expenditure in 2008.[12] The majority of EMSN benefit goes to female patients of child bearing age.[13]

The CHERE report

2.10 Section 4 of the *Health Legislation Amendment (Medicare) Act 2004* requires the Minister to initiate an independent review of the 'operation, effectiveness and implications' of the Act. This review, initiated on 15 March 2007 by the former Health Minister, engaged the Centre for Health Economics Research and Evaluation (CHERE) at the University of Technology in Sydney. CHERE was selected following an open tender process.[14]

2.11 In the Second Reading Speech on the bill, the Minister for Health and Ageing, the Hon. Nicola Roxon, explained that 'in particular cases' the existing safety net was

11 Budget Measures 2009–10, http://www.aph.gov.au/budget/2009-10/content/bp2/html/bp2_expense-16.htm

12 Department of Health and Ageing, *Submission 4*, p. 4.

13 Department of Health and Ageing, *Submission 4*, p. 11.

14 Department of Health and Ageing, *Submission 4*, p. 18.

not meeting its purpose of protecting Australians for high out of pocket costs for out of hospital services.[15] The Minister tabled CHERE's independent review.[16]

2.12 The CHERE report observed that for services where an episode of care is likely to make patients qualify for EMSN benefits, 'providers feel fewer competitive market pressures to contain their fees'.[17] It noted that since the introduction of the EMSN in 2004, average fees have increased by around 4.2 per cent which is 'over and above' the rate of inflation. It estimated that the EMSN was responsible for 70 per cent of this increase, or a 2.9 per cent increase in fees per year.[18] Apart from the cost to the public purse from higher payments under the EMSN, this increase in fees means that 'some patients that do not qualify for EMSN benefits are now being charged higher average fees'.[19]

2.13 The CHERE report disaggregated the fee increases for particular services. It found that between 2003 and 2007, total Medicare benefits for obstetric services increased from $80.5 million to $199.5 million. Eighty-three per cent of this increase was attributable to the EMSN. Further, the in-hospital component of the benefit grew by only 8 per cent over the period compared to a 313 per cent increase in the out of hospital component. In the case of ART, government benefits increased from $55.5 million to $158.7 million, with 70 per cent of this increase attributable to the EMSN.[20]

2.14 The CHERE report also found that between 2003 and 2008, the fees charged by obstetricians for in-hospital services reduced by six per cent while the fees charged for out of hospital services increased by 267 per cent. Over the same period, fees charged for ART services for in-hospital services fell by nine per cent compared with an increase of 62 per cent for out of hospital ART services. The report observed that

---

15 The Hon. Nicola Roxon, 'Second reading speech: Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009', *House of Representatives Hansard*, 28 May 2009, p. 8, (accessed 20 June 2009), p. 8 http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F2009-05-28%2F0025%22

16 CHERE, *Extended Medicare Safety Net, Review report 2009*, A report by the Centre for Health Economics Research and Evaluation, 2009.

17 CHERE, *Extended Medicare Safety Net, Review report 2009*, A report by the Centre for Health Economics Research and Evaluation, 2009, p. 76.

18 CHERE, *Extended Medicare Safety Net, Review report 2009*, A report by the Centre for Health Economics Research and Evaluation, p. vi.

19 Department of Health and Ageing, *Submission 4*, p. 3.

20 CHERE, *Extended Medicare Safety Net, Review report 2009*, A report by the Centre for Health Economics Research and Evaluation, p. 49.

'the EMSN may have affected the incentives for doctors and patients to change from in-hospital to out-of-hospital service settings'.[21]

2.15 Tables 2.2 and 2.3 are reproduced from the Department of Health and Ageing's submission. They show the increase in Medicare benefits paid for obstetric and ART services, the increase in expenditure on these services and the number of services billed to Medicare.

Table 2.2: Obstetrics Services and Benefits under Medicare by calendar year*

	Medicare Benefits ($million)	% increase in benefits from previous year	Number of obstetrics services billed to Medicare	% increase in services from previous year	Number of MBS funded deliveries**	% increase in deliveries from previous year
Obstetrics						
2000	60.7		1,462,838		70,003	
2001	66.5	10%	1,473,021	1%	78,410	12%
2002	72.3	9%	1,473,434	0%	84,690	8%
2003	72.4	0%	1,422,727	-3%	82,268	-3%
2004	112.4	55%	1,432,633	1%	82,336	0%
2005	157.6	40%	1,414,410	-1%	84,925	3%
2006	171.9	9%	1,465,424	4%	86,132	1%
2007	198.6	16%	1,510,551	3%	89,645	4%
2008	227.9	15%	1,563,849	4%	91,313	2%

* Medicare data, date of processing.
**sum of services from items 16515-16522, includes delivery by any means, including caesarean sections.

Source: Department of Health and Ageing, Submission 4, p. 27.

Table 2.3: ART Services and Benefits under Medicare by calendar year

Calendar Year	Medicare Benefits ** ($ million)	% increase in expenditure from previous year	Services billed to Medicare	% increase in services from previous year
2000	39.3		131,004	
2001	43.3	10%	135,187	3%
2002	46.0	6%	139,086	3%
2003	50.0	9%	145,517	5%
2004 *	78.6	57%	159,181	9%
2005	108.4	38%	182,834	15%
2006	119.3	10%	195,557	7%
2007	158.9	33%	228,248	17%
2008	202.2	27%	252,813	11%

*Extended Medicare safety net introduced in March 2004.
**Note that this does not include other expenditure on ART such as PBS benefits.

Source: Department of Health and Ageing, Submission 4, p. 32.

21 CHERE, *Extended Medicare Safety Net, Review report 2009*, A report by the Centre for Health Economics Research and Evaluation, p. 62.

The bill

2.16 The bill restricts the rebate for costs incurred for out of hospital Medicare services. It introduces a cap on a range of items with 'excessive' fees. These items are:

- all obstetric services including some pregnancy related ultrasounds;
- all Assisted Reproductive Technology services;
- one type of cataract surgery;
- hair transplants for alopecia;
- one type of varicose vein surgery; and
- the injection of a therapeutic substance into an eye.[22]

For these items, the Government will only provide safety net benefits up to a certain amount. Specialists who increase their fees above these caps will increase patients' out of pocket costs.[23]

2.17 To this end, the bill amends the *Health Insurance Act 1973* (new section 10B) to allow the Minister for Health and Ageing to make determinations on the maximum benefit payable under the EMSN for certain items listed on the Medicare Benefits Schedule. New subsections 10ACA(7A) and 10ADA(8A) establish that the benefit payable under the EMSN is not to exceed the EMSN benefit cap. The caps will take effect from 1 January 2010.[24]

2.18 The capped items and the EMSN benefit cap will be established by legislative instrument and therefore subject to parliamentary scrutiny. The draft *Health Insurance (Extended Medicare Safety Net) Determination 2009* was tabled with the bill to demonstrate the operation of new section 10B. The Determination will establish those items which will have an EMSN benefit cap applied and the dollar amount of this cap. The Determination:

> …will allow the Government to be responsive to changes in circumstances which impact on the EMSN. It also means that small administrative changes that occur frequently, such as renumbering of MBS items and machinery of Government changes and annual indexation of EMSN benefit caps by CPI, can occur without adding to the legislative program of Parliament.[25]

---

22 Budget 2009–2010, *Budget Paper No. 2*, http://www.aph.gov.au/budget/2009-10/content/bp2/html/bp2_expense-16.htm

23 See The Hon. Nicola Roxon, 'A Sustainable Medicare Safety Net', *Media Release*, 12 May 2009, (accessed 26 June 2009). http://www.health.gov.au/internet/budget/publishing.nsf/Content/4432C7FF32627D9DCA2575B2003D0AB0/$File/hmedia12.pdf

24 Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009

25 Department of Health and Ageing, *Submission 4*, p. 20.

2.19 Table 2.4 shows that the bill's measures will provide savings of $257.9 million over four years. The projected savings in the first six months of the scheme (1 January 2010 to 30 June 2010) are $19.9 million, increasing to $62.4 million in the first full financial year of the revised scheme. For the year 2012–13, the projected savings are nearly $100 million.

Table 2.4: Savings from capping Extended Medicare Safety Net benefits

Expense	2008–09	2009–10	2010–11	2011–12	2012–13
Medicare Australia	-	1.6	0.4	0.2	0.1
Department of Health and Ageing	-	-21.5	-62.8	-79.4	-97.4
Total	-	-19.9	-62.4	-79.2	-97.3
Related capital ($m) Medicare Australia	-	0.9	-	-	-

Source: Budget Paper No. 2, 2008–09.

The government's position

2.20 In its submission to this inquiry, the Department of Health and Ageing noted that in 2007, only 8.5 per cent of families and less than one per cent of single people receive a benefit from the EMSN. It also noted that out of pocket costs for some Medicare services 'have now increased to the level seen before the introduction of the EMSN'.[26]

2.21 The government has largely attributed the increase in the EMSN to higher doctors' fees (as opposed to higher rates of claim). The Minister's Second Reading Speech cited the findings of the CHERE report which found that for some services, for every safety net dollar paid, 78 cents was spent on meeting higher doctors' fees. The Minister also cited the hike in out of hospital services costs (paragraph 2.9), adding:

> This indicates that some doctors are taking advantage of the safety net as their fees for out-of-hospital services have increased far in excess of the fees they are charging in-hospital patients.[27]
>
> …

26 Department of Health and Ageing, *Submission 4*, p. 3.

27 The Hon. Nicola Roxon, 'Second reading speech: Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009', *House of Representatives Hansard*, 28 May 2009, p. 8, (accessed 20 June 2009), http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F2009-05-28%2F0025%22

> The unlimited nature of the benefits available through the safety net has led to some doctors taking advantage of the safety net to increase their fees with the knowledge that the majority of the cost will be funded by the government. This has had the effect of increasing the fees being charged to many people for some services, thus increasing the cost for those people who have not qualified for safety net benefits, as well as the cost to the government. The safety net benefit is for the patient. It is not intended to subsidise the fee increase of doctors.[28]

2.22 In terms of the anticipated cost for patients of the proposal to cap ART services, the Minister told Parliament that:

> The cost of IVF should not increase for most patients. On average, patients are charged around $6,000 per IVF cycle, yet there are some doctors charging in excess of $10,000 per cycle. Patients who see specialists who charge $6,000 or less for a typical IVF cycle will not be worse off under these changes.[29]

Support for the government's position

2.23 In some quarters, there has been strong support for the bill. Mr Robert Wells, Director of the Menzies Centre for Health Policy at the Australian National University, argued that the bill would address 'some of the outrageous rorts' under the EMSN 'without destroying the scheme'.[30] The Australian Healthcare and Hospitals Association similarly supported the government's efforts to 'reduce the opportunities for private providers to manipulate the system'.[31]

---

28 The Hon. Nicola Roxon, 'Second reading speech: Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009', *House of Representatives Hansard*, 28 May 2009, pp. 8–9, (accessed 20 June 2009), http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F2009-05-28%2F0025%22

29 The Hon. Nicola Roxon, Second Reading Speech, *House of Representatives Hansard*, 15 June 2009, p. 5922.

30 Australian National University, 'Policy expert welcomes health reform', *Media Release*, 13 May 2009.

31 Australian Healthcare and Hospitals Association, 'Mixed fortunes for hospitals', *News*, 13 May 2009.

2.24 In evidence to the committee, the Australian Nursing Federation noted that it had long been concerned with the incentives offered under the current EMSN. It argued that the absence of a limit on the amount of benefit payable is an enticement for doctors to increase their fees 'with the knowledge that the majority of the cost would be funded by the Government'. It added:

> The subsequently artificially inflated fee structure then has implications for those people who have not qualified for the EMSN benefit, as pointed out also in the Explanatory Memorandum. The ANF supports too, the setting of the EMSN in a legislative instrument so that it is subject to parliamentary scrutiny and thus gives greater assurance of protection of the public.[32]

32 Australian Nursing Federation, *Submission 7*, p. 7.