



Australian Government
Department of Health and Ageing

Submission to the
Senate Community Affairs Committee
for the
Inquiry into the Professional Services Review Scheme

1. Introduction

On 6 July 2011, the following matter was referred to the Community Affairs Committee for inquiry and report by 22 September 2011:

A review of the Professional Services Review (PSR) Scheme provided for under the Health Insurance Act 1973 (the Act) which is responsible for reviewing and investigating the provision of Medicare or Pharmaceutical Benefits Scheme services by health professionals, with particular reference to:

- (a) the structure and composition of the PSR, including:*
 - (i) criteria for selection of the executive and constituent members encompassing their experience in administrative review proceedings,*
 - (ii) the role of specialist health professionals in assisting in cases where members lack relevant specialist expertise, and*
 - (iii) accountability of all parties under the Act;*
- (b) current operating procedures and processes used to guide committees in reviewing cases;*
- (c) procedures for investigating alleged breaches under the Act;*
- (d) pathways available to practitioners or health professionals under review to respond to any alleged breach;*
- (e) the appropriateness of the appeals process; and*
- (f) any other related matter.*

On 28 July 2011, Dr Ian Holland, Secretary to the Community Affairs Committee invited the Secretary of the Department of Health and Ageing, Ms Jane Halton PSM to provide a written submission to the Committee addressing the terms of reference for the Inquiry. This submission is in response to that request.

2. Contextual overview

The Professional Services Review scheme is a statutory scheme for reviewing and investigating the provision of services by health practitioners, to determine whether a practitioner has engaged in inappropriate practice in providing Medicare services or in prescribing medicines under the Pharmaceutical Benefits Scheme (PBS).¹

The scheme is based on the concept of peer review. This involves review by a committee comprising the practitioner's peers, to determine whether the provision of services by the practitioner would be considered clinically relevant and appropriate to the general body of members of the profession.

Under the Administrative Arrangements Orders, the Minister for Health and Ageing and the Department of Health and Ageing administer health and ageing policy and legislation, including in relation to the Medicare Benefits Scheme (MBS) and the PBS and the *Health Insurance Act 1973* (HI Act). The Minister for Health and Ageing has overarching policy responsibility for the PSR Scheme.

The Department of Health and Ageing's role is to provide policy advice to the Minister for Health and Ageing on the development and maintenance of the PSR Scheme. The Department of Health and Ageing is also responsible for legislation development in relation to the PSR Scheme.

The Department of Human Services is responsible for compliance activity relating to the MBS and PBS. The Chief Executive Officer of Medicare Australia (now the Medicare Chief Executive in the Department of Human Services) may request the Director of the PSR agency to review the provision of services by a person in order to assess whether that person engaged in inappropriate practice.

The PSR agency administers the PSR scheme. Its work includes providing support to the Director in reviewing referrals from the Department of Human Services, establishing and providing secretariat support to PSR Committees and providing secretariat support to the Determining Authority.

¹ The concept of 'inappropriate practice' is defined in s 82 of the HI Act as conduct in connection with rendering or initiating services that would be considered unacceptable to the general body of a practitioner's professional colleagues. This is a determination that may only be applied to a practitioner once he or she has been subject to the PSR peer review mechanism or has acknowledged inappropriate practice.

3. History of the PSR

The PSR Scheme was introduced in 1994 in response to a report² by the Australian National Audit Office in 1992-1993, which concluded that the previous Medical Services Committees of Inquiry (MSCI) arrangements were unsatisfactory and needed to be strengthened. The Government worked closely with the medical profession in the development of the PSR Scheme to overcome the shortcomings of the MSCI arrangements. This included the need to combat over-servicing, provide greater transparency and independence in the processes for investigating irregularities in the provision of MBS and PBS services, improved access to records, and improved capability to deal with a range of different practitioners with different areas of specialty.

The legislation establishing the PSR Scheme also introduced the concept of 'inappropriate practice', which was defined as conduct in rendering or initiating services unacceptable to a practitioner's professional colleagues generally. The intention was to increase the autonomy of the medical profession to reach decisions on inappropriate practice while still according natural justice and procedural fairness to a person under review. This principle of peer review of services remains central to the PSR Scheme to ensure the integrity of the MBS and PBS.

The PSR Scheme has been periodically refined to strengthen the peer review process and increase transparency. In 1997, the Scheme was amended to remove administrative difficulties associated with Committee procedures, and to improve the review process.

Following the 1997 amendments, a comprehensive review of the PSR Scheme was undertaken in 1999 by the Department, Medicare Australia, the Australian Medical Association (AMA), and PSR. The 1999 review resulted in improvements such as the establishment of the Determining Authority to increase transparency in the imposition of sanctions, expansion of the PSR Director's review powers and ability to negotiate agreements with practitioners about inappropriate practice, enabling PSR and its Committees to access patient records, and the introduction of measures to improve patient safety. These changes did not alter the purpose of the PSR Scheme, but enhanced its transparency and fairness, refined its administrative processes, and clarified the methods for investigating inappropriate practice.

Additional legislative amendments in 2002 clarified the protective nature of the PSR Scheme in safeguarding both Commonwealth revenue and patients from inappropriate practice by practitioners.

In 2006, a review of the Scheme assessed the extent to which the Scheme would be able to achieve its future objectives. It was recommended that an advisory committee be formed to oversee the performance of the Scheme. This is the PSR Advisory Committee, and it includes representatives of the AMA, the PSR, the Department of Health and Ageing and Medicare Australia (now the Department of Human Services).

² *Medifraud and excessive servicing: Health Insurance Commission.*

4. Current structure of the PSR Scheme

4.1 The PSR Scheme

The objects of the PSR Scheme are to protect the integrity of the Commonwealth medicare benefits and pharmaceutical programs, and in doing so:

- (a) protect patients and the community in general from the risks associated with inappropriate practice; and
- (b) protect the Commonwealth from having to meet the cost of services provided as a result of inappropriate practice.

4.2 Referral by Medicare Chief Executive

The Medicare Chief Executive has a statutory function under the HI Act to request that the Director of PSR review the provision of services provided by a person over a specified period.³ Medicare Australia (now the Department of Human Services) undertakes compliance activities, including audits of services provided by health practitioners, which assist it in identifying possible instances of inappropriate practice.

4.3 The PSR Agency

PSR is an independent body established under the HI Act to administer the PSR Scheme, which is set out in Part VAA of the HI Act. It consists of the Director, its permanent staff who are engaged under the *Public Service Act 1999* (PS Act), consultants and contractors. The PSR is a Statutory Agency under the PS Act.

Under Schedule 1 to the *Financial Management and Accountability Regulations 1997*, PSR is prescribed as an Agency for the purposes of the *Financial Management and Accountability Act 1997*. The Director is prescribed as the Agency's Chief Executive for the purposes of that Act and its responsibilities relating to the proper use of Commonwealth resources.

The Director of PSR is an independent statutory office holder appointed by the Minister for Health and Ageing with the AMA's agreement.⁴

PSR is part of the Health and Ageing portfolio and reports to the Minister for Health and Ageing.

4.4 The PSR Review Process

The PSR process consists of three main stages

- review by the Director;
- review by a Committee of the practitioner's peers; and
- consideration of outcomes and sanctions by the Determining Authority.

³ See s 86 of the HI Act.

⁴ See s 83 of the HI Act.

5. Current Issues

A number of concerns have been raised with the Department by representatives of the medical profession regarding the transparency of PSR processes. In response, the Department of Health and Ageing has provided advice to the PSR about improvements to the administration of the PSR Scheme to enhance transparency, ensure compliance with the legislation and improve the understanding of health practitioners about the scheme.

5.1 The PSR Advisory Committee

The PSR Advisory Committee comprises representatives from the Department, AMA, PSR and the Department of Human Services.

The PSR Advisory Committee has been an important forum for discussing significant issues relating to the administration of the PSR Scheme.⁵ The PSR Advisory Committee has discussed and provided advice on approaches to increase the profession's level of confidence in PSR, improve communications between PSR and persons under review and encourage transparency within the PSR Scheme.

5.2 Memorandum of Understanding

The Department of Health and Ageing has worked with the PSR and the AMA to develop a Memorandum of Understanding (MoU) between the Minister for Health and Ageing and the AMA.

The MoU will clearly describe the roles and responsibilities of the Minister for Health and Ageing and the AMA in relation to the PSR Scheme. Additionally, the MoU also describes the roles of the PSR, the Determining Authority and the Department of Health and Ageing in the PSR Scheme, and the processes for appointing the PSR Director, Deputy Directors, Panel Members and Determining Authority members, to ensure that future appointments and the exercise of statutory powers comply with the HI Act.

5.3 PSR Panel Member Appointments

A new PSR Panel will be appointed after the MoU between the Minister and the AMA on the operation of the PSR Scheme is finalised.

The appointments will not occur until after consultation with the AMA and other relevant organisations as required under the legislation. Given the recent findings of the Federal Court, it is essential to the integrity of the PSR Scheme to ensure that the appointment process occurs consistently with the legislation. This is also essential to restore the confidence of the profession in the PSR Scheme.

⁵ There have been three PSR Advisory Committee meetings in the last year. These took place on 23 November 2010, 8 February 2011 and 20 April 2011.

5.4 PSR Director Appointment

The appointment of the current Director, Dr Tony Webber, expires on 13 August 2011.

Dr William Coote will commence appointment as the new Acting Director of the PSR on 14 August 2011 for a period of up to three months. The AMA has agreed to the appointment of Dr Coote.

The Department is finalising an open and transparent merit-based recruitment process conducted by a selection panel including the Commonwealth Chief Medical Officer, the President of the AMA and senior officials from the Departments of Health and Ageing and Human Services to appoint a new Director on a substantive basis. This appointment will be considered by the Government shortly.

5.5 Resource Guide

The PSR Advisory Committee suggested that the PSR develop a handbook explaining the PSR process to provide better information for persons under review.

The AMA and PSR have collaborated to produce a Resource Guide, which is intended to provide persons under review with a detailed explanation of each of the steps in the PSR process and to inform practitioners of their rights during the Review process.

PSR intends to review the Resource Guide before the end of 2011 to include any further feedback provided on the document.

It is envisaged that this document will be reviewed regularly to meet the changing needs of persons under review and other stakeholders and to maintain its relevance. It is envisaged that the Resource Guide will be amended as required to reflect any amendments made to Part VAA of the HI Act.

The Resource Guide can be accessed on the PSR website at <http://www.psr.gov.au/Publications>.

5.6 Governance Review

In March 2011, the Minister for Health and Ageing announced that a governance review of the PSR would be undertaken. The Department has engaged PricewaterhouseCoopers to conduct an external governance review of the PSR agency. The report of the review is expected in October 2011.