

PROFESSIONAL SERVICES REVIEW

Current Issue:

- *The Full Court of the Federal Court of Australia has ruled that appointments of Professional Services Review (PSR) Panel and Deputy Directors were invalid. The decision has been widely reported in the media.*
- *Senate Community Affairs Committee Inquiry into PSR.*

Brief talking points:

- The PSR Scheme is an integral part of the regulatory framework that protects the integrity of the Medicare Benefits and Pharmaceutical Benefits Schemes.
- The Australian Government is committed to ensuring that practitioners who are suspected of engaging in inappropriate practice are investigated under the PSR Scheme, thereby improving the quality of medical services provided under the MBS and PBS Schemes.
- This also ensures that taxpayers do not bear the cost of medical services that do not meet the expectations of the medical profession.
- The PSR Advisory Committee, which includes the AMA and Department of Human Services, is working to improve the PSR's operations to ensure that the peer review arrangements operate effectively in the future.
- I have endorsed an independent external review of the PSR and will continue to talk with the AMA about the appointment of a new PSR Panel.
- I am aware of the Federal Court's decision and the Commonwealth is seeking legal advice about the implications of the decision. This involved appointments in 05 and 09.

Key Facts:

- On 28 July 2011, the Full Federal Court ruled that the appointment of PSR Panel members in 2009 and Deputy Directors in 2005 and 2009 were invalid because the Ministers for Health and Ageing did not consult with the AMA as required under the *Health Insurance Act*.
- The arrangements regarding appointments and relevant consultations were managed by PSR.

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Background:

- A number of medical practitioners took action in the Federal Court to challenge PSR Committee decisions by questioning the validity of the Committee members' and Deputy Directors' appointments.
- On 6 August 2010 the Director of PSR requested that all existing Panel members and Deputy Directors resign from their positions.
- The *Health Insurance Act 1973* (the Act) requires that the AMA be consulted with respect to the appointment of medical practitioners as PSR Panel members (subsection 84(3)) and as Deputy Directors of the PSR Panel (subsection 85(3)).
- The Full Federal Court ruled that the Minister did not consult with the AMA as required under the Act in respect to the appointments of PSR Panel members in 2009 and the appointment of Deputy Directors in 2005 and 2009.
- Therefore, the Court found that the appointments were invalid and of no effect. Further, the Court held that the Determining Authority decisions imposing sanctions on medical practitioners based on the reports of the committees found to be invalidly appointed were also invalid.
- The Court ordered that the Commonwealth and the Minister pay the applicants' costs.
- Recent media articles claimed that around 50 doctors who had been subject to adverse findings by PSR since 2005 would be able to seek to have those decisions overturned; that doctors would be able to seek a refund of any Medicare benefits that they had been ordered to re-pay; and that the Government has not listened to the AMA's requests for consultation on PSR appointments.
- The Department is currently considering the consequences of the decision and will advise the Minister shortly. Data provided by PSR indicates that 71 cases were completed from the 2005 appointments until 30 June 2010. The PSR Committees ceased functioning shortly after this.
- The Department is in the process of seeking advice from the Australian Government Solicitor about the decision and its implications as well as the prospects of success for an appeal to the High Court.

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- A new PSR Panel will also be appointed following consultation with the AMA and other relevant organisations as required under the Act. This will not occur until an MOU has been agreed with the AMA on the operations of the PSR Scheme. Currently a draft of the MOU is with the AMA for consideration.
 - The Senate Community Affairs Committee has announced an Inquiry into the PSR Scheme. The reporting date for the Inquiry is 22 September 2011. The Department will provide a submission to the Inquiry before the closing date of 12 August.
 - The Department is finalising an agreement with PricewaterhouseCoopers to undertake a contracted Review into the Scheme. The Governance Review will commence shortly.

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