Prescribed List Reforms - Consultation Paper 8a

Gifts, benefits and discounts reporting requirements

# Introduction

In July-August 2023, the department consulted on several proposed measures related to compliance, assurance, and information sharing as part of the reforms to the Prescribed List (PL). Among the measures, was the requirement for hospitals to report any non-financial gifts or benefits received, such as a device or product listed on the PL.

Stakeholders raised concerns and questions around the proposed measure. As a result, we are undertaking additional consultation to refine and finalise this proposed measure.

# Purpose of this paper

The purpose of this paper is to provide stakeholders with information to consider and provide feedback on the proposed measure. This paper provides the:

* background and clarity around the proposed measure,
* policy objective of the proposed measure,
* answers to questions raised during Consultation Paper 7, and
* questions to guide a two-way conversation with sponsors.

# Proposed Measure: Prescribed List gifts, benefits and discounts reporting requirements

## Proposed measure

[Consultation Paper 7](https://www.health.gov.au/news/phi-circulars/phi-4923-consultation-on-proposed-measures-for-compliance-assurance-and-information-sharing?language=en) on proposed measures related to compliance, assurance and information sharing initially suggested introducing the following compliance measure for hospitals:

[…] hospitals would also be required to maintain a register of non-financial gifts and benefits that they received throughout the financial year. The gifts and benefits would only be in relation to the provision and procurement of devices and products listed on the [Prescribed List](https://www.health.gov.au/resources/publications/prescribed-list-of-medical-devices-and-human-tissue-products?language=en) and would then be submitted to the department on an annual basis.

Hospitals would only be required to report their gifts and benefits if that gift or benefit was a device or product on the Prescribed List. Any gift or benefit received by a hospital that is not a device on the Prescribed List, such as a monetary benefit, would not need to be reported.

this paper proposes to expand the measure to include reporting of gifts, benefits and discounts for PRESCRIBED LIST items AND to open discussion as to whether PRIVATE hospitals or mediCal device sponsors should be responsible for reporting.

## Policy objective of the measure

There are anecdotal and evidentiary concerns around benefits being claimed for devices on the PL when there was never any outlay for the device or product. For example, where a hospital gets a free listed device to try but then claims the PL benefit.

While the above scenario represents a normal commercial arrangement for generic items, the PL is a regulated reimbursement mechanism that does not follow standard commercial arrangements and any incorrect or inappropriate claiming for items against the PL ultimately affects the insured patient.

Hence only devices listed on the PL (and discounts related to these) are to be reported as part of this measure.

At this stage, the department is not aware of how often gifts/PL listed devices/products are given for free or at discounted prices. This proposed reporting process is to get an idea of the frequency and scale of gifting and discounts.

This measure is proposed to collect evidence that will help promote transparency behind claims on the PL, quantify the extent of the vulnerability and dictate whether any further regulatory actions are required.

## Who should be responsible for reporting?

When this proposed measure was previously raised the intention was for hospitals to maintain this register and report to the department on an annual basis. However, we are considering whether it would be more appropriate for sponsors to be responsible for this register.

Although hospitals claim benefits for items on the PL, (where some may have been free or discounted) it is sponsors who offer the free or discounted items to the hospitals. As such, it may be that sponsors have better access to records in relation to these items.

## What would the register look like?

The proposed measure would require hospitals/sponsors to record and report any gift, benefit or discount linked to a device or product listed on the PL.

The department will provide a template for hospitals/sponsors to record this information. Information required could include:

* Date of the transaction
* Name of the person/organisation in receipt of the gift, benefit or discount
* Name of the person/organisation offering the gift, benefit or discount
* Description of the gift, benefit or discount
* Reason for the offer
* Estimated value
* PL billing codes the gift, benefit or discount relate to

All items on the PL that were received with no expenditure or with a discount by the receiving hospital would be expected to be reported.

There is no proposal to include any sanctions or penalties regarding any gifts or benefits that are claimed. However, there would be an obligation to provide the information each financial year. It is proposed that penalties would apply for giving false or misleading information as described in Proposed Measures 6 and 7 in [Consultation Paper 7](https://www.health.gov.au/news/phi-circulars/phi-4923-consultation-on-proposed-measures-for-compliance-assurance-and-information-sharing?language=en).

For transparency purposes, and when appropriate, the department may publish a summary of annual reports (that complies with privacy and confidentiality requirements).

## What does not need to be reported?

* Devices or products that are waived through wastage
* Devices, products or other items that are not listed on the PL

# Consultation approach

We are in the ‘discovery’ phase for this measure and want to work collaboratively with stakeholders to create a fit-for-purpose measure and reduce the risk of unintended consequences.

We ask that stakeholders provide feedback on the proposed measure and to consider the questions below and provide your responses, and any other comments about the matters raised in this consultation paper.

### Questions

1. Do you have any current reporting mechanism for receipt of gifts, benefits or discounts?
2. Are there any specific implications for your organisation if this measure includes reporting of discounted items?
3. If this proposal was currently in place, approximately how many PL listed items would your organisation need to report on for the last financial year for:
   1. Gifts
   2. Benefits
   3. Discounts
4. What safeguards or assurances would you like to see addressed when this measure is implemented?
5. Are there any confidentiality limitations on the use of information proposed to be reported on?
6. Do you see any positive implications for this measure?
7. What are the advantages and/or disadvantages for your stakeholder group maintaining this register?
8. Could this measure negatively impact negotiations between your stakeholder group and another? Please explain.
9. Are there any other matters the department should consider when finalising this measure?
10. Would it be easier to report all items that were gifts, free or discounted, or, should there be a threshold, such as the item or discount being below certain amount or discounted by a certain percentage?
    1. If you believe a discount threshold is the better option, what amount or percentage do you think the threshold should be?
11. Can you please give us your opinion on which stakeholder group should be responsible for the register and reporting, and the advantages and disadvantages for each group. Should both sponsors and hospital report?
12. What other items do you consider could be included in the register?