

Professional Services Review Scheme Operational Review

Department of Health and Ageing

Draft Report

19 December 2011

pwc

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you like to grow?*

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1 Executive summary

Background

The Professional Services Review scheme (PSR) was established in 1994 to protect the integrity of the Medicare benefits and pharmaceutical benefits programs, and protect patients and the community in general from the risks of inappropriate practice.

The current review is a diagnostic assessment of PSR's organisational performance. It follows on from previous major reviews of PSR in 1999 and 2007 regarding legislative effectiveness, and procedural and evidentiary practices. The review is being undertaken in an environment of increased interest in PSR activities due to recent findings regarding PSR's financial and operational performance, and court rulings in cases such as *Kutlu v Director PSR* and *Tisdall v Webber*. A concurrent inquiry by the Senate Standing Committee on Community Affairs is also underway.

PSR operational performance

Over the last five years, PSR has been subject to a range of internal inquiries which have raised concerns regarding non-compliance with legislative and financial requirements, and a range of operational matters. Potential non-compliance with PSR's establishing legislation has arisen through legal challenges, and non-compliance with financial framework requirements has been identified through internal audit activities. At an operational level, concerns over PSR's workforce have been raised, with staff roles and responsibilities not clearly defined and understood, an overly senior grading structure, and limited flexibility for varying workload resulting in inefficiencies. While PSR has taken actions to address all of these issues to some degree, it is too early to understand the impacts of these actions and their sustainability.

PSR currently operates with 31 APS staff (29.1 FTE). The size of the workforce has doubled over the past five years, and may be inefficient given that 58% of staff are graded EL1 or above and 45% are in corporate support roles.

PSR financial performance

PSR was appropriated \$7.8m in 2010-11 from the Department and is forecast to report a net operating surplus of \$2.1m, in part due to the suspension of committee activities in August 2010 following legal challenges. PSR's cost base are employee expense (\$3.2m, 43% of 2009-10 expenditure), case related costs (\$1.7m, 23%) and legal expenses (\$1.0m, 13%).

The length and quality of the PSR process is of concern to stakeholders and a driver of internal costs. The average time from referral to the Director PSR from Medicare to the resolution of the matter is 186 days when no further action is taken, 260 days where negotiated agreements are reached, and 876 days when Committee review is required.

Future operating model

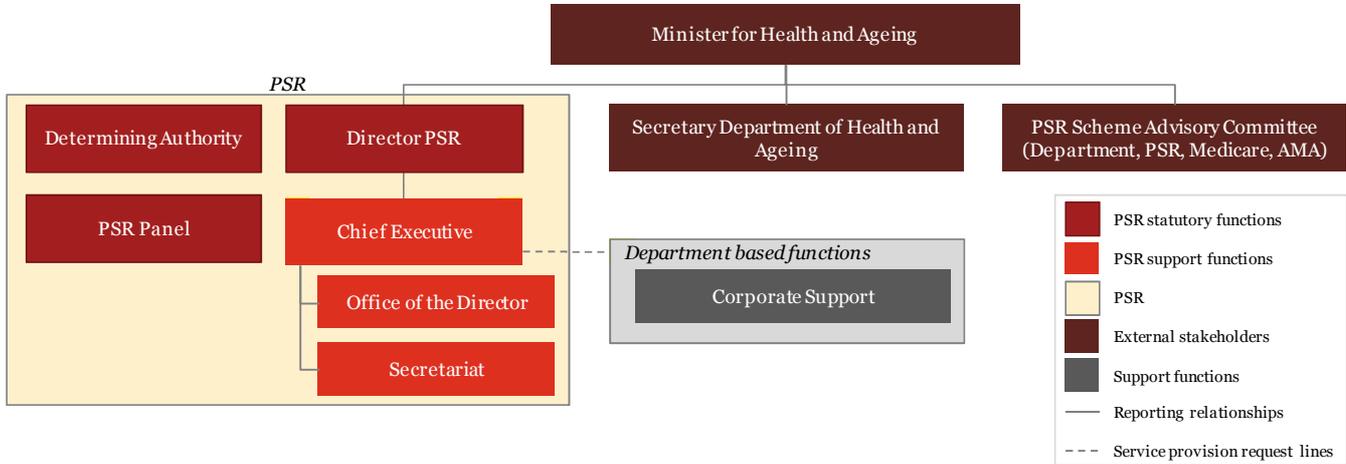
The extent of the challenges identified in this review indicate that the current operating model needs to be redesigned to facilitate the future delivery of PSR Scheme functions and enable sustainable, efficient and effective delivery. Changes are required to both the structure of PSR and oversight arrangements.

The PSR Advisory Committee (PSRAC) would be given a broader remit in oversight and consultation arrangements. In the future, the PSRAC would provide an annual statement to the Minister concerning PSR's functional delivery and operational efficiency. PSRAC would also provide a mechanism through which the Minister can be advised to remove the Director, a Determining Authority member, or a member of the PSR Panel if required.

The review has developed a high level operating model in consultation with PSR and the Department which addresses identified challenges and stakeholder requirements. In particular, the model provides for the continuation of PSR as a separate portfolio agency and maintains the statutory independence of the Director, Determining Authority and PSR Panel. Under this model PSR would continue to operate as a separate agency with support functions sourced through two internal business units providing investigative support, legal advice, and secretariat

functions, supplemented by corporate services from the Department. Support functions would be sourced through DoHA corporate services capacity from the Department. This model, illustrated in Figure 1 below, should form the basis for further development and implementation planning.

Figure 1 - Proposed future state PSR operating model



Additional opportunities

The review has also identified opportunities to improve the effectiveness of Committee functions through creating a standing committee for General Practitioners, revising selection, appointment, induction and ongoing training of Determining Authority and PSR Panel members, and reviewing arrangements for the Audit Committee. Further consideration should also be given to the potential to revise PSR’s funding model to incorporate greater levels of industry funding.

2 Introduction, background and scope of the review

Key Messages

- The Professional Services Review scheme (PSR) was established in 1994 through amendments to the *Health Insurance Act 1973*. The PSR scheme aims to protect the integrity of the medicare benefits and pharmaceutical benefits program by addressing inappropriate practice in service provision, replacing the previous Medical Services Committees of Inquiry.
- Since 1994, PSR has been subject to reform through legislative amendments in 1997, 2002 and 2006 and previous reviews in 1999 and 2007. Previous reforms have focussed on assessing the effectiveness of the legislation, and refining procedural and evidentiary practices in response to court rulings.
- The current review is a diagnostic assessment of PSR's organisational performance and provides a series of recommendations regarding improvement opportunities.

PSR background

The Professional Services Review (PSR) scheme was established in 1994 following amendments to the *Health Insurance Act 1973* (the Act). PSR replaced the previous peer review functions delivered through the Medical Services Committees of Inquiry scheme. The chief impetus for the new arrangements was the Australian National Audit Office's (ANAO) 1992-93 report *Medifraud and excessive servicing: Health Insurance Commission*. In the report, the ANAO identified that:

- the existing bodies responsible for dealing with excessive servicing were not operating satisfactorily and needed to be strengthened;
- existing mechanisms for dealing with overservicing did little to discourage initiation or provision of excessive services; and
- the level of benefits recovered from practitioners were eclipsed by the level of overservicing actually engaged in¹.

In particular, the previous arrangements through the Medical Services Committees of Inquiry scheme were found to be unable to impose penalties commensurate with the extent of a practitioner's overservicing due to a lack of power to make decisions on the extent of overservicing on the basis of generalised evidence. The Medical Services Committee judgments on overservicing could only be made on the basis of individual services, and the recovery of benefits and imposition of penalties could only be made in respect of each service separately determined to have been excessive. Additionally, the Medical Services Committee process was impacted by delays in case finalisation, including delays resulting from practitioners declining to appear at hearings as the penalties for non-attendance were insufficient to ensure the attendance of the practitioner.²

¹ Commonwealth, Health Legislation (Professional Services Review) Amendment Bill 1993 Second Reading, 30 September 1993, 1550 (Dr Theophanous, Parliamentary Secretary to the Minister for Housing, Local Government and Community Services and Parliamentary Secretary to the Minister for Health)

² *ibid.*

Introduction, background and scope of the review

The review process through the PSR scheme was also extended by the replacement of the concept of “excessive servicing” with the concept of “inappropriate practice”. The previous focus on excessive servicing had focussed on the rendering or initiation of services not reasonably necessary for adequate care, while the concept of inappropriate practice provides a broader focus through considering conduct that is unacceptable to professional colleagues generally.³

The PSR scheme is intended to protect the integrity of Medicare benefits and pharmaceutical benefits programs by providing a framework for reviewing and investigating service provision and identifying instances of inappropriate practice. Through a structured process for the referral, review and determination of any penalties, PSR is intended to:

- a) protect patients and the community in general from the risks associated with inappropriate practice
- b) protect the Commonwealth from having to meet the cost of services provided as a result of inappropriate practice.⁴

Since its inception, PSR has been subject to major review programs in 1999 and 2007. Reforms have also occurred due to legislative amendments in 1997, 2002 and 2006 that have been intended to strengthen and clarify the PSR process and address evidentiary difficulties in Committee functions.

The 1999 review was commissioned to address procedural and evidentiary deficiencies identified through the Federal Court’s decision in *Yung*⁵, and to clarify the legislative intention of the PSR Scheme to focus of professional conduct. In *Yung* the Federal Court raised concerns regarding the provision of natural justice due to a failure to particularise various matters against the doctor in respect of inappropriate practice and to indicate the adverse conclusions that might be reached, as well as evidentiary difficulties in terms of the PSR Committee not relating its findings to identified services, and not undertaking a detailed consideration of individual services.⁶ The review identified a range of administrative and legislative improvements aimed at increasing the efficiency and effectiveness of the scheme, according natural justice to the practitioner under review (PUR), and clarifying methods for investigating inappropriate practice, and addressing evidentiary difficulties.

The 2007 Review was initiated to review the PSR Scheme’s operations, with a particular focus on the impact of the 1999 and 2002 legislative changes, and to assess PSR’s ability to meet its objectives in the future. The review identified a range of recommendations, including establishing a committee to oversee PSR functions, streamlining PSR and Medicare processes, broadening the PSR scheme to allied health professionals, and re-examining the effectiveness of sanctions.

The 2007 Review also recommended that another review of the PSR Scheme be undertaken in 2010 to evaluate the effectiveness of the revised arrangements and the ability of the Scheme to meet future challenges.⁷ This recommendation, together with an increased interest in the efficiency and effectiveness of the PSR Scheme’s operations, form the background to the current review.

Background to the review

Recommendation 15 of the 2007 *Review of the Professional Services Review Scheme* provided for a further review of the PSR Scheme in 2010. The current review is also being undertaken at a time of increased interest in PSR’s

³ *ibid.*

⁴ *Health Insurance Act 1973 (Cth) s 79A*

⁵ *Steven Yung v Anthony Adams* [1997] 1400 FCA

⁶ *Report of the Review Committee of the Professional Services Review Scheme*, 1999 pg. 2

⁷ *Review of the Professional Services Review Scheme*, 2007 pg. 47

Introduction, background and scope of the review

activities, with a concurrent inquiry into PSR's activities by the Senate Standing Committee on Community Affairs, recent reports concerning PSR's operational and financial performance, and the recent Federal Court findings in *Kutlu v Director PSR*. In *Kutlu* the Federal Court found that the appointments of various Panel members in the 2005 and 2010 appointment processes were invalid, as were the Committees the Panel members took part in, and the subsequent findings of these Committees. In *Tisdall v Webber*, the Federal Court recently ruled to allow an appeal against findings of inappropriate practice made by a Committee, on the basis that the Committee did not appropriately consider factual questions relating to the case and disregarded evidence presented to the Committee. At the time of the current review the Commonwealth Government was seeking leave to appeal to the High Court on the Federal Court's findings.

The current review is intended to provide a diagnostic assessment of PSR's organisational performance, and is based on interviews and analysis undertaken during August and September 2011. The diagnostic establishes a set of facts drawn from available PSR data and documentation, as well as the insights of PSR staff and a targeted selection of key external stakeholders, with a focus on:

- Internal policies, processes and procedures;
- Workforce data (staffing levels, mix, organisational spans, etc.);
- Financial performance (revenues, expenditures and key trends); and
- Findings, judgements and determinations from other internal or external reviews.

An inclusive approach has been taken throughout the review to solicit the views of both internal and external stakeholders in relation to the above.

The review is intended to be the first part of a two phase work program, with the next phase of work considering a redesign of PSR's operating model in response to the findings of the first phase.

3 PSR role, stakeholders and key processes

Key Messages

- A range of stakeholders and key statutory roles are involved in PSR activities. Within PSR these include the statutory appointed Director, Panel members and the Determining Authority. Key stakeholders external to PSR include the Minister, the Department, Medicare and the Australian Medical Association.
- PSR currently operates with 31 APS staff (29.1 FTE). PSR's 2010-11 appropriations were \$7.8m (including \$2m for a one-off budget measure), resulting in a forecast net operating surplus of \$2.1m, in part due to the suspension of committee activities in August 2010.
- A process framework has recently been developed in conjunction with the AMA to provide a clearer understanding of the PSR process to all stakeholders.

3.1 Key roles and stakeholder relationships

To undertake the delivery of PSR's functions, the Act establishes the positions of the Director of Professional Services Review, Deputy Directors, the Professional Services Review Panel, Professional Services Review Committees, and the Determining Authority. The key aspects to these elements are outlined in Table 1 below.

Table 1 - Key PSR constituent elements⁸

Role	Key role aspects
Director	<p>The Director has the authority to decide whether a review requested by Medicare should be undertaken, make a decision that no further action should be taken, enter into an agreement with the PUR, or make a referral to a Committee for investigation.</p> <p>The Director is appointed by the Minister, following agreement with the AMA. Appointments are on a part or full time basis, for a period of three years, and are eligible for re-appointment.</p>
Panel	<p>The Professional Services Review Panel provides a body of clinical professionals from which Committees can be drawn to undertake investigations. The Director can also draw on panel members, any consultant or learned professional body that the Director considers appropriate as required to assist in decision making.</p> <p>Panel members are appointed by the Minister following a consultation process involving the AMA and any other relevant professional organisations. They are appointed on a part time basis for up to five years and are eligible for re-appointment.</p>
Committee	<p>Committees comprise a selection of panel members to investigate whether a PUR referred by the Director has engaged in inappropriate practice. Committee meetings are held in private and can be undertaken as the Committee sees fit, subject to timeframes and other requirements included in the Act.</p> <p>The Committee has the authority to request documents and information to be provided, and may summon individuals other than the PUR to give evidence. Committees are chaired by a Deputy Director and constitute of two other panel members, with provision for the Director to include up to two additional panel members if a wider range of clinical expertise is deemed to be desirable.</p>
Deputy Directors	<p>Deputy Directors act as Chairs of Committees. They are appointed by the Minister from Panel members, following a consultation process involving the AMA and other relevant professional organisations.</p>

⁸ Based on *Health Insurance Act 1973*

Determining Authority	<p>The Determining Authority is a separate statutory authority and has responsibility for considering and ratifying any agreements made between the PUR and the Director under section 92 of the Act. It also decides what actions to take against PUR's who have been determined by a Committee through an investigation process to have engaged in inappropriate practice.</p> <p>The members of the Determining Authority consist of a Chair who is a medical practitioner and eleven other members, incorporating a medical practitioner, a dental practitioner, two optometrists (one participating and one non-participating), a midwife, a nurse practitioner, a chiropractor, a physiotherapist, a podiatrist, an osteopath, and one member who is not a practitioner.</p> <p>The members of the Determining Authority are appointed by the Minister following consultation with the AMA and other relevant professional organisations. Members are appointed for up to five years and are eligible for reappointment.</p>
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In addition to the above, the Act identified a range of other key stakeholders that have specific authority or obligations to enable PSR functional delivery.

Table 2 - PSR stakeholders included in the Act

Stakeholder	Commentary
Medicare	The Medicare Chief Executive has the authority to request the PSR Director to undertake a review of the provision of services by a practitioner.
Australian Medical Association (AMA)	Under the Act, the Minister must gain the agreement of the AMA prior to the appointment of a Director. The Minister must also consult with the AMA prior to the appointment of panel members, Deputy Directors and Determining Authority members.
Other specified organisations and associations	Other organisations and associations must consulted by the AMA as part of the consultation process prior to the appointment of panel members and Deputy Directors.
Department or similar Commonwealth body	The Director may make arrangements with the Department for the provision of employees to assist the Director in carrying out their duties and exercising powers.

In addition to legislated stakeholder responsibilities, mechanisms have been developed to enable stakeholder engagement at an operational level. In particular, the PSR Advisory Committee (PSRAC) was formed subsequent to the *2007 Review of the Professional Services Review Scheme*. The 2007 Review recommended the PSRAC be established to maintain an overview of the PSR Scheme and provide ongoing guidance for its effective operation.⁹

The PSRAC's activities lapsed sometime prior to November 2010¹⁰, and has since been reconstituted as a non-binding advisory body, drawing representatives from PSR, the Department, Medicare and the AMA. PSRAC's terms of reference provide that the Committee mechanism is intended to “ensure that those responsible for policy arrangements, and those responsible for administering the various parts of the PSR Scheme, are directly involved in identifying and resolving issues arising from time to time in relation to the operation of the Scheme.”¹¹

In particular, PSRAC is charged as follows:

- Assess and review, on an ongoing basis, the effectiveness of the PSR Scheme's performance, having regard particularly to the Scheme's primary objective to protect the integrity of Medicare benefits and the Pharmaceutical Benefits Scheme (PBS) and protect patients and the community in general from the risks associated with inappropriate practice.

⁹ 2007, *Review of the Professional Services Review Scheme* pg. 5.

¹⁰ Consultations with PSR executives have indicated that the PSRAC activities had lapsed prior to November 2010, and that there was insufficient documentary evidence as to the timing or content of previous PSRAC meetings

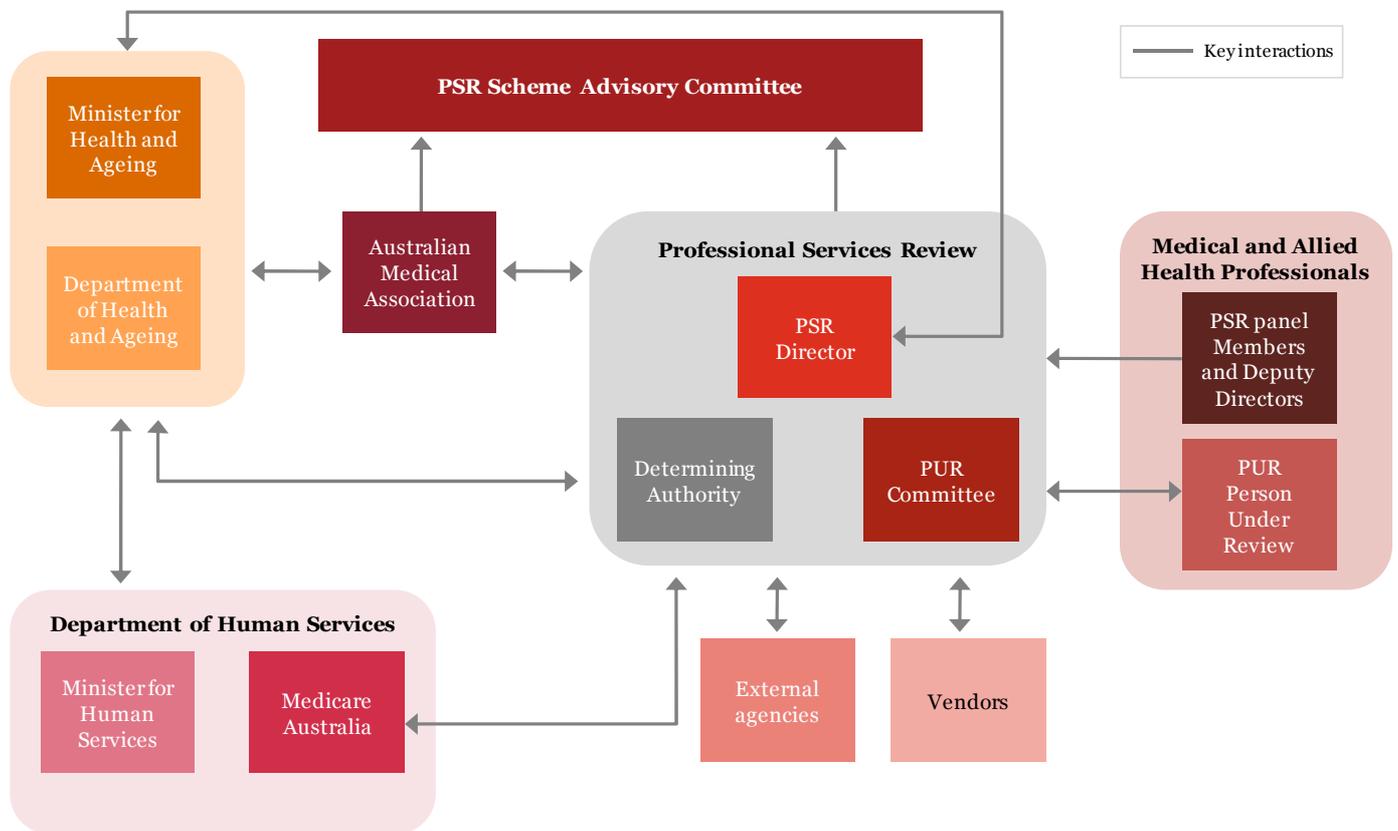
¹¹ *PSRAC Terms of Reference*

PSR role, stakeholders and key processes

- Inform policy review and development by participating in the Scheme’s strategic direction, particularly to address emerging trends in potential Medicare and PBS inappropriate practice.
- Enable stakeholders’ involvement in identifying and resolving current and emerging issues and practices and encourage liaison between stakeholders and professional colleges and bodies.
- Make recommendations to relevant bodies on, and facilitate implementation of, legislative or administrative changes to the PSR Scheme.
- Oversee the implementation of the recommendations included in the Review of the Professional Services Review Scheme Report of the Steering Committee May 2007.¹²

In addition to the above stakeholder groups, PSR operates within a broader network of stakeholder relationships. Figure 2 below provides an overview of the extent of these stakeholder relationships.

Figure 2 - PSR's stakeholder environment¹³



¹² PSRAC Terms of Reference

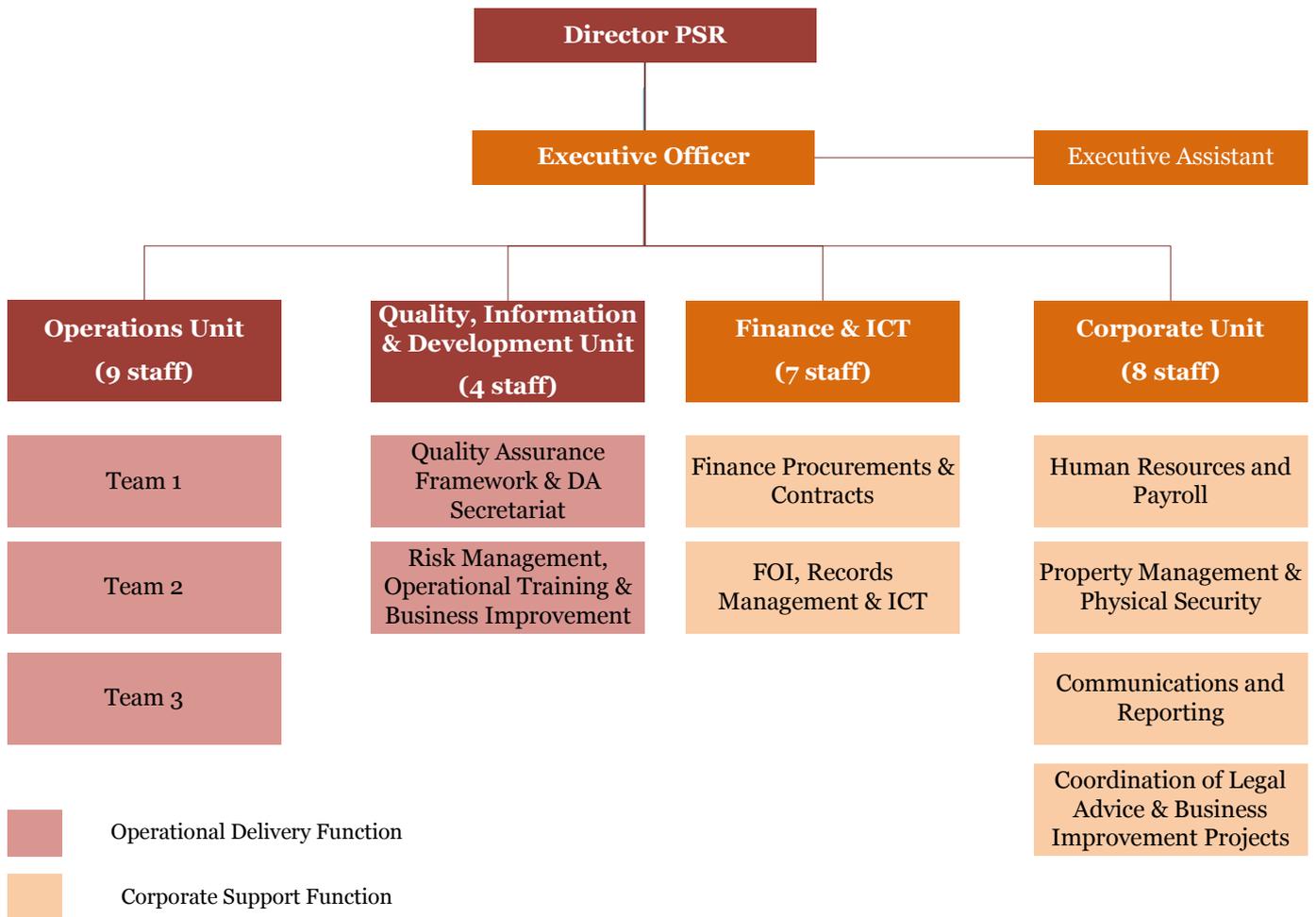
¹³ Based on PSR Agency Business Plan 2011-12 pg. 10 PSR External Governance/Relationship Diagram

3.2 Current operating snapshot

PSR’s operating profile has been relatively steady for the past 5 years, with a consistent funding envelope, organisation structure and internal processes.

As at 30 June 2011, PSR had 31 staff working across the four internal units outlined in Figure 3 below.

Figure 3 - Current PSR structure¹⁴



In 2010-11 the organisation was funded through an appropriation of \$7.8m, which included \$2m for a one-off budget measure, and was expected to deliver a net operating surplus of \$2.1m due to the suspension of committee activity. This resulted in an accumulated \$3.6m of reserve funding due to previous surplus results. While committees were suspended, PSR continued to receive referrals from Medicare Australia with a number of negotiated agreements and no further action cases resolved in 2010-11.

Figure 4 highlights some of the key operating figures for PSR across the 2010-11 financial year.¹⁵

¹⁴ Based on *PSR Agency Business Plan 2011-12* pg 9 and organisational data

¹⁵ Case figures are from 2009-10 and are believed to reflect a more typical workload for PSR given committees were suspended for most of 2010-11).

Figure 4 – Key PSR information

Dimension	Key data
Financials	<ul style="list-style-type: none"> • 2010-2011 appropriation of \$7.8m • Forecast net operating surplus of \$2.1m due to suspension of committee activity • \$3.6m in reserves from previous surplus results
Workforce	<ul style="list-style-type: none"> • Director is a Statutory Officer supported by an Executive Officer (SES1) • 31 APS staff (29.1 FTE) work across 4 units: <ul style="list-style-type: none"> ○ Executive Team (5 staff) ○ Operations Unit (9 staff) ○ Quality, Information & Development Unit (6 staff) ○ Corporate Unit (5 staff) ○ Finance and ICT Unit (6 staff)
PSR Process	<ul style="list-style-type: none"> • Committee activity suspended from August 2010 • In 2009-10 (cases completed over multiple financial years): <ul style="list-style-type: none"> ○ 39 requests for review from Medicare ○ 17 cases resulted in no further action ○ 49 cases resulted in negotiated agreement ○ 28 final determinations made by Committees

3.3 PSR Scheme process

To fulfil its statutory requirements, the PSR scheme investigates the provision of services by a practitioner to determine whether the practitioner has engaged in inappropriate practice¹⁶. The investigation process includes three distinct elements:

- an initial consideration of whether inappropriate practice by a person under review (PUR) may have occurred. This is undertaken by the Director, after which the Director may decide to take no further action, enter into an agreement with the PUR, or refer the matter to a Committee for further consideration;
- a peer review investigation by a Committee as to whether inappropriate practice has occurred; and
- a determination by the Determining Authority of what sanctions should be imposed on a PUR who has been found by a Committee to have engaged in inappropriate practice, or to ratify any agreement made between the PUR and the Director.

The Act provides a high level framework for the provision of these review stages. PSR has developed more detailed operational approaches to complete these activities. Figure 5 below provides an overview of the most recent process outlined, developed by PSR in conjunction with the AMA in early 2011.¹⁷

This flow chart is further supplemented by guidance materials and internal procedures. The majority of existing guidance and procedure materials have been developed over the course of the last 12 months, in response to concerns over lack of appropriate documentation. The process for developing this material is ongoing, with consultations continuing with the AMA on guidance materials and PSR operational policies and procedures still being developed and documented.

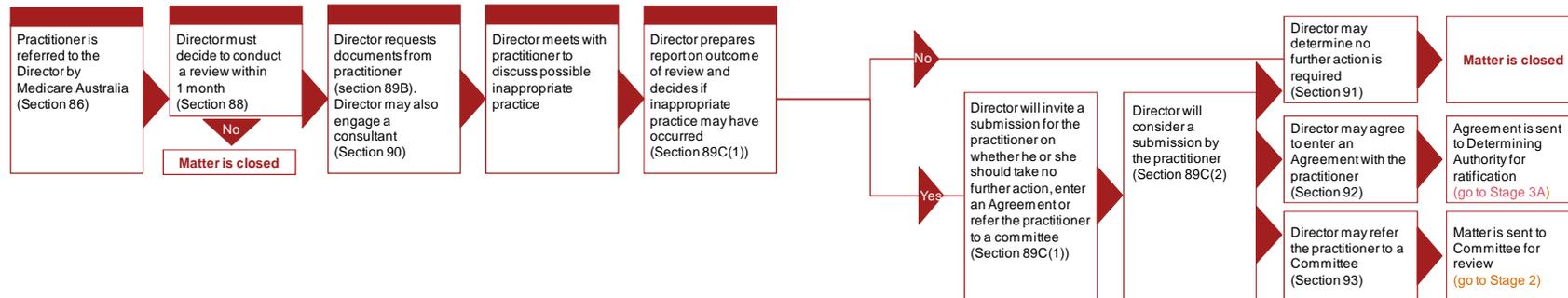
¹⁶ Under s. 82 of the Act inappropriate practice is defined as follows:

1. A practitioner engages in inappropriate practice if the practitioners conduct in connection with rendering or initiating services is such that a Committee could reasonably conclude that:
 - a. if the practitioner rendered or initiated the services as a general practitioner the conduct would be unacceptable to the general body of general practitioners; or
 - b. if the practitioner rendered or initiated the services as a specialist (other than a consultant physician) in a particular specialty the conduct would be unacceptable to the general body of specialists in that specialty; or
 - c. if the practitioner rendered or initiated the services as a consultant physician in a particular specialty the conduct would be unacceptable to the general body of consultant physicians in that specialty; or
 - d. if the practitioner rendered or initiated the services as neither a general practitioner nor a specialist but as a member of a particular profession the conduct would be unacceptable to the general body of the members of that profession.
2. A person (including a practitioner) engages in inappropriate practice if the person:
 - a. knowingly, recklessly or negligently causes, or knowingly, recklessly or negligently permits, a practitioner employed by the person to engage in conduct that constitutes inappropriate practice by the practitioner within the meaning of subsection (1); or
 - b. is an officer of a body corporate and knowingly, recklessly or negligently causes, or knowingly, recklessly or negligently permits, a practitioner employed by the body corporate to engage in conduct that constitutes inappropriate practice by the practitioner within the meaning of subsection (1).

¹⁷ PSR 2011, *Your Guide to the PSR Process* pg.16-17

Figure 5 - PSR process flow

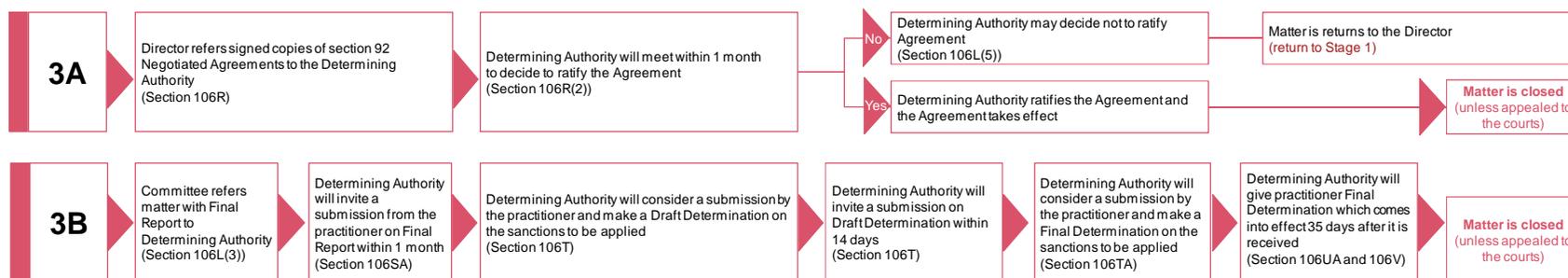
Stage 1: Review by Director



Stage 2: Review by a Committee



Stage 3: Determining Authority



4 Findings of previous reviews and actions taken by PSR

Findings of previous reviews

- PSR has been subject to a number of internal and external review processes in the last 5 years.
- These reviews have raised a significant number of concerns across a range of areas, with high risk issues including:
 - Legislative non-compliance (Committee hearings suspended due to challenges to Panel appointment process);
 - High number of instances of financial framework non-compliance, particularly in relation to the expenditure of public money;
 - Staff roles and responsibilities not clearly defined and understood, limited flexibility for varying workload, and senior grade mix; and,
 - Case management system is technologically outdated and limiting.

PSR's response

- PSR has taken action on all key issues, including developing internal and external policy, process and procedure documents. However, the majority of these actions have occurred recently so are not fully bedded down in the organisation's processes and procedures and established as part of day to day activities and it is too early to determine the impact of actions taken and their effectiveness in addressing the issues raised.

Recommendations:

1. Continue the implementation and embedding of recent initiatives to improve legislative compliance, financial compliance, clarity of roles and responsibilities, case management and document security.
2. Develop end to end process maps to aid in process analysis, improvement and transparency for staff, and provide appropriate training and role clarification to embed revised practices.

This chapter summarises the findings of previous reviews of PSR by external consultants and internal audit processes and describes the actions taken by PSR in response to these reviews. An assessment of the status of PSR's policy, process and procedure documents concludes the chapter.

4.1 Previous reviews of PSR and subsequent actions by PSR

Previous reviews of PSR

PSR has commissioned, and been subject to, a number of review processes additional to their regular program of internal audit and risk assessments, encompassing operational areas including:

- *Internal Audit Risk Assessments (2007-2011);*
- *Compliance with enabling legislation (2011);*
- *Quality assurance review of financial statements (2011);*
- *ICT Strategic Review (2009);*

Findings of previous reviews and actions taken by PSR

- *Organisational Structure and Workflow (2008)*;
- *Management reporting practices (2007)*; and
- *Case Data Systems (2007)*.

In addition to these reviews, PSR is currently subject to a Senate Community Affairs Inquiry which has been established to examine:

- (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.

Issues identified, actions taken and risk register

The submissions to the Senate Inquiry, in addition to the previous reviews of PSR, specified a number of areas of improvement for PSR's policies and procedures. From these reviews, PSR developed an internal risk register to identify and classify critical risks based on the potential impact to PSR's ability to effectively deliver its key functions (represented in Table 7). The key issues and risks, as rated by PSR, relate mainly to the delivery of the PSR process, including compliance with key legislation, whilst operational aspects of PSR's business are deemed to be of medium risk.

Table 3 - PSR's risk register in response to key issues identified in previous reviews¹⁸

High Risk	Medium Risk	Low Risk
<ul style="list-style-type: none"> • PSR does not comply with its enabling legislation • PSR does not comply with other legislation (FMA Act etc) • Information managed by PSR (including medical records, evidence for cases etc) is not stored efficiently or effectively • PSR loses the support of stakeholders • PSR diverted from core business due to legal action • PSR's culture and working environment does not support effective performance 	<ul style="list-style-type: none"> • Information is not always appropriately secured • PSR's case management system is insufficient for PSR's business • Volatility of workflow adversely impacts service delivery • The end to end PSR business process is determined to be no longer appropriate and/or effective 	<ul style="list-style-type: none"> • No risks currently classified as low risk in PSR risk register

PSR have acted upon the majority of the findings of these reports, developing a number of strategies, business plans and project initiatives. In addition, the organisation has recruited a number of new management positions, especially in the corporate area. However, the majority of these actions have occurred recently so are not fully bedded down in the organisation's processes and procedures and established as part of day to day activities and it is too early to determine the impact of actions taken and their effectiveness in addressing the issues raised.

The table below expands on PSR's risk register by examining a sample of the high risk issues raised by previous reviews. Previous reviews of PSR identified a number of important issues and risks across a wide range of business areas. The most critical risks for PSR relate to non compliance with legislative process, however operational, workforce and corporate support functions all contribute indirectly to PSR's outcomes and can be considered significant in their own right. PSR have provided information on actions that have been undertaken in response to issues, while this review has provided an evaluation on the progress PSR have made towards these goals.

A more comprehensive listing of issues identified by previous reviews, and PSR's action taken in response can be found in Appendix A.

Table 4: High risk issues identified by previous reviews and PSR's subsequent response¹⁹

High risk issues identified	PSR action taken	Status
<p>Legislative Compliance The 2005 and 2010 appointment processes for PSR panel members may not have been valid due to inadequate consultation</p>	<p>PSR has developed, in conjunction the AMA, public Guidelines that set out the selection criteria and process used to identify, select, consult on, and put forth panel members and deputy-directors to the Minister for approval. These guidelines were agreed on 16 March 2011 and introduce greater transparency to the process.</p>	<p>Ongoing</p>

¹⁸ Table 3 sourced from PSR's internal risk register. Risks and ratings are as per PSR's judgement.

¹⁹ Summary of PSR's action taken in response to issues identified sourced from PSR executives. Progress status as rated by review team in consultation with PSR executives

High risk issues identified	PSR action taken	Status
<p>Financial Compliance Generally inadequate controls and procedures for financial transactions and asset movements. This has led to large scale financial framework non-compliance, particularly in relation to the expenditure of public money.</p>	<p>PSR placed significant focus on increasing its financial capability and governance in 2011. Significant work has been undertaken to improve month end reconciliations and reporting. New Chief Executive Instructions and associated business rules have been developed, and circulated to all staff for consultation (and education) in July 2011.</p> <p>The FMA Act Compliance Framework audit undertaken by Moore Stephens identified areas of improvement which have largely been accepted and rectified. The Certificate of Compliance for 2009-10 contained 424 breaches (418 relating to absence of Reg9 delegation for credit card holders) and in 2010-11 155 breaches (135 relating to absence of Reg9 delegation for credit card holders that was a continuation of the 2009-10 issue not identified/rectified until August 2011).</p>	Ongoing
<p>Roles and responsibilities Staff were unsure of their exact responsibilities, and the job that staff were required to do did not align with the role they were recruited to fulfil.</p>	<p>In 2011 PSR implemented a new aligned planning framework that includes a documented corporate plan, Agency business plan, unit plans and individual plans.</p> <p>PSR has held two separate Agency business planning days since January 2011 to discuss the roles and functions within the Agency, clarify existing expectations, and enhance cross-team and individual support and coordination.</p>	Ongoing
<p>Case management system There is limited expertise in the proper use of the case management system, and the technology base for the case management system is outdated.</p>	<p>The New Case Procedures manual explicitly steps through the MALCOM (case management system) requirements for each activity undertaken on a case.</p> <p>PSR has set aside capital funding for the replacement of the system which is now 10 years old. It is expected that the new case management system is to be in place by June 2012.</p>	Ongoing
<p>Document security Investigations have suggested that physical document security is non compliant. Additionally, electronic security protocols were found to be sub optimal, including a lack security matrixes to ensure data segregation and mechanisms to align system access controls across various platforms.</p>	<p>PSR installed internal lockable cabinets in June-July 2011 to store all confidential material. The keys to these cabinets are kept in a computerised key safe which grants staff access to authorised cabinets only.</p> <p>PSR electronic records are stored within a TRIM records management environment. All records are maintained on our PSR servers located onsite in a dedicated server room. Access to this room is limited.</p>	Completed

4.2 PSR's response to previous reviews: internal policies, processes and procedures

Vision, Strategy and Policy Documents

In conjunction with gathering information from previous reviews, the review team examined PSR's internal policies, processes and procedures. A number of documents relating to internal policy and procedure had been produced directly as a result of previous reviews while other long-standing documents (e.g. the *Case Process and Procedure Manual*) has undergone recent review and revisions in light of PSR's legal challenges.

In summary, PSR has produced a number of strategy documents to outline their overarching vision to delivering PSR's functions, including:

- *PSR Agency Business Plan 2011-12*;
- *PSR Corporate Plan 2011-13*; and
- *Unit Plans for 2011-12* (Corporate Unit, Finance and ICT Unit, Operations Unit, while Quality, Information and Development Unit Plan still in draft).

The aforementioned documents have been prepared recently, generally in response to the collection of issues identified through the various review processes PSR has been subject to in the last five years. These documents are targeted at a high level and, whilst useful in defining a guiding strategy, do not provide the level of detail required to qualify as a process and procedure document.

For some specific areas, such as ICT, PSR has developed more detailed policy documentation to provide guidance on delivery of specific functions. Sample documents at this level include:

- *PSR Information Management Strategic Plan 2011-2012*;
- *Information & Communications Technology Strategic Plan 2010-2012*; and
- *Agency ICT Workforce Plan 2010*.

Processes and Procedures

PSR has a number of process and procedure manuals targeted at providing detailed information for external Panel, Committee and Determining Authority members. These documents are based on the legislative responsibilities of the stakeholders involved in the PSR process and include:

- *Guidelines for the Appointment of Medical Practitioners as Panel Members, Deputy Directors and Consultants* (updated 2011);
- *Your Guide to the PSR Process* (2011);
- *Induction to Committees Pre Hearing Meeting and Hearing Guidance*; and
- *Committee Handbook for Panel Members and Deputy Directors*.

In terms of internal process documentation, the review team was provided with PSR's *Case Process and Procedure Manual* as the key document containing PSR's internal processes and procedures. The final version of this document was internally approved in August 2011. The document was developed as an amalgamation of three previous process manuals and details the internal PSR workflow for process, procedures and legislation while providing some detail on administrative matters in dealing with the PSR's case management and records management systems.

This document is a comprehensive listing of work steps undertaken in administering the PSR process, including detailed instructions for the use of the case management system (MALCOLM). However, the lack of process flow charts makes it problematic to undertake a detailed process analysis or to propose options for the performance

improvement of internal processes and procedures. The potential to develop process maps for the detailed processes contained in the PSR *Case Process and Procedure Manual* is explored below.

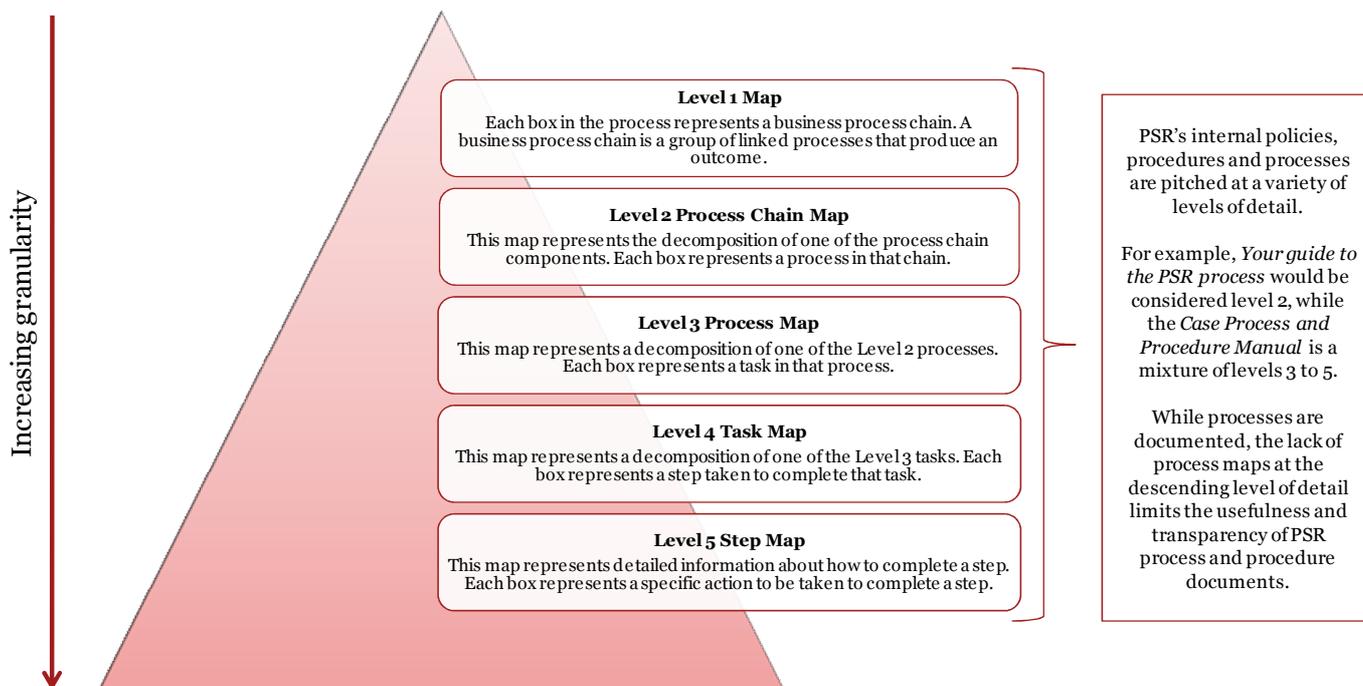
Developing best practice process in PSR

PwC best practice guidelines suggest that processes need to be considered in their overall context as well as in the detail of step by step procedures. In this manner, processes need to be organised from an ‘end-to-end’ perspective in order to identify and articulate responsibilities, accountabilities and key interfaces for PSR both internally and with its stakeholders.

Figure 6 demonstrates how end-to end process design can utilise a hierarchy approach to produce cascading levels of detail suitable for different stakeholders. In the context of PSR, the Level 1 process (transfer of a PUR from Medicare through the PSR process to the Determining Authority) is well understood. A Level 2 process chain map has also been produced in the form of *Your Guide to the PSR Process (2011)*.

However, lower layers of detail, currently contained in the *Case Process and Procedure Manual*, are difficult to extract and analyse given the highly detailed and dense nature of the document. The processes and procedures in PSR’s *Case Process and Procedure Manual* should be translated into process, task and step maps as identified below.

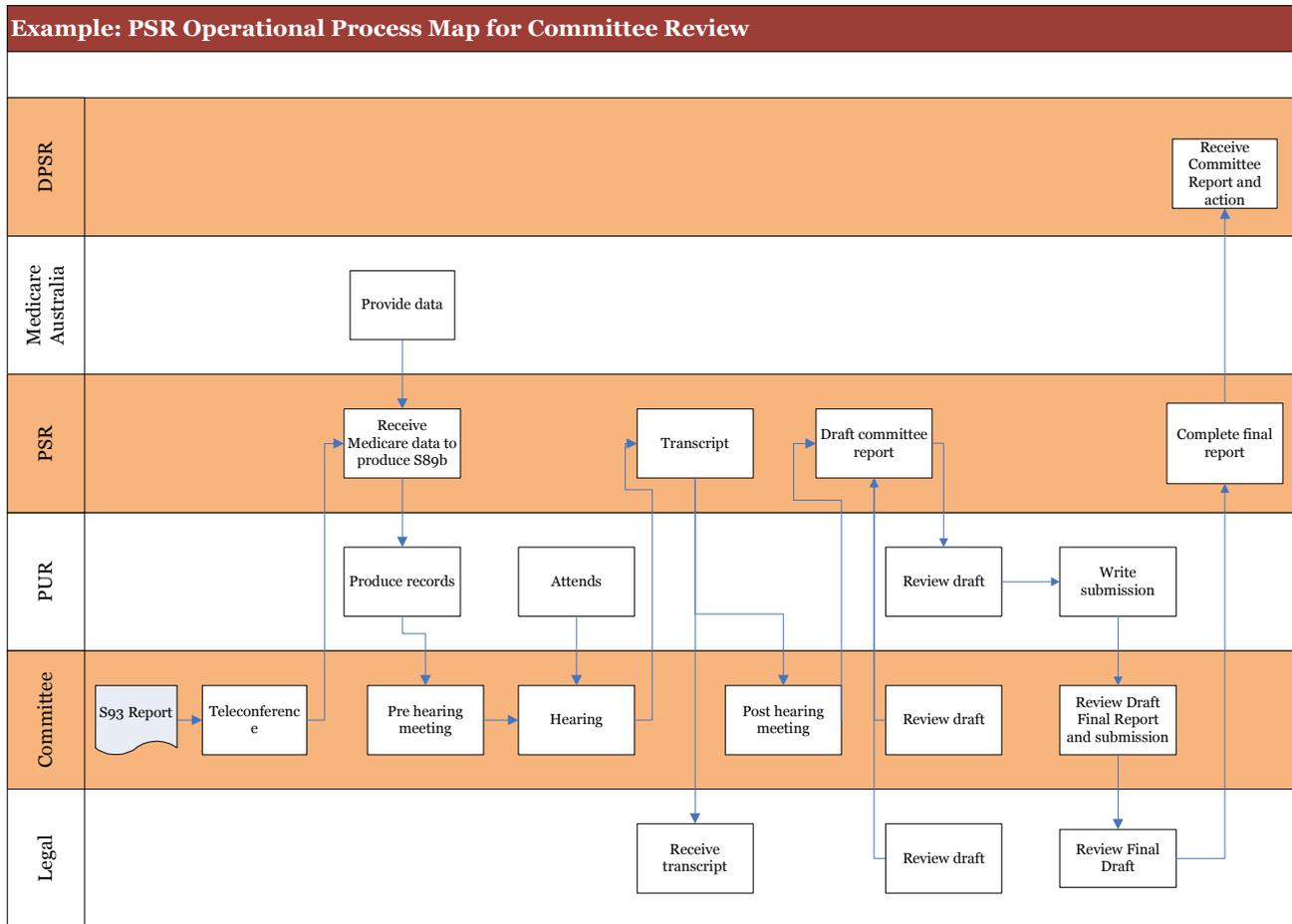
Figure 6 - Best practice process hierarchy



This exercise could be aided by employing end to end process design to represent the various process hierarchy levels using swim lane process maps. These diagrams describe in a chronological order how the different roles (including line manager and employees/ Committees /stakeholders) intervene on a process and when and how a hand-over occurs between the different roles. The diagram should not only clarify the hand-over between the different roles but also the nature of the activity and the information needs of each activity.

Figure 7 is a representation of a level 3 process map followed in moving a PUR through the Committee Review process. It will be necessary for PSR to develop lower level process maps for each step from the Case Process and Procedure Manual in order to allow analysis and improvement of key work steps, as well as bringing transparency to the process to ensure all employees are aware of the expectations and hand off points involved in PSR processes. This will also assist in aiding the induction of new or temporary staff members to the process.

Figure 7 - Example high level process map or PSR Committee Review process



4.3 Summary of PSR initiatives from previous reviews

The tables on the following pages provide a listing of issues raised by previous reviews. The most critical risks for PSR relate to non compliance with legislative process, however operational, workforce and corporate support functions all contribute indirectly to PSR’s outcomes and can be considered significant in their own right.

The tables also highlight that PSR have taken action on all key issues in order to address the concerns of previous reviews. The majority of the actions taken in response are still underway, so that only a small number been addressed entirely or have been recently commenced. In this light, it is too early to understand the impact of actions taken and whether they will be sufficient to resolve the wide ranging and numerous issues facing the organisation. A key has been provided below to assist the reader in interpreting the progress PSR has made against each issue.

Key

Status	Explanation
Yet to commence	Response to issue determined but yet to take place
Commenced	Response to issue recently begun at time of reporting, evaluation of impact not possible,
Ongoing	Issue and response identified and underway. Ongoing status allocated to those responses that involve multiple actions of which one or more may be still underway
Completed	Issue resolved and response completed. NB: No actions were rated as entirely complete

Table 3: Previous findings related to the Process administered by PSR20

Issue identified	PSR action taken	Status
<p>Legislative Compliance</p> <p><i>Risk Rating: High</i></p> <p>The 2005 and 2010 appointment processes for PSR panel members may not have been valid due to inadequate consultation</p>	<p>In addition to supporting the response to the legal issue, PSR requested the voluntary resignation of all PSR panel members, and has developed plans for new recruitment, appointment and induction process to re-establish the panel using appropriate consultation.</p> <p>This has included agreeing with the AMA to public Guidelines that set out the selection criteria and process used to identify, select, consult on, and put forth panel members and deputy-directors to the Minister for approval. These guidelines were agreed on 16 March 2011 and introduce greater transparency to the process.</p> <p>In line with the guidelines PSR has prepared a pro-forma Expression of Interest form for practitioners to use when seeking to be nominated to the panel. This requires them to list responses to key criteria that will enable short listing, and form the basis of useful profiling of the PSR panel to respond to any stakeholder concerns.</p> <p>PSR has also developed a project plan and process for the appointments and has tested these on former committee members. Based on the agreed criteria in the <i>Guidelines for Appointments</i>, PSR wrote to all former Panel Members and Deputy Directors in March 2011 and asked them to complete a nomination form that addressed the requirements.</p> <p>Part of this overall project also involves greater record keeping, and establishment of a searchable committee member database.</p> <p>The procedures will be finalised in line with the Memorandum of Understanding (MOU) between the Minister and AMA, and the outcomes of the Senate Inquiry and Governance Review.</p> <p>In addition the operational case procedures have new quality checks designed to ensure that the validity of appointment for each legislated decision maker is checked during each case. Similarly the Agency Information publication scheme and website will carry greater information on appointees as a way of ensuring transparency and accountability.</p>	Ongoing

²⁰ Summary of PSR’s action taken in response to issues identified sourced from PSR executives. Progress status as rated by review team in consultation with PSR executives.

Findings of previous reviews and actions taken by PSR

<p>Policies and procedures</p> <p><i>Risk rating: High</i></p> <p>As at 2011, policies and procedures in the form of the PSR Case Manager manual encourage compliance with the majority of <i>Part IV of the Health Insurance Act 1973</i>, however fails to provide guidance in a number of areas including the key area of committee appointments.</p>	<p>In March 2011 PSR created the temporary position of Case Procedure Manual Coordinator. The occupant of this role was sourced internally and led a project to combine three existing procedure manuals, address the outcomes of the internal audit on the compliance of our case manual, and identify business improvements and efficiencies within the case process.</p> <p>The new, end to end, case procedure manual was officially approved on 16 August 2011 after a trial period. Ownership of the Manual now sits with the Operations Unit Manager, with the Quality Review Program Scheduled to test quality and compliance throughout 2011-12.</p> <p>Despite this project being finalised the Case Process and Procedure Manual continues to be marked for review as a consequence of the commencement of a new Director, the Senate Inquiry, ongoing process changes stemming from the MOU between the AMA and Minister, and other process improvement sources (including PSRAC and the Governance Review).</p>	<p>Ongoing</p>
<p>Quality Assurance</p> <p><i>Risk Rating: High</i></p> <p>As at 2011, a more robust internal QA function needs to be developed to check all elements of the enabling legislative requirements especially in relation to timing.</p>	<p>Management has commenced activities to develop a more robust Quality Assurance Framework through the PSR QA Review Program Project Plan and Concept. In March 2011, PSR internally advertised and filled the role of Risk and Quality Manager to specifically design an Agency Quality Framework and Quality Review Program.</p> <p>The Quality program was approved by the Executive and Management Team in August 2011 and is due to be implemented in September 2011.</p> <p>PSR has also engaged with Medicare Australia in relation to borrowing aspects of their new compliance quality assurance framework and compliance officer development program.</p>	<p>Commenced</p>
<p>PSR Process</p> <p><i>Risk Rating: High</i></p> <p>Written decisions made by the Director or Committee did not appear to consider evidence the PUR had provided during the review, or explain how the evidence was considered, or why it was dismissed</p>	<p>Whilst PSR does not necessarily support the broad thrust of this recommendation (as past s89C reports, Draft and Final Committee Reports, and draft and final Determining Authority Determinations have all been legally valid in their detailed reasoning), it acknowledged that some of the supporting cover letters and other templates could be enhanced to increase the practitioners understanding of the reason for decision.</p> <p>A project on the 2011-12 PSR Agency Work plan to review the standard letter suite has commenced and will include the AMA commenting on key communication documents used in the PSR process. The publication <i>Your Guide to the PSR process</i>, launched in July 2011 assists to open a dialogue on the PSR decision making process that PSR has committed to continue to develop.</p> <p>PSR, the AMA and DoHA are currently in ongoing discussions concerning options for revising administrative processes and report content. A complete set of past PSR templates was sent to the AMA in early 2011 and post consultation are expected to be finalised shortly.</p>	<p>Ongoing</p>

Findings of previous reviews and actions taken by PSR

PSR Process

Risk Rating: Medium

PSR Committees were comprised of medical practitioners who have not practised for some time or who practised in a different specialty to the PUR

PSR has produced two guideline documents in consultation with the AMA that address these perceived issues.

The Guidelines for the Appointment of Medical Practitioners as Panel Members, Deputy Directors and Consultants to Professional Services Review Matters was completed on 16 March 2011. This includes criteria that require committee members to be currently practicing (at least part time).

The introduction of an application proforma for future committee members means that they are required to declare their current levels of practice at the time of appointment, and this will be recorded in a yet to be introduced committee member database. This information will then be confirmed prior to appointments to specific committees.

The *Guidelines for the selection of specific panel members and Deputy-Directors when forming a PSR Committee* detail an agreement between the profession and PSR on the correct definition of a peer (for the purpose of appointment to a specific committee).

It should be noted that the proposed wording reflects PSR's past practice which may be subject to change arising from the current reviews, but the availability of this document will address perception issues and stakeholder concerns. The guidelines are currently in draft form due to the change over in Director, having been most recently discussed in a meeting with the AMA on 5 September 2011 with the expectation they will be completed by the end of the month.

Ongoing

PSR Process

Risk Rating: Medium

The procedures followed in Directors meetings with PUR's were inconsistent, including holding the initial meeting between the PUR and the Director at the offices of PSR's legal advisors.

PSR has amended its process in light of feedback from the profession. This has included changing the review meeting location as from June 2011, and agreeing to a new review meeting invitation template that details the format and purpose of the meeting in words approved by the AMA. This letter was agreed to following the August PSRAC meeting, however has yet to be put into practice, resulting in an 'ongoing' status.

Ongoing

Table 4: Previous findings related to PSR’s Operations²¹

Issue identified	PSR action taken	Status
<p>Document security</p> <p><i>Risk rating: High</i></p> <p>Initial investigations have suggested that physical document security is non compliant. For example, the server room and the offsite data storage are not compliant with the PSM and ACSI 33 (Medical-in-Confidence Data security) and that possibilities exist for information to be compromised.</p> <p>Additionally, electronic security protocols were found to be sub optimal, including a lack security matrixes to ensure data segregation and mechanisms to align system access controls across various platforms.</p>	<p>PSR is building a security system which restricts access to authorised personnel only. The current system is in the process of being updated to a more current system.</p> <p>PSR installed internal lockable cabinets in June-July 2011 to store all confidential material. The keys to these cabinets are kept in a computerised key safe which grants staff access to authorised cabinets only.</p> <p>PSR has a large quantity of physical records kept offsite within Recall’s facilities. In 2011 and on two separate occasions, three PSR officers completed a walk-through of Recall’s operations and observed secure handling procedures for receipt, storage, and transfer of documents. Recall facilities were found to adequately maintain PSR records securely, in a safe, sound and secure environment.</p> <p>PSR has a robust Records Management Policy recently updated in August 2011 with strong links to the National Archives of Australia compliance information.</p> <p>On 27 May 2011 the Office of the Australian Information Commissioner wrote that “it is satisfied that PSR has reasonable security safeguards in place to protect the information it holds from unauthorised use, modification or disclosure”.</p>	Completed
<p>Case management system</p> <p><i>Risk rating: Medium</i></p> <p>There is limited expertise in the proper use of the case management system, so that the workflow of the system is not being properly</p>	<p>The New Case Procedures manual explicitly steps through the MALCOM (case management system) requirements for each activity undertaken on a case.</p> <p>In light of its expected replacement (see below), a review of Malcolm was conducted in the second quarter of 2011 and a number of system updates were approved to increase its effectiveness. These were implemented in August 2011 and have reduced the need for some outside-system work, and have increased</p>	Ongoing

²¹ Summary of PSR’s action taken in response to issues identified sourced from PSR executives. Progress status as rated by review team in consultation with PSR executives

Findings of previous reviews and actions taken by PSR

utilised and information not being consistently recorded in the case management system, resulting in information being stored outside of the core operating system and an inability to effectively report on PSR's outcomes.

the reporting capability of the system.

Case management system

Risk rating: Medium

The technology base for the case management system is ten years old which although not an immediate problem will lead to risks in the medium term to long term as resources to maintain the system will become harder to source driving an increased cost to maintain the system.

PSR has set aside capital funding for the replacement of the system which is now 10 years old. A tender process set up for 2010-11 was deferred by the current Executive Officer in late 2010 on the basis of the Portfolio Small Agency Review. The funding has since been transferred to 2011-12.

It is expected that a tender to purchase a new case management system will be managed during 2011-12.

The new case management system is planned to be established by June 2012.

Yet to commence

Management reporting

Risk rating: Medium

Management reporting information was found to be sub optimal, with issues raised including:

No linkage of the volume of cases either underway, or expected to be referred from Medicare Australia, within financial information;

Workflow and case status reports do not measure either the timeliness of cases' passage through the workflow stages, the cost of cases in progress or the quality of services proved by PSR; and

The commentary provided accompanying the financial reports should be based on an objective criteria rather than left to the discretion of the Finance Manager.

PSR recruited a Reporting and Communications Officer in January 2011 to increase both the agency performance reporting and our relationship with external stakeholders.

The Reporting Officer introduced an Agency Case Flow Report to track case numbers in 2011, and track progress through the PSR stages. The report included timeliness and outcome effectiveness reporting. In August 2011 this report was automated within the Case Management system.

As a part of its letter of understanding, PSR receives a 6 weekly report from Medicare Australia on the anticipated number of cases to be received in the coming reporting period. This is currently being renegotiated in line with the need for a new letter of understanding.

In relation to financial management the Monthly Management meeting receives an objective financial report on the status of the Agency finances. The management team also receives a commentary report from the CFO on the agency's financial situation and this is considered important.

Ongoing

Table 5: Previous findings related to PSR’s Workforce²²

Issue identified	PSR action taken	Status
<p>Roles and responsibilities</p> <p><i>Risk rating: High</i></p> <p>Staff were unsure of their exact responsibilities, and the job that staff were required to do did not align with the role they were recruited to fulfil.</p>	<p>In 2011 PSR implemented a new aligned planning framework that includes a documented corporate plan, Agency business plan, unit plans and individual plans.</p> <p>PSR has held two separate Agency business planning days since January 2011 to discuss the roles and functions within the Agency, clarify existing expectations, and enhance cross-team and individual support and coordination.</p> <p>Individuals, in developing their own performance plans, are expected to link their individual tasks to the organisation’s corporate goals.</p> <p>PSR has also approved new position descriptions for all operations unit staff to clarify their role and responsibilities.</p>	Ongoing
<p>Staff welfare strategy</p> <p><i>Risk rating: High</i></p> <p>PSR should take action on strategies and policies to reflect an appropriate complaints handling process to ensure that incidents of bullying and harassment which meet the definition of dangerous occurrence (ie serious personal injury, dangerous occurrence or incapacity), are notified to Comcare.</p>	<p>PSR recruited a HR manager in January 2011 and an experience Corporate Manager in June 2011.</p> <p>PSR’s Corporate Unit plan details the plan of activities to address HR policies and strategies, specifically in relation to complaints and bullying and harassment. In July 2011 PSR established a formal complaints register as a part of enhancing its complaint handling process.</p> <p>PSR developed an Action Plan to update policies, systems of work, provide training, and create a notification and documentation system to handle instances of workplace bullying and harassment. The plan includes actions, timeframes and responsibilities.</p>	Ongoing

²² Summary of PSR’s action taken in response to issues identified sourced from PSR executives. Progress status as rated by review team in consultation with PSR executives

Findings of previous reviews and actions taken by PSR

Workflow management

Risk rating: Medium

Inadequate management of support staff resulted in workloads that do not optimise prioritisation of workflow. This was compounded by a lack of flexibility in the workforce, with staff not inclined to find other work during periods of low demand.

In 2011 PSR implemented a new organisation structure supported by a documented corporate plan, business plan, unit plans and individual plans. This has had a particular impact in bringing together key workflow elements in the Operations unit.

It is intended that a quarterly business reporting process will be implemented during the second quarter of 2011-12. The reports will form the basis of quarterly discussions on workload and resource allocation.

In conjunction with this, PSR management have commenced discussions (including preliminary costings) in relation to the future workforce planning needs of the Agency. This is a specific item of work in the 2011-12 Agency Business plan.

Ongoing

Induction training

Risk rating: Medium

New staff did not receive induction training and did not have an adequate understanding of PSR's purpose, the main operational drivers, and how individual tasks contributed to PSR outcomes

An induction pack and check list are being developed and is expected to be implemented in October 2011. The basis of induction training will be for individual managers to outline individual roles based on the documented corporate, business and unit plans.

Commenced

Table 6: Previous findings related to PSR’s Corporate Support functions²³

Issue identified	PSR action taken	Status
<p>Financial Compliance <i>Risk Rating: High</i> Generally inadequate controls and procedures for financial transactions and asset movements. This has led to large scale financial framework non-compliance, particularly in relation to the expenditure of public money. This is manifested in, for example: Routine failure to pursue and document procurement processes that demonstrate that value for money; Lack of available records of relevant financial approvals for the majority of PSR’s contracts; and Inaccurate and incomplete public disclosure of contracts and consultant expenditures. Further issues were cited in the areas of contract administration, system controls, financial approval, commitment register, contractor</p>	<p>The FMA Act Compliance Framework audit undertaken by Moore Stephens identified areas of improvement which have largely been accepted and rectified. The Certificate of Compliance for 2009-10 contained 424 breaches (418 relating to absence of Reg9 delegation for credit card holders) and in 2010-11 155 breaches (135 relating to absence of Reg9 delegation for credit card holders that was a continuation of the 2009-10 issue not identified/rectified until August 2011).</p> <p>PSR placed significant focus on increasing its financial capability and governance in 2011. The creation of a dedicated CFO role, and the recruitment of an officer with experience as CFO in a similar small health agency has had a significant impact.</p> <p>The PSR financial approval controls were strengthened through the introduction of standard templates, training, and a purchase order system that monitors delegation approval.</p> <p>Additional work has been undertaken to improve month end reconciliations and reporting. Journals and reconciliation procedures are now comparable to other agencies and work continues to progress outstanding issues identified through internal and external audits.</p> <p>New Chief Executive Instructions and associated Business rules have been developed, and circulated to all staff for consultation (and education) in July 2011, and were presented for approval to the new Director PSR in August 2011). It is anticipated that they will be approved in September 2011.</p> <p>PSR has commissioned three external audits since June 2011 which indicate positive improvements to financial controls across the agency.</p> <p>Moore Stephens also undertook a QA of the Financial Statement audit which contained positive feedback in relation to the documentation that was provided to support the financial statements. We understand that the ANAO have also provided positive feedback with no major findings. The ANAO’s closing audit report will be presented to the next Audit Committee in late September 2011.</p>	Ongoing

²³ Summary of PSR’s action taken in response to issues identified sourced from PSR executives. Progress status as rated by review team in consultation with PSR executives

Findings of previous reviews and actions taken by PSR

management, payment of invoices, external disclosures, journals, general payments, credit cards, travel and petty cash.

Financial compliance issues are ongoing, with audit processes revealing discrepancies in the 2010-11 financial year.

PSR have undertaken a complete review of all current contracts and subsequently updated the internal Contract Register. The Contract Register has the inclusion of additional fields for completeness including indemnities, letters of comfort, guarantees and warrantees.

Business Planning

Risk rating: Medium

PSR lacks any overarching documentation of its strategies and priorities, such as a Corporate Plan, HR or ICT Strategic Plan.

PSR have prepared a Corporate Plan for 2011-2013, an Agency Business Plan (2011-12), Unit plans for each of the Agency divisions, an ICT Workforce Plan (2010), and an ICT Strategic Plan (2010-2012). These were all developed and approved in 2011 in line with an overarching business planning framework.

One of the tasks for the Corporate Unit in its 2011-12 Unit plan is a review and enhancement of this planning framework, and enhancing the alignment between the plans and Agency performance reporting. This is expected to commence in October 2011.

Ongoing

Records management

Risk rating: Medium

Poor records management, particularly for corporate records, with copies of signed documents unable to be located in multiple audit instances as recently as 2011.

As at 2007, PSR did not have a comprehensive set of record keeping policies that covers the key record management risks, including legislative compliance. PSR also did not perform a recordkeeping needs analysis to identify all of PSR's records, related systems, security requirements and legislative obligations.

The new PSR Case Procedure Manual explicitly contains TRIM instructions for the correct creation and storage of all case related documents.

PSR have developed an Information Management Strategic Plan (2011-2012) to document record keeping policies.

More broadly, on 11 May 2011 PSR recruited an Strategic ICT Governance and Information Management Officer to enhance the Agency's record and information management framework, policies and procedures. :

- Reviewed the agency Information Management and Record Keeping environment and ICT Support environment
- Identified problems and issues and prepared an Information Management and Record Keeping upgrade and Update plan for submission to PSR Executive
- Reviewed all PSR Information Management and Record Keeping Policies and procedures to determine suitability and fit for purpose and rewritten a range of Information Management and Record Keeping policies
- Developed a Project Plan for the upgrade of the PSR Intranet which is now being implemented.
- Enhanced the process and PSR's compliance with:
 - Senate Order No 8 submission,
 - Information Publishing Scheme, and
 - National Archives of Australia Checklist
- reviewed the TRIM Records management environment

Ongoing

5 Financial and Operational Performance

Financial Performance

- PSR's budgeted appropriation in 2011-12 is \$5.9 million
- PSR's expenditure has historically comprised three key items, employee expense (\$3.2m, 43% of expenditure in 2009-10), case related costs (\$1.7m, 23%) and legal expenses (\$1.0m, 13%)
- Analysis of PSR's expenditure trends reveals key cost drivers for PSR are:
 - Workforce – PSR's workforce has doubled in five years and become more senior (58% of staff graded at EL1 or above). Roughly half of staff (45%) are in corporate support roles
 - The length of the PSR process – The average time from referral to DPSR to closure of matter is 186 days for no further action cases, 260 days for negotiated agreements and 876 days for Committee review

Operational Performance

- PSR provides financial benefits to the Australian health system, with an average annual recoup from PUR's of \$2.3m, and potential further indirect financial benefits from deterrent effects.

Recommendations

3. Reassess grade structures in both corporate and operational functions and consider whether administration and case management functions can be undertaken by more junior resources
4. Undertake further analysis to fully understand the costs and impacts to stakeholders and PUR's of PSR process length
5. Undertake consultation and further analysis to determine whether PSR should continue to deliver education functions
6. Undertake a modelling exercise to fully understand the potential workload levels and costs of an insourced legal counsel

This chapter explores PSR's financial and operational performance. It begins by examining the historic and forecast financial performance of the agency to identify budgetary pressure points and key cost drivers. A deeper analysis of identified cost drivers (workforce and PSR process efficiency) is followed by an evaluation of the effectiveness of PSR's operational performance.

5.1 PSR's Financial Performance

Historic Financial Performance

PSR delivered surplus net operating results in 2005-06, 2006-07 and 2007-08 (Figure 8). Surpluses were due to a change in Medicare Australia's procedures that lead to a decrease in the number of requests for review being sent to PSR during 2005-06 and 2006-07.

In the 2007-08 financial year, PSR returned unutilised appropriation from prior years totalling \$9,493,000 to the Department of Finance and Deregulation. This comprised of \$2,500,000 for 2001-02, \$2,000,000 for 2002-03,

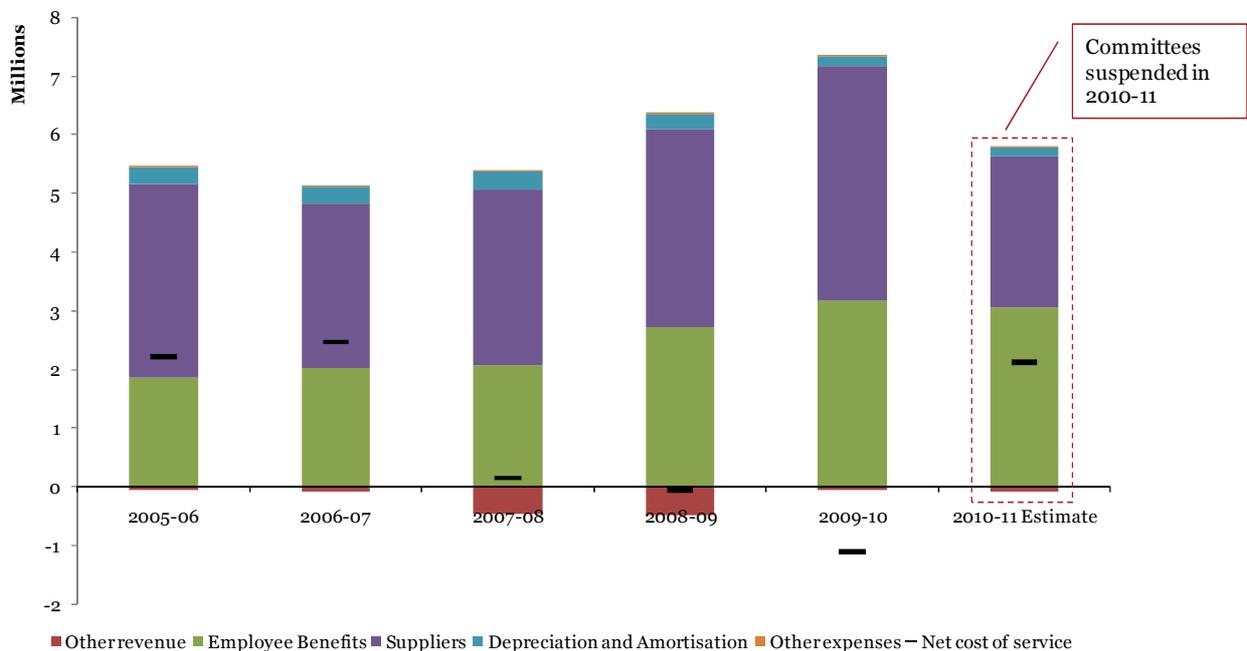
Financial and Operational Performance

\$500,000 for 2003-04, and \$4,493,000 for 2006-07. As at 1 July 2011 PSR has \$3.6 million in prior year reserves. This includes an amount of roughly \$2.1m surplus from 2010-11.

The suspension of Committees in August 2010 has created an anomaly for 2010-11 expenditure in terms of PSR's historic trends. In 2010-11 PSR placed 39 committee matters on hold, required no further action on 9 matters, ratified 32 negotiated agreements and made 6 final determinations. This reduced workload is reflected in the operating result for supplier expenditure (down 45% against budget), while fixed costs such as workforce have remained nominally the same.

PSR's appropriation budget for 2009-10 was \$6,109,000. The Department of Finance and Deregulation also approved an operating loss of \$1.5 million to handle the increased case workload identified by using the new costing model developed in the previous financial year. The actual increase in workload in 2009-10 came in a little under the estimated peak, and resulted in an operating loss for the financial year of \$1.1m (i.e. total expenditure of \$7.4m against total revenue of \$6.3m including revenue from other sources).

Figure 8 - PSR Financial Operating Performance (2005-06 to 2010-11)



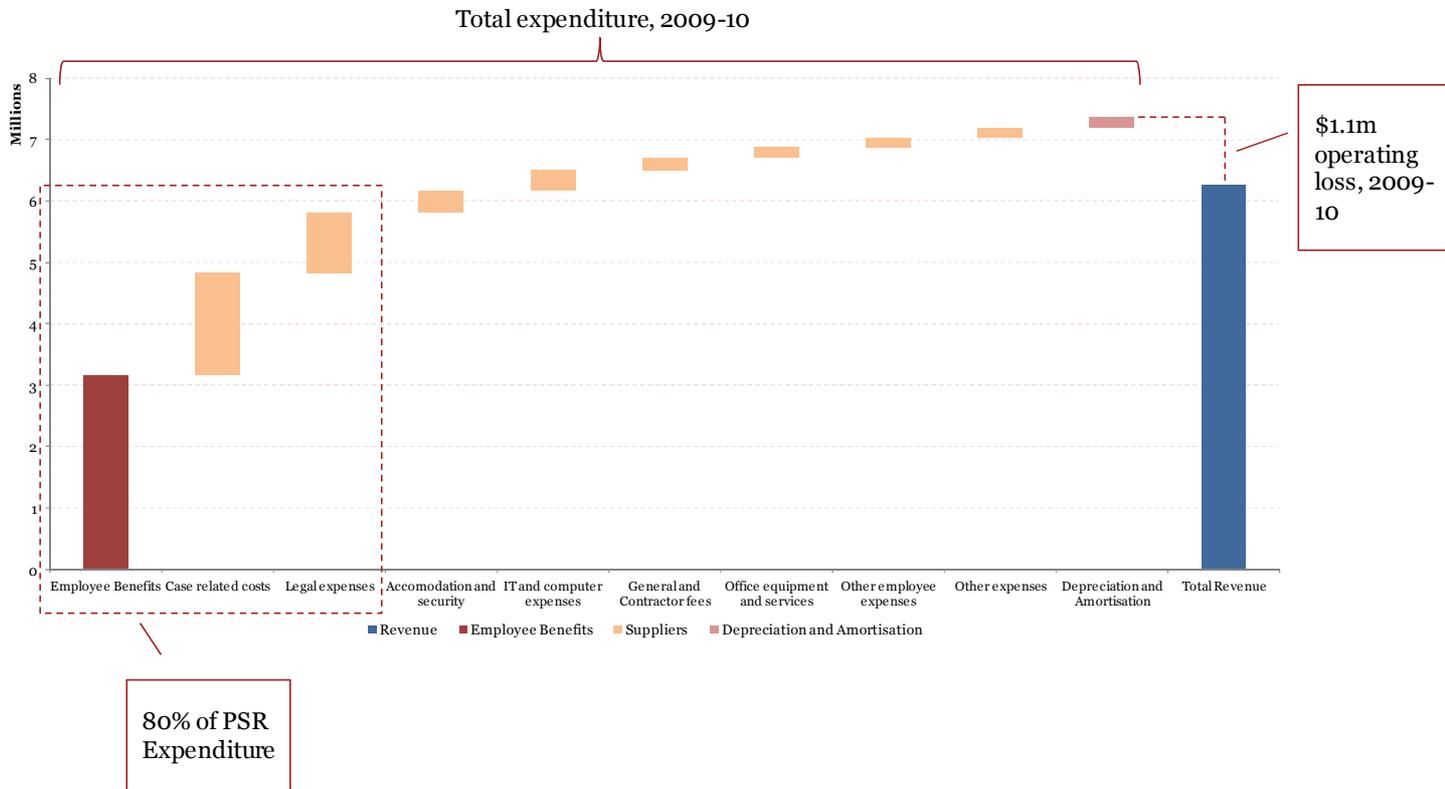
2009-10 Expenditure Breakdown

The analysis below uses 2009-10 as the expenditure baseline. It is recognised that this was a non typical year for expenditure given the unusually high caseload PSR were dealing with.

Figure 9 provides a more detailed breakdown of PSR's expenditure for 2009-10. For this year, employee related expenditure was the largest single expense item, accounting for 43% or \$3.2m of PSR's cost base. Items falling under supplier costs (equivalent to operating expenditure) make up the remainder of PSR expenditure. Of these, case related costs (\$1.7m, 23%), legal expenses (\$1.0m, 13%), accommodation and security (\$0.4m, 5%), and IT and computer expenses (\$0.3m, 4%) were the most significant.

Employee related expenditure, case related costs and legal expenses constituted close to 80% of all PSR costs demonstrating these items are the key categories of expenditure in PSR.

Figure 9 - PSR Expenditure Breakdown 2009-10



Future Financial Performance

Discounting the irregular 2010-11 result from analysis, the historic annual growth rate (CAGR) for PSR’s total expenditure from 2005-06 to 2009-10 is 7.9%. This growth in expenditure is not matched by commensurate revenue increases and requires changes to how PSR operates.

PSR is initially relying on accumulated underspend from previous years to operate within the new funding envelope, however this is not sustainable in the longer term. PSR is aware of this cost pressure and has determined that early in 2011-12 the CFO will develop a business case and plan covering the funding objectives and strategies for achieving the objectives for 2011-12 plus 3 forward years. This process is intended to provide appropriate workforce and operational strategies to meet the necessary expenditure reduction beyond 2011-12.

5.2 Key Cost drivers

Key expenditure trends

Given the budget pressures faced by PSR, a more detailed examination of expenditure patterns has been necessary to determine the drivers of cost in the agency.

Employee related expense, case related costs and legal expenses make up typically 70-80% of PSR expenditure. Figure 10 illustrates the cost breakdown of these three key expense categories in terms of total expenditure over time.

Figure 10 - PSR Key expenditure item trends 2005-06 – 2010-11

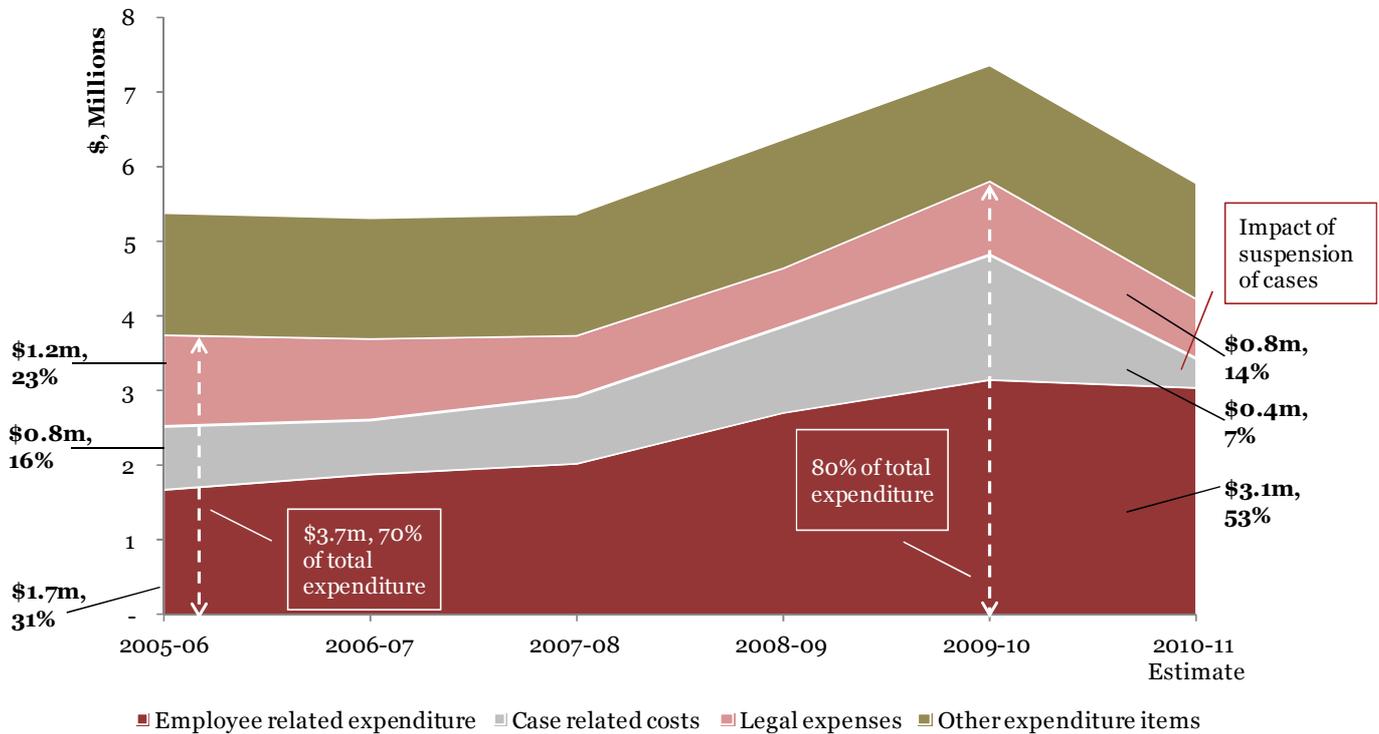


Figure 10 identifies several key trends:

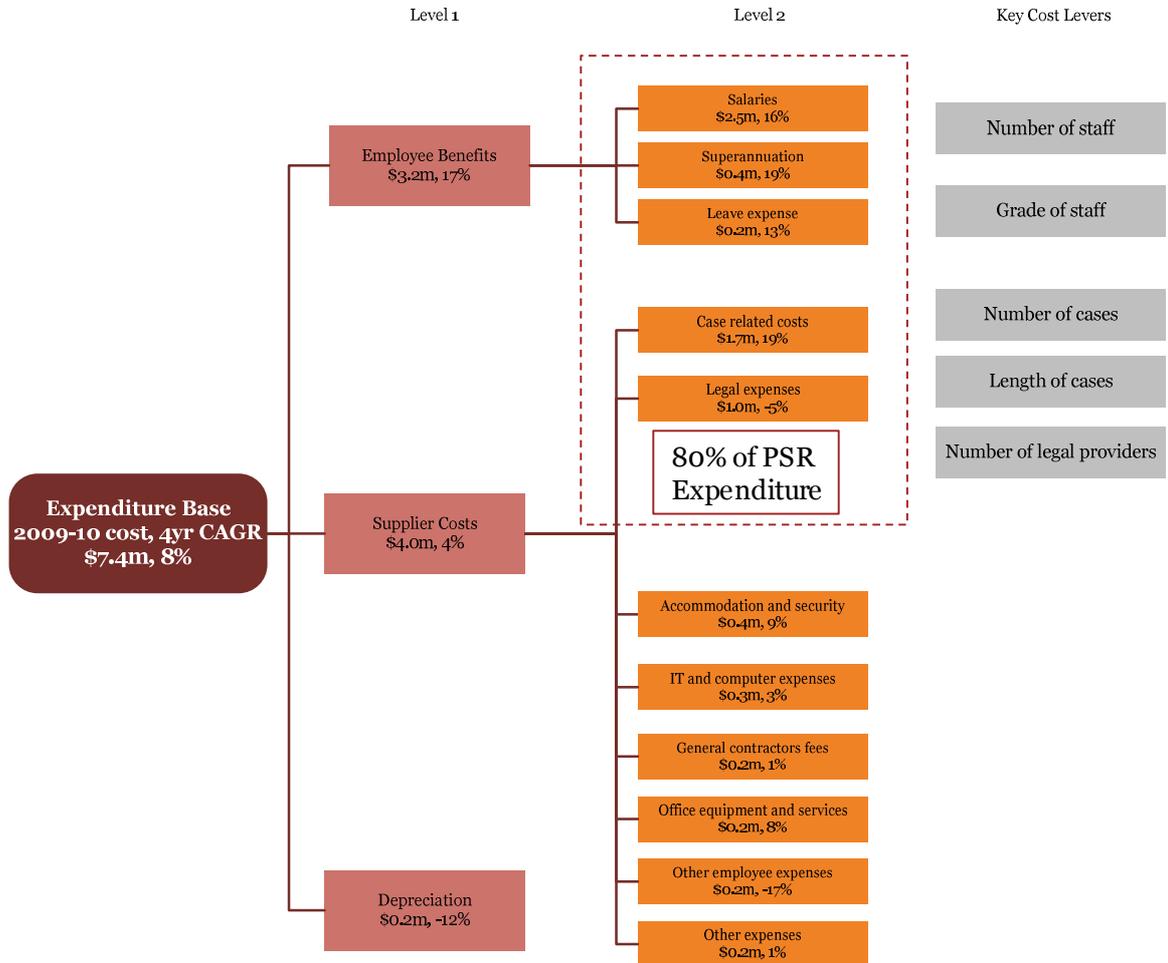
- The rise of employee related costs as an increasing proportion of total expenditure, increasing from 31% of the PSR expenditure base to 43% in 2008-09 and 2009-10;
- The increase in case related costs over time, from \$0.8m to \$1.7m in 2009-10 is symptomatic of a cost driver in the organisation; and
- Legal fees and other expenses have reduced in comparison to employee related expense and case related costs.

Given the increase in spend and historic growth trends (both in absolute and relative terms), the review team has identified hypotheses for drivers of expenditure in PSR, as discussed further below.

Cost drivers in PSR

The 2009-10 cost base and growth trends for key expense items have been represented as a cost driver tree in Figure 11. The cost driver tree is designed to highlight areas of large expenditure and significant growth over the last 5 years to identify the key influencers of PSR’s operational performance.

Figure 11 - PSR Cost driver tree, 2009-10 expenditure base and 4 year compound annual growth



This analysis casts focus onto PSR’s expenditure on staff as a key driver of growth for the organisation, (increasing at a CAGR of 17%) in addition to case related costs (19% CAGR). At a high level, these two areas are typically influenced by relatively straight forward drivers, which for PSR are:

- Employee related expenditure is a combination of the number of staff employed by PSR and the mix of grades;
- The number of cases referred to the Director by Medicare Australia; and
- The length of time each case is in progress in the organisation (driving cost in terms of internal administration and external payments to stakeholders involved in the process, i.e. legal experts and Committee members).

These two cost levers are explored in more detail in the following sections.

5.3 PSR Cost Lever: Workforce

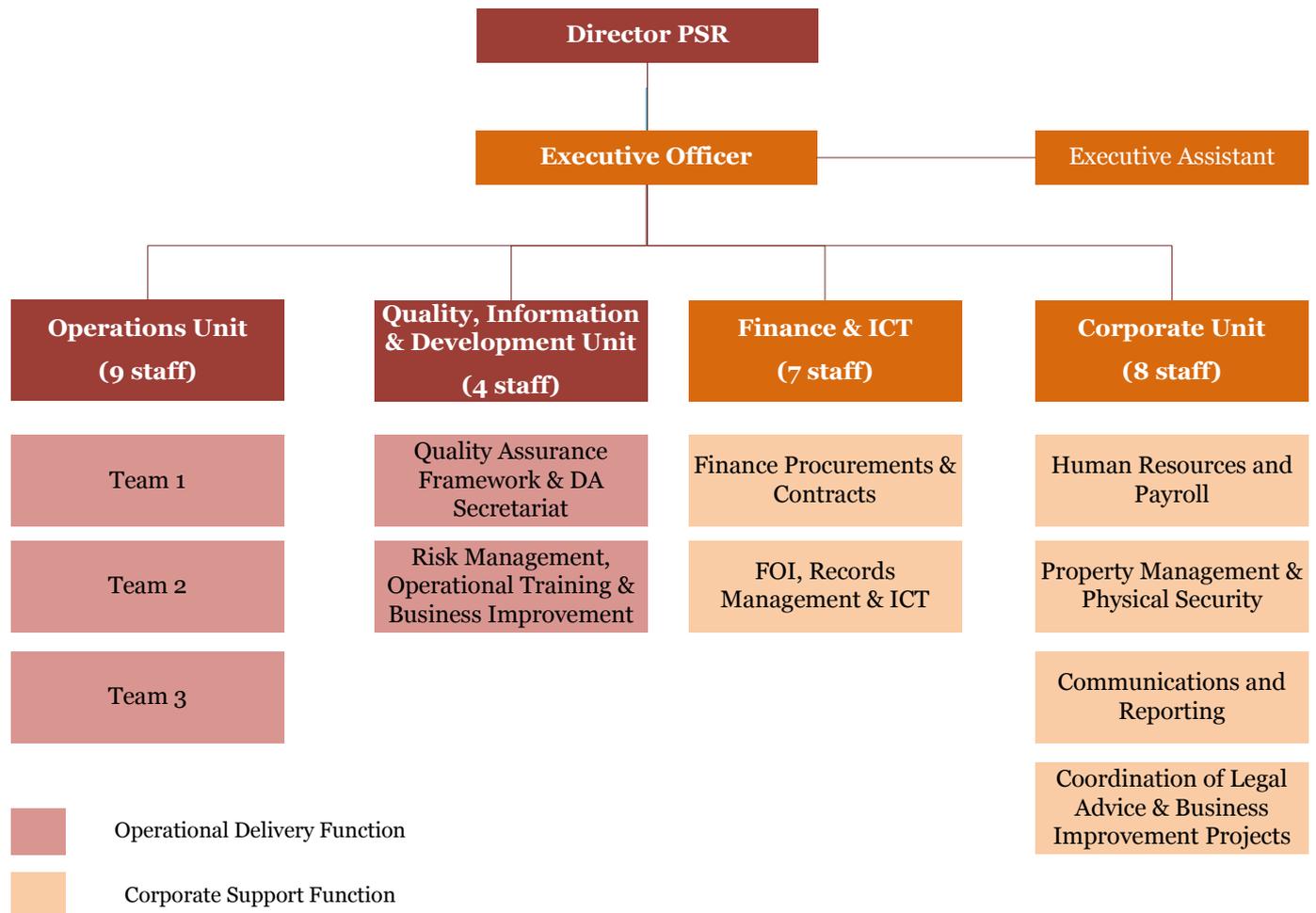
Organisation Structure

PSR’s functions are delivered through four units, shown below in Figure 12. The PSR Director is a statutory officer appointed to manage the agency by the Minister for Health and Ageing, with agreement from the Australian Medical Association. An Executive Officer reports to the Director and provides leadership and strategic guidance to PSR on organisational policy, governance and financial and operational issues.

PSR’s organisational structure includes an Operations Unit that manages the review and committee processes and a Corporate Unit which provides corporate services. PSR’s Quality and Development Unit provides technical development and quality assurance, coordinates legal services and supports the Determining Authority.

The agency’s Finance and ICT Unit provides technical support to staff and support for business operations.

Figure 12 - PSR Organisational Structure



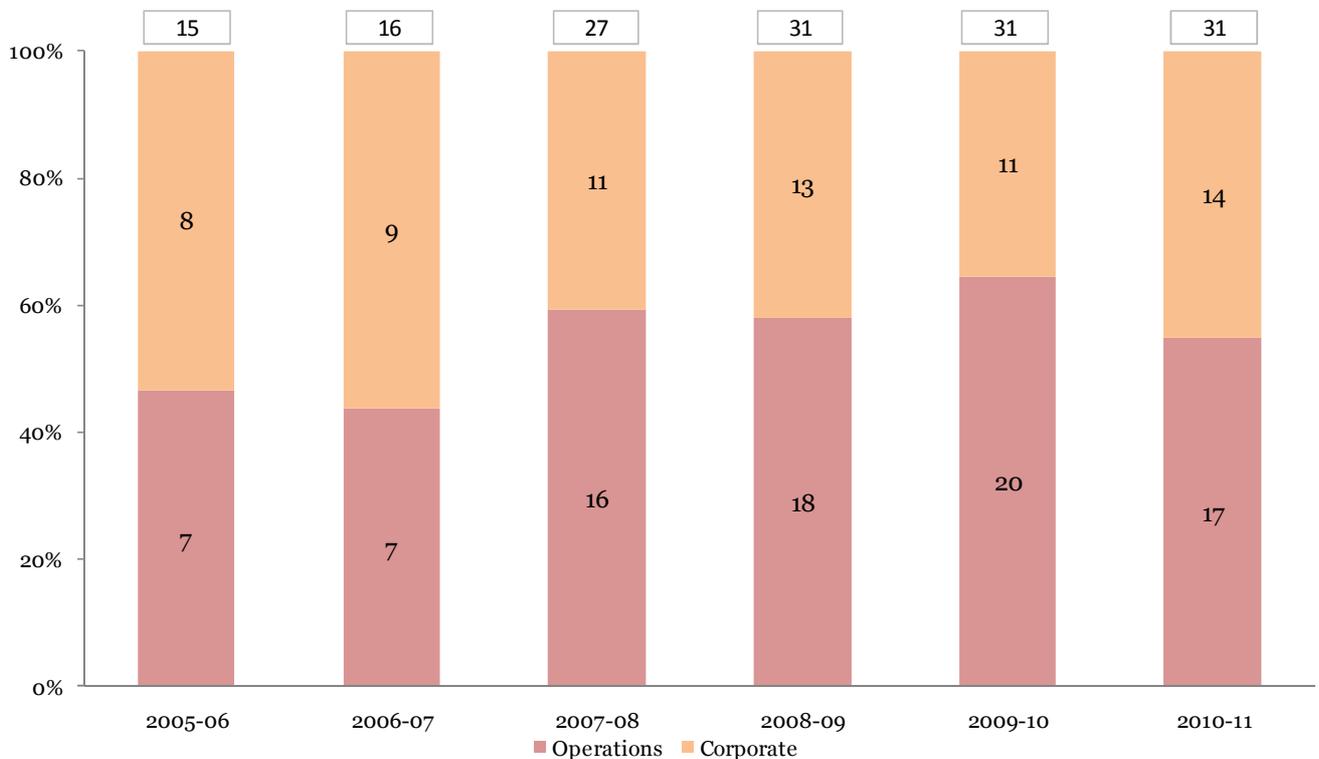
This functional structure has remained largely consistent over the last 5 years with the Operations Unit undergoing a number of nomenclature changes, progressing from being named the Review Unit and Committee Servicing Unit to its current iteration.

For the context of this review, the PSR organisation structure has been broadly classified into operational delivery functions (including the Operations Unit and the Quality, Information and Development Unit) and corporate support functions (Finance and ICT Unit and Corporate Unit). The Executive Officer and his staff have been classified as delivering a corporate role; however the Director, as a statutory officer, is considered to provide an operational function.

PSR Corporate Support

Using these assumptions, it is possible to examine the historic mix of operational delivery and corporate support staff (Figure 13). In 2005-06, there was approximately an equal number of corporate and operational staff to process the seven cases referred to PSR by Medicare. The composition of PSR’s workforce shifted to approximately 60% Operations staff during the 2007-08 to 2009-10 financial years in reflection of the increased staff numbers to meet higher caseload requirements referred from Medicare Australia. Given the suspension of committees in 2010-11, a number of staff were re-allocated to corporate roles to take on an internal performance improvement function in anticipation of the resumption of case work in 2011-12. This shifted the ratio of corporate to operational staff back toward being roughly even.

Figure 13 - Historic Corporate vs Operational Staffing Mix (headcount, including non-ongoing staff)



The average proportion of corporate support staff in PSR over the last 5 years is 45%. While we recognise that PSR corporate support staff undertake logistics activities for approximately 150 statutory office holders, the level of corporate support in PSR is high relative to other organisations of similar size and structure. For example, NSW government guidelines, informed by NSW Department of Premier & Cabinet benchmarks²⁴, suggest a maximum

²⁴ NSW Department of Premier and Cabinet, *Blueprint for Corporate and Shared Services in the NSW Government, 2010*

corporate overhead of 25% for micro sized agencies (less than 25 employees) and 16% for very small agencies (25-100 employees).

While it is recognised that PSR’s role is unique and requires additional support to meet its privacy and legislative requirements, the number of corporate support staff may represent an opportunity for PSR to reduce its expenditure footprint.

PSR Grading Structure

While the level of corporate support is high, the grading structure of staff also represents a cost driver, with the current mix weighted toward more senior graded staff as illustrated in Figure 14. While corporate staff are more evenly spread across the APS grades, the staffing profile shows a peak in the number of Executive Level 1 staff for both corporate and operational areas of the business. Staff graded at EL1 level or above made up 58% of the PSR workforce in 2010-11.

Figure 14 - Grading profile of 2010-11 staff, by corporate and operational breakdown

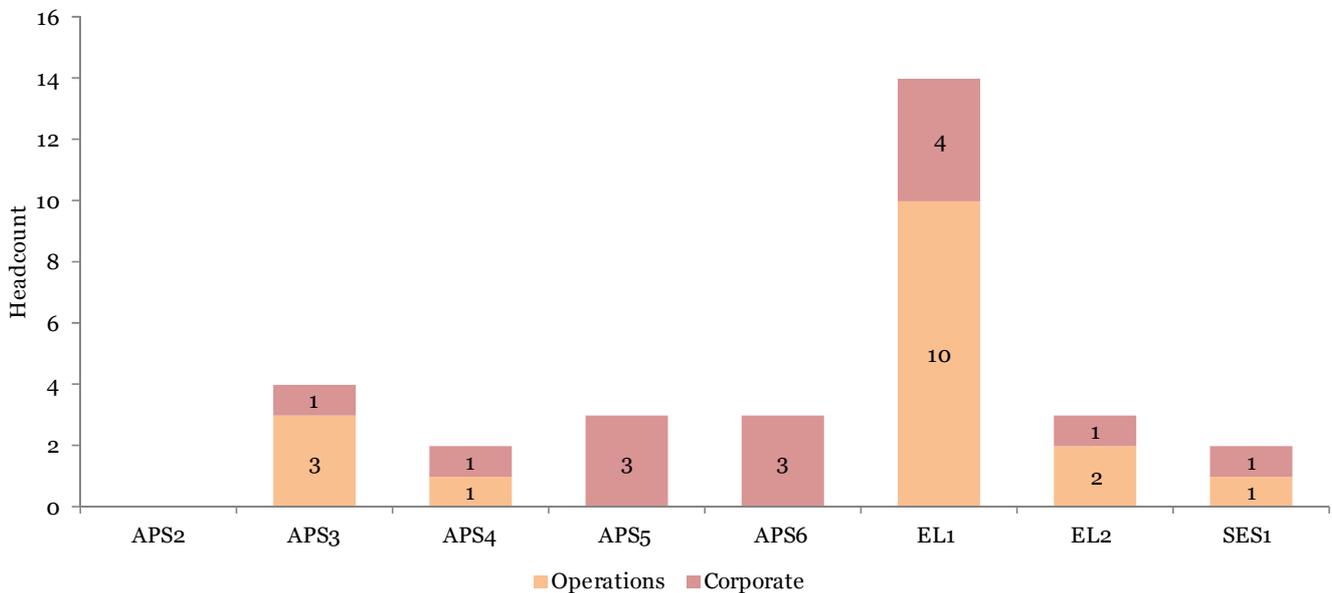
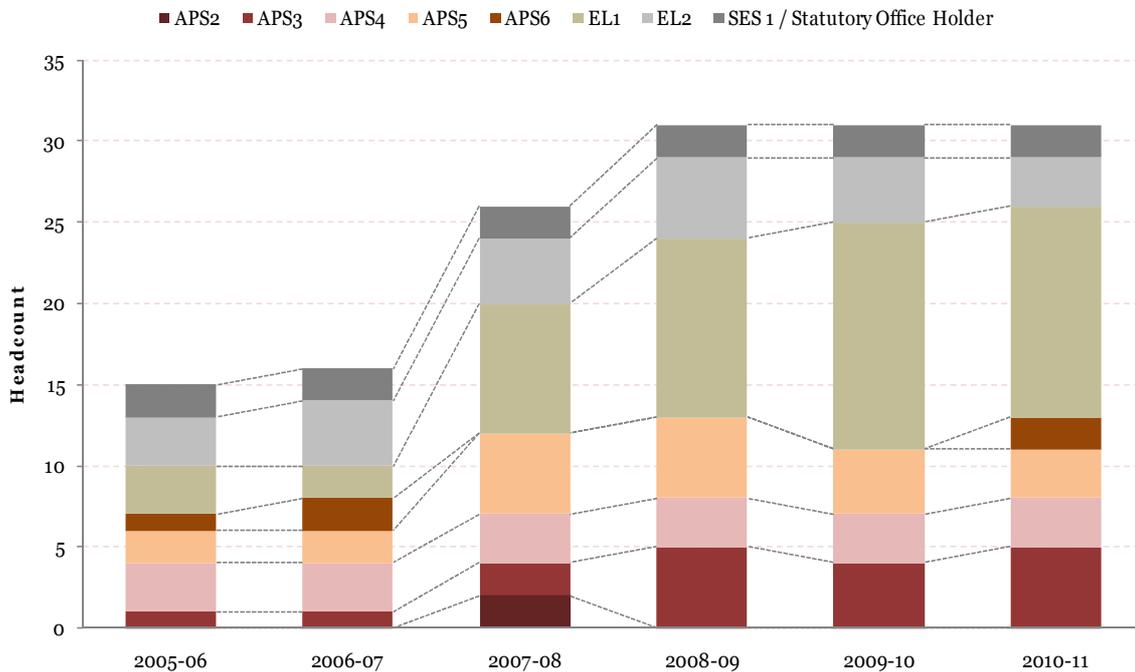


Figure 15 charts PSR’s changing grading structures over the last five years. The number of EL1 staff, at a peak in 2009-10, increased from three in 2005-06 to thirteen in 2010-11. This has not been in proportion to the overall increase in staff numbers, where staff at EL1 level and above constituted 53% of the workforce in 2005-06 compared to 67% in 2009-10.

Figure 15 - Historic Grading profile of PSR



PSR Roles and Responsibilities

The high proportion of more senior graded staff was raised as an issue in a 2008 review of PSR’s organisational structure and workflow²⁵, where it was noted that:

- EL1 staff have little or no opportunity to act as managers of people – they are ‘managers’ only in the context of being ‘case managers’; and
- The required capabilities of the EL1 level (as detailed in the Public Service Commission’s Integrated Leadership System [ILS]) appear to be higher than the capabilities required of case managers.

The large contingent of EL1 staff in the Operations side of the business are predominantly PSR Case Managers. According to the PSR Case Manager position description, responsibilities of this grade are as follows:

“Case managers manage and oversee the processing of matters through the Professional Services Review scheme. This extends to performing the administrative tasks associated with actioning cases through the Director of Professional Services Review (DPSR) and PSR Committees (PSRC) stages in line with the legislated process. Case Managers are responsible for ensuring good record keeping and decision making practices, as well as drafting and compiling clear, concise, accurate and robust reports and other critical decision documents for the DPSR and PSRC.

As a senior leader with PSR, Case Managers also contribute to the ongoing improvement of the Agency. This can include providing executive level guidance on procedural, legislative and regulatory matters. The

²⁵ Courage Partners, *Report on Organisation Structure and Workflow for Professional Services Review 2008*

role requires attention to detail, sound judgment, and extensive organisation and liaison skills to successfully achieve timely and accurate outcomes”.²⁶

It is the understanding of the review that case managers assist the Director with initially determining if a PUR has a case to answer, which requires a certain level of expertise given the need for investigative experience and an understanding of medical procedure. As the position description does not currently require these attributes, there is some uncertainty over the true capability set, grade and number of staff required to carry out these roles.

While questions remain over the appropriateness of the structure of the operational aspect of PSR, additional consideration should be given to the structuring of the corporate support functions of the agency, where throughout the course of 2011 PSR has created position descriptions and role definitions for the Executive Officer, Corporate Manager, Chief Financial Officer, HR leader, Finance, Reporting and Communications, Risk and Quality manager, Case Process and Procedures Manager, ICT Officer, Communications support officer, Property Officer, Receptionist, DA support officer, ICT Governance and Records Officer.

This review recommends that further work should be undertaken to assess the suitability of the current grading profile of PSR and whether there is scope to involve lower graded staff for the administrative tasks involved in case management and in delivering PSR’s statutory functions.

5.4 PSR Cost Lever: Efficiency of PSR process and case management

PSR process caseload

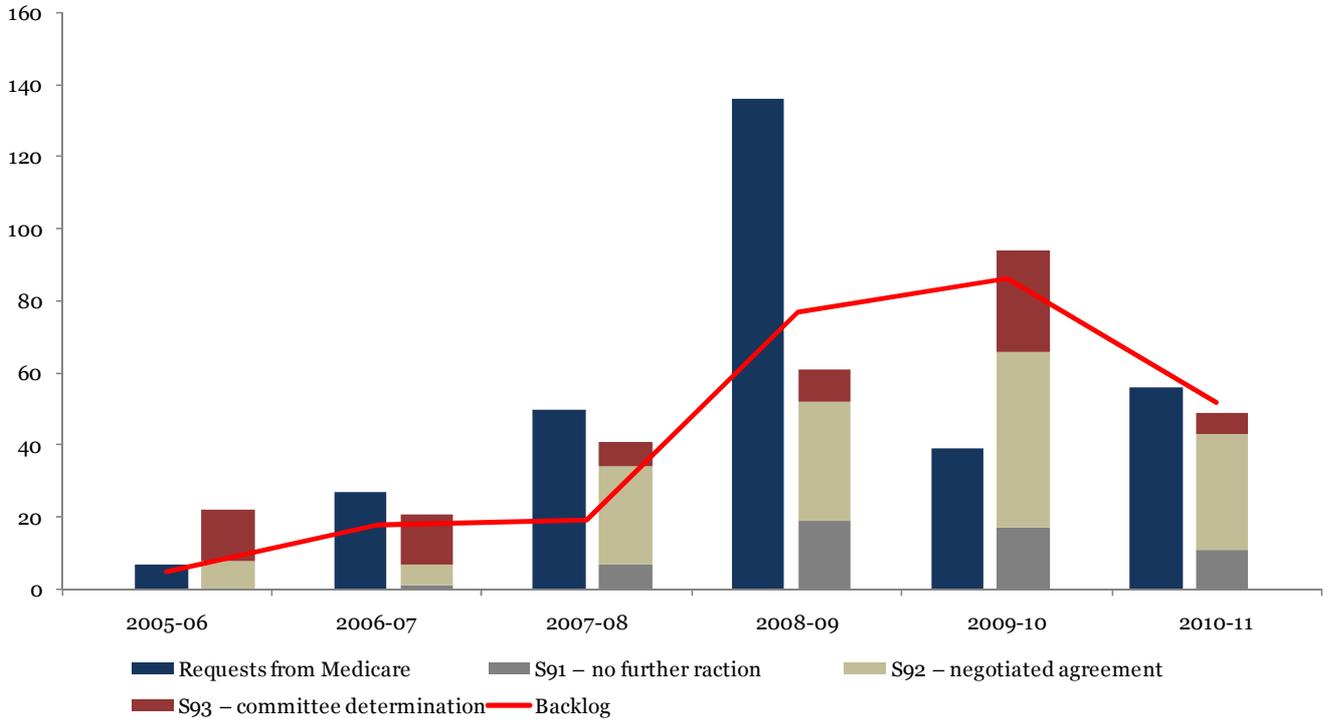
The PSR process is commenced with the referral of cases by Medicare Australia to the Director PSR. As part of its letter of understanding with Medicare, PSR receives a 6 weekly report on the anticipated number of cases to be received in the coming reporting period, assisting with the ability to forecast workflow.

However, as the number of cases referred by Medicare is driven by their internal selection and sampling procedures, this key driver of expense is out of the control of PSR. Figure 16 shows the number of cases referred to Medicare and the outcomes of cases processed over the previous 6 years. Over this timeframe, PSR has, in general, received more cases each year than it has finalised resulting in a backlog of cases spread out over a number of financial years. The exception to this was in 2009-10 when PSR received only 39 cases but finalised 94, many of which were an overflow from the spike the year before.

The pattern illustrated in Figure 16 is illustrative of the long period of time taken to resolve matters through the PSR process, especially in regards to the Committee Review outcome. Further analysis on time taken to complete the various outcomes and the impact on PSR’s financial and operational performance is explored further later in this section.

²⁶ Professional Services Review’s submission to the Senate Community Affairs Inquiry, 2011

Figure 16 - Historic number of cases referred and cases finalised (by type)

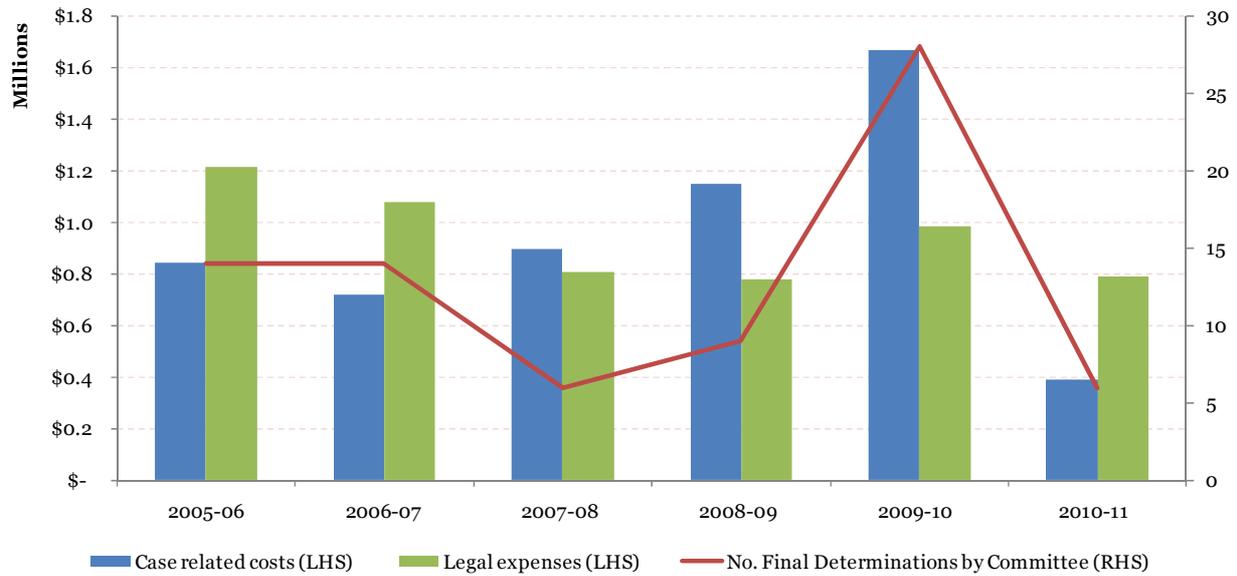


Case related and legal costs

Case related and legal costs accounted for 66% of PSR’s operating expenditure (supplier costs) in 2009-10, and 36% of total expenditure. These two expenditure items are for the external costs of administering and supporting the Committee Review process and do not involve any internal costs. Such costs include Committee members’ remuneration, flight and accommodation costs and legal expenses in preparing and validating the draft and final reports of Committee Reviews.

In general, case related expenditure tracks the number of Committee determinations made in each financial year, trending up and down together as expected. The 2007-08 and 2008-09 financial years are an exception in this regard, due to a need for overseas travel and external consultants in 2007-08, and staff airfares and an increase in case-related fees for service in 2008-09.

Figure 17 - Historic Case related costs vs number of final determinations made by PSRC process



Given these historic trends, PSR can expect case related and legal expenses to increase with the number of Committee Reviews held. The driver of the number of Committees held has several influencers (including the Director’s decision and cooperation of PURs); however the underlying driver is a function of the number of cases referred to DPSR by Medicare Australia. As discussed above, the volume of cases is beyond the control of PSR and thus does not represent a controllable lever to reduce expenditure (except to encourage the PUR to elect to accept a negotiated outcome where the Director believes there is a case to be answered and thus avoid a Committee Review process).

PSR process efficiency

PSR suggests that the length of the review process is due to the investigative and procedural nature of the activity. This fact is recognised in *Your Guide to the PSR Process (2011)* which indicates that a PUR may be involved with the PSR process for up to 5 months (for no further action), 8 months (for a negotiated agreement) or 2.5 years (for a Committee review) from referral of the matter to the Director to the finalisation of the case through the Determining Authority.

It should be noted that these timeframes are in addition to the average 12 month period that the PUR has already spent under review by Medicare Australia before referral to DPSR. The average time to complete different outcomes in 2009-10 are tabulated below.

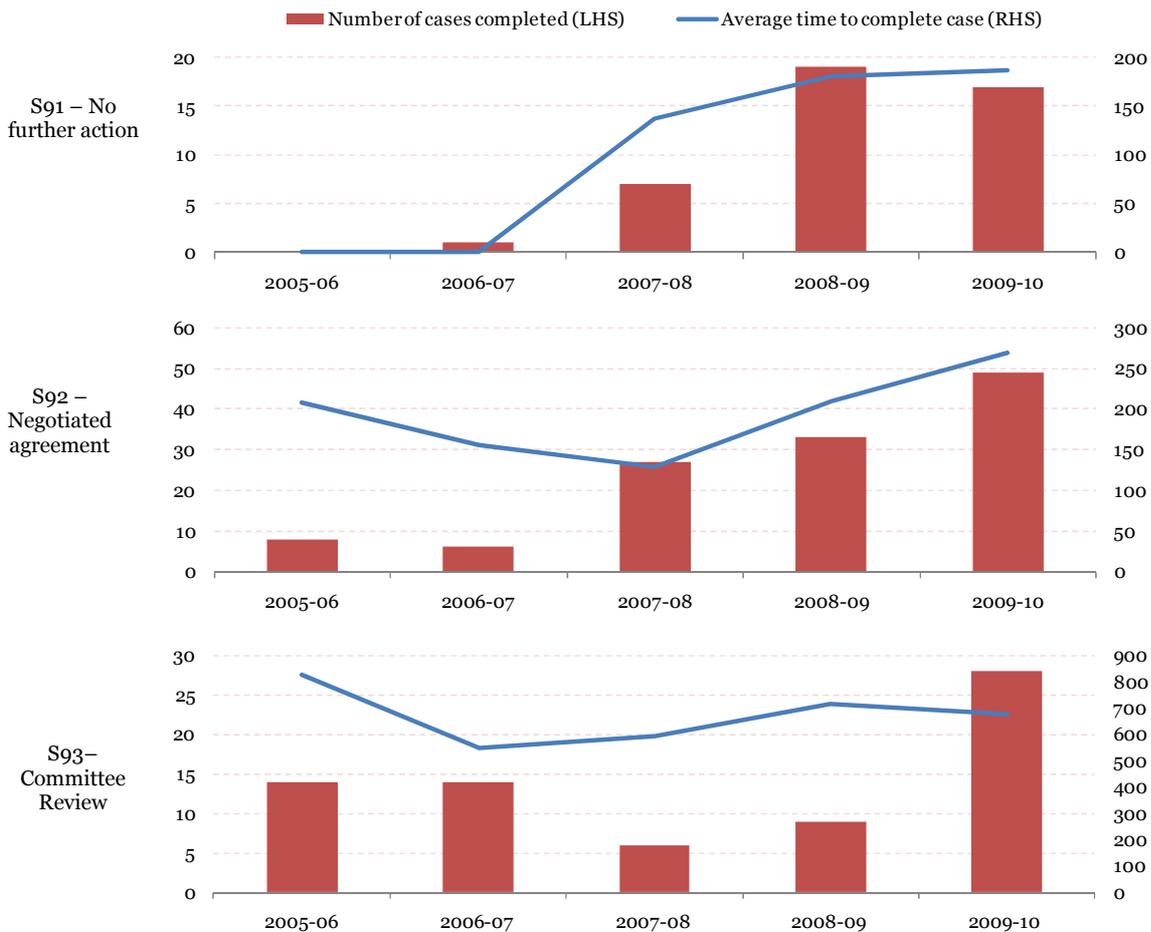
Figure 18 – Average time to complete PSR outcomes in 2009-10

Process outcome	Average time to complete in 2009-10 (days)
S91 – No further action	186
S92 – Negotiated agreement	269
S93 – Committee review	675

Case completion time

The average time to complete cases, along with the number of cases in the last 5 years, are depicted by outcome in Figure 19. Financial year 2010-11 has been excluded due to the suspension of Committees. For matters that progress to either a negotiated agreement or a Committee review there does not appear to be a correlation between the number of cases resolved and the average time taken to complete the case. This suggests that the build-up of case load is due to the length of time taken to complete each case.

Figure 19 - Historic number of cases completed vs average time to complete



The charts above analyse a sample of data relating to the time taken to finalise cases referred to PSR. The data has been sourced from a sample of completed case files from PSR’s case management system, MALCOLM, and identifies the length of time taken to resolve the case from referral to the Director to a final judgement by the Determining Authority. It should be noted that this sample is drawn from cases originated and resolved in the last four financial years (i.e. back to 2007/08). The data is a sample only, consisting of 19 s93 (Committee Review) and 114 s92 (negotiated agreement) cases.

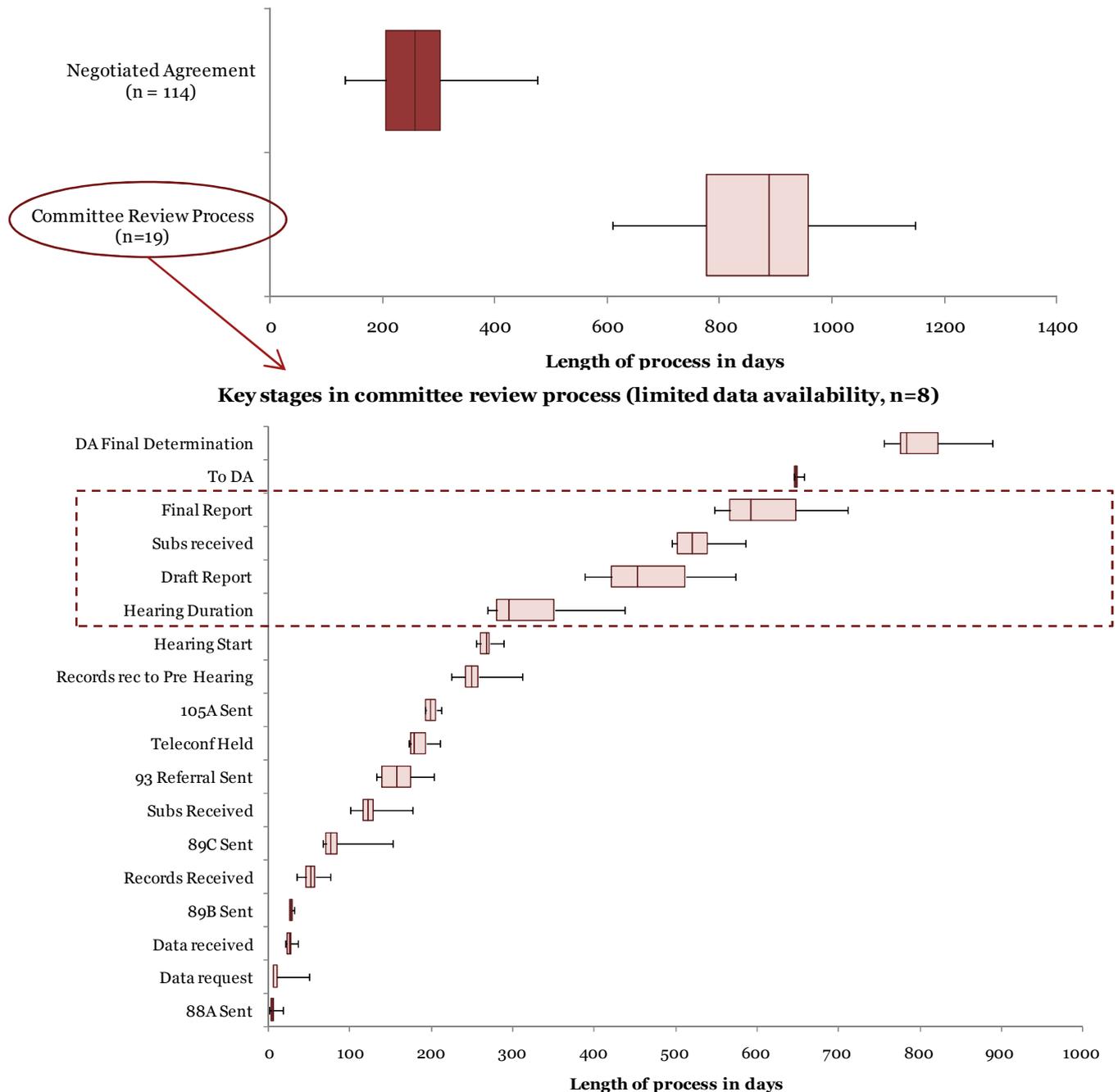
Figure 20 (below) identifies the outliers, median and quartile ranges for time taken to complete negotiated agreements and Committee review processes. The most efficient negotiated agreement took 133 days, while the longest in the sample took 474 days. The median time for resolving a negotiated agreement outcome was 259 days.

Cases that progress through the Committee Review process take considerably longer. The shortest case time for this outcome was 609 days, while the longest took 1,148 days. The median time for finalising a Committee review was 888 days (or 2.4 years). It should be noted that these case durations are in addition to the time spent under investigation in Medicare (which is typically up to a year).

As can be seen in the Committee review breakout, there are three key stages that can be considered a ‘bottleneck’ in terms of taking a disproportionately longer time to complete. These are the duration of the hearing, which can be drawn out over many months if multiple sitting dates are required, and the production of the draft and final report.

PSR has commenced an internal assessment of the efficiency of these stages of the Committee process, and this review recommends that further work be undertaken to understand the cost impact, in addition to the effect on stakeholders and the PUR, that the current length of the process entails.

Figure 20 - Box and whisker plot of time taken to resolve Section 92 and Section 93 outcomes, and plot of key stages within Section 93 process



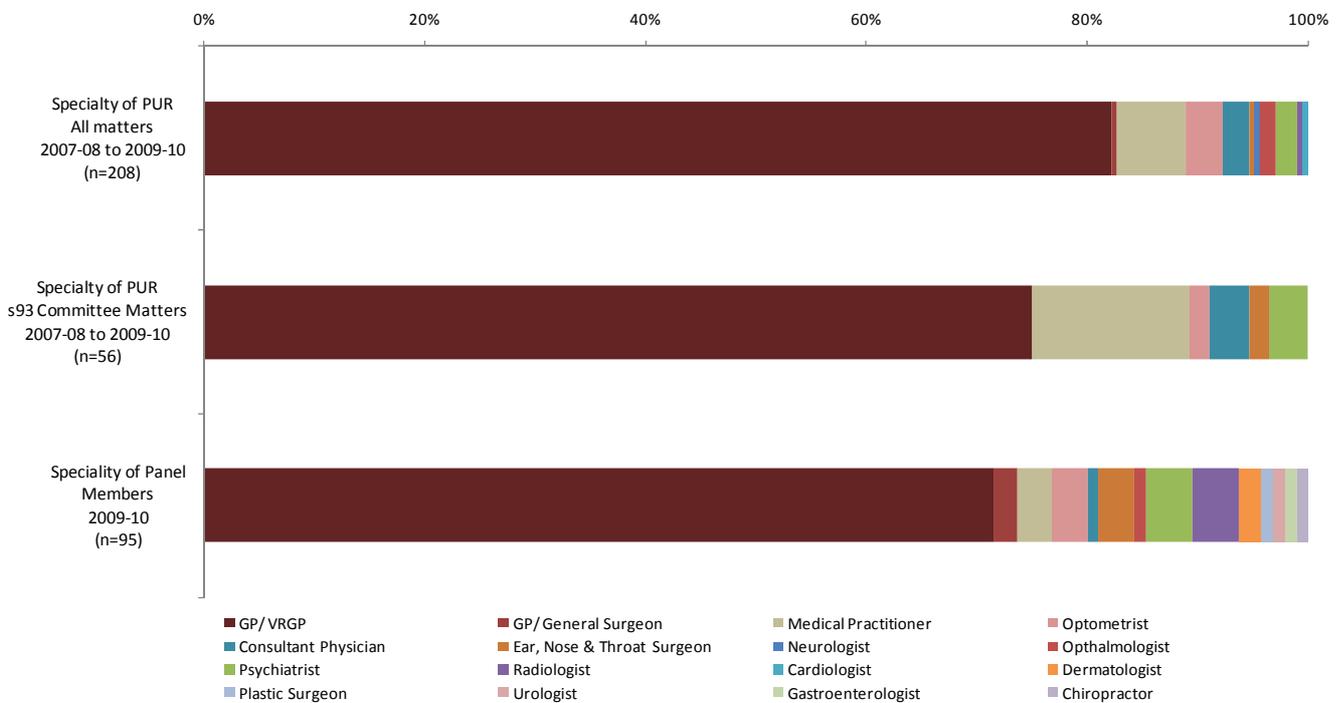
On average, it takes 268 days to progress the PUR to the start of the hearing date. Anecdotal evidence suggests that much of the delay occurs in coordinating and organising a date for the hearing to occur. This has been explained as a function of the difficulty of bringing together specialist medical practitioners who are ‘peers’ of the PUR.

Case load analysis

Figure 21 represents a breakdown of the specialty of the PUR for matters put before PSR over the period 2007-08 to 2009-10. As can be seen, the overwhelming majority of PURs were general practitioners or medical practitioners, accounting for 89% of all matters referred to PSR and similarly 89% of PURs that are progressed through the Committee Review process.

In terms of panel composition, the chart shows that there are more specialists (non-GPs or medical practitioners) on the panel than would appear to be necessitated by past case history. The percentage of specialists on the panel (excluding GP’s and medical practitioners) is 23%, roughly double the 11% of cases involving specialists over the last four years.

Figure 21 - Proportion of case matters by specialty of PUR vs specialty of panel members



The high proportion of matters that involve general and medical practitioners, in addition to the corresponding weighting of panel members’ specialty towards generalised medical professions, suggests there may be opportunities to reduce the amount of time to set hearing dates by scheduling a standing committee for matters relating to GPs. The proposed standing committees would potentially need to take into account methods to ensure appropriate “peer” representation (i.e. diversity of gender, ethnicity, language etc). This concept is explored further in the next chapter which considers potential future target operating models.

5.5 PSR functional effectiveness

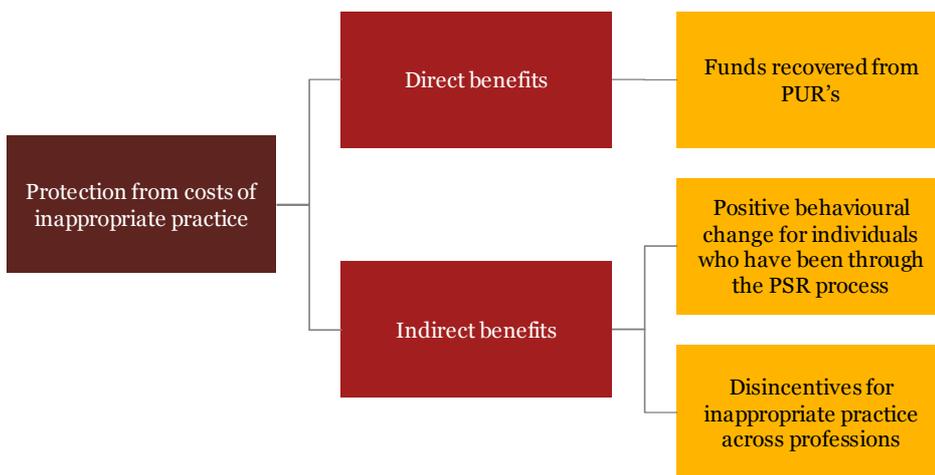
Under the Act, PSR’s functions are to:

- 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.²⁷

The risks to patients and the community in general outlined in (a) above derive from the potential risks from overservicing (such as the health impacts of over prescription of radiation based diagnostics) and the impacts of not providing a complete service (for example through spending insufficient time conducting a claimable medical procedure). Under the Act, the Director can refer a PUR to a regulatory body if a potential threat to life or health was identified through the Committee or Determining Authority proceedings. Over the period 2005 to 2010, PSR has referred 42 separate providers (15% of matters referred by Medicare) to a regulatory body for their consideration.

In relation to protecting the Commonwealth from the costs associated with inappropriate practice outlined in b) above, PSR’s effectiveness can be seen as arising from direct and indirect impacts of functional delivery, as outlined in Figure 22 below.

Figure 22 - PSR functional effectiveness regarding costs of inappropriate practice



Direct benefits arise from the funds recovered from PUR’s through the PSR process. Table 7 below provides a summary of the amounts recovered from PUR’s through negotiated agreements and final determinations following Committee processes. This indicates that over the previous seven years PSR has recovered a total of \$15.97m in payments, or an average annual recoup of \$2.3m. It should be noted that the actual amounts recovered are lower in real terms than the amount initially claimed from the PUR as the amounts recovered are not adjusted for inflation.

²⁷ Health Insurance Act 1973 (Cth) s 79A.

Table 7 - Funds recovered from PUR's

Year	Negotiated Agreements	Final Determinations	Total
2004-05	197,500	1,626,909	1,824,409
2005-06	509,984	817,332	1,327,316
2006-07	594,887	1,155,981	1,750,868
2007-08	1,130,793	530,011	1,660,804
2008-09	1,202,872	405,083	1,607,955
2009-10	3,509,621	2,085,519	5,595,140
2010-11	1,813,894	386,750	2,200,644
Total	8,959,551	7,007,585	15,967,136

Indirect benefits arise from both the changes to behaviour of individuals who have previously been subject to the PSR process, and from the more general disincentive effect that reduces the tendency of professionals from inappropriate practices.

Positive behavioural change can also generate direct benefits, for example as an outcome of the improved performance of PURs involved in the PSR process. At the agency's request, Medicare Australia were able to provide data on 49 practitioners who entered into a negotiated agreement with PSR in 2009-10. The statistics indicate that, on average:

- there was a 35% reduction in MBS services rendered and a 19% reduction in average monthly MBS benefits claimed; and
- there was a 34% reduction in PBS prescriptions rendered and a 31% reduction in PBS benefits generated

Indirect disincentive effects for inappropriate practice arise from multiple sources, and providing a clear understanding of the disincentive value of PSR's activities is problematic. Medicare's analysis and intervention processes and the ongoing work of the AMA and other professional bodies can be seen as inhibitors to the growth of inappropriate practice, albeit challenging to quantify.

Based on an analysis of claim levels prior and post a public report by the Director in 2010 that included discussion of CT scans, PSR identified a drop in claiming for CT scans of \$11.85m during the following month. PSR further estimates that its overall deterrent effect could be in the order of 1% to 4% in overall MBS and PBS expenditure, which could equate to \$228 to \$912m.

Based on the above, it is possible that a high quality PSR function can deliver financial benefits to the Australian health system, and provide a mechanism to protect patients and the community from inappropriate practice.

However, the quality of functional delivery will be an important consideration in the achievement and sustainability of these benefits. In particular, the final outcome of court rulings in *Kutlu* and *Tisdall*, and the ability of PSR processes to withstand future legal challenges, may have significant bearing on future functional effectiveness.

5.6 PSR Educational activities

Under the Act, PSR does not have a role in providing education to the professions. However, over time PSR has included a communications and education role in its activities, which appear to be aimed at promoting better understanding of the PSR and sanctions that have been applied in order to maximise potential deterrent effects. For example, PSR produced a Report to the Professions from 2004-05 to 2008-09 to address "*a need for health professionals to be aware of their obligations to the public when using Medicare and the PBS, and a need to be aware of the regulatory environment.*"²⁸ We note that there is no statutory basis for PSR's educative role. However, the educative role has received Ministerial support, with the Minister for Health in her July 2009 *Statement of Expectations* requesting PSR to "*continue to maintain the support of the health professions for the PSR Scheme by*

²⁸ PSR 2006, *Report to the Professions* pg. 6.

... using the medical press to highlight the outcomes and consequences of PSR's actions" and "continue to publicise the activities of PSR, including findings of inappropriate practice and sanctions imposed, in order to leverage the deterrent effect of the PSR Scheme." Similarly, the 2011-12 Portfolio Budget Statement includes an objective of maintaining professional support for PSR through the publication of cases of inappropriate practice by health care practitioners, as well as qualitative key performance indicators regarding PSR's ability to positively influence health care profession behaviour²⁹.

However, our limited consultations with stakeholders and PSR have suggested that the education role that PSR has undertaken has had limited effect. For example, regarding the *Report to the Professions*, stakeholders have suggested that:

- the material was out of date by the time it was published, due to the passage of time between instances of inappropriate practice and the completion of Medicare and PSR processes; and
- the cases cited by the report represent cases that have been forwarded to the PSR for consideration, and as such are outliers of professional behaviour, rather than representing the general state of medical practices.

We note that other MBS and PBS stakeholders have potential for providing education and communication functions. For example, Medicare is well placed to identify emerging trends in potential inappropriate practice through its current statistical analysis process, and included education of doctors regarding compliance with program requirements as part of its 2010-11 focus areas. Professional organisations, such as the AMA and professional colleges, are also well placed to communicate with their members and provide education materials on emerging areas, as well as report on the outcomes of PSR activities. The AMA has previously included discussion of PSR matters in membership communication materials.

5.7 Provision of legal functions

Our consultations with PSR executives, Determining Authority members, former Committee members and external stakeholders have identified opportunities for improvement in the provision of legal functions. Currently, legal support functions are sourced through PSR's external legal advisors at a cost of 2009-10 of \$1.0m (13% of PSR's operating expenditure). Consultations have indicated that:

- the provision of high quality legal advice at Determining Authority and Committee meetings is highly valued by members. As Determining Authority and Committee members are not legal specialists, but the matters that they are dealing with resemble a quasi-judicial process, having high quality legal advice available during Determining Authority and Committee meetings is considered by these stakeholders to be valuable; and
- the Director also requires legal input, and having access to legal advice during initial investigations and discussions with PUR's is seen as beneficial to the fulfilment of statutory responsibilities.

PSR is cognisant of the high costs associated with the provision of external legal counsel. Previously all legal counsel has been provided through PSR's external legal advisors on an as needed basis, rather than at all meetings, to limit associated costs. Given the extent of legal expenditure PSR is currently considering appointing an internal legal counsel to provide ongoing access to legal advice at lower cost, and is also considering triaging matters to better target legal expenditure on the basis of the expected complexity of the matter under consideration.

We note that under s. 106ZPL of the Act, any person who has provided legal services to the Director is precluded from providing legal services to Committees or the Determining Authority in regards to the same matter under review. In considering future sourcing of legal services, we recommend that PSR undertake a modelling exercise to fully understand the potential workload of an insourced legal counsel, and the financial implications of this approach given the limitations imposed by the Act.

²⁹ 2011-12 Portfolio Budget Statement, *Professional Services Review - Agency resources and planned performance*, pgs. 800-801

6 Potential future operating model

Rationale and requirements for a new model

- Given the extent of previous challenges, PSR's current operating model is not operating effectively and needs to be redesigned to facilitate future delivery of PSR Scheme functions. This chapter provides a starting point for the development of a new operating model.
- Any future operating model will need to address the challenges outlined above, as well as:
 - risks faced by joint Government / professional organisations, such as the potential lack of clarity for stakeholder accountability, the tendency to pursue activities outside of core purposes, the difficulties in detecting suboptimal operational performance, and the residual risk of failure that is born by Government.
 - identified stakeholder requirements, including the continued statutory and perceived independence of the Director, the Determining Authority and Committees, compliance with legislative, privacy and operational requirements, transparency and efficiency of operations, and a peer review process that is high quality, fair, just, transparent and timely.
- The PSR Advisory Committee should be given a broader remit through inclusion in the Act to provide an annual statement to the Minister via the Secretary of the Department concerning PSR's functional delivery and operational efficiency, and form a mechanism through which the Minister can be advised to remove the Director, a Determining Authority member, or a member of the PSR Panel.

Potential future operating model

- A potential future operating model has been identified that provides for PSR to continue to operate as a separate agency, with:
 - the Director, Determining Authority and PSR Panel maintaining statutory independence;
 - the Chief Executive being a Departmental employee seconded to PSR, having dual reporting lines to the Director and the Secretary of the Department; and
 - Support functions provided through both internal business units of the Office of the Director and the Secretariat, supported by corporate services sourced from the Department.

Additional considerations

The review has also identified opportunities to revise Committee functions through the establishment of a Standing Committee for General Practitioners, revise the selection, appointment, induction and ongoing training of Determining Authority and PSR Panel members, review Audit Committee arrangements, and consider changes to PSR's funding model.

Recommendations

7. Undertake further development and implement a new operating model as per the high level operating model outlined in this section.
8. Incorporate requirements for the PSRAC to:
 - a. meet at a minimum on a quarterly basis, and include the number of meetings and stakeholder attendance in the PSR annual report
 - b. be comprised of senior members of the Department (as chair), the AMA, PSR and Medicare
 - c. provide an annual statement to the Minister of its continuing satisfaction with functional delivery and operational effectiveness of the PSR scheme and its continued confidence in key appointees
 - d. advise the Minister if the PSRAC believes that the PSR Director, a member of the Determining Authority or a member of the PSR Panel is not acting at an appropriate level and should be removed from office.
9. Investigate the potential for:
 - a. establishing a standing committee for reviewing matters relating to General Practitioners
 - b. revising the induction and ongoing training of Determining Authority and PSR Panel members
 - c. review the membership, terms of reference and operation of the Audit Committee
 - d. revising PSR's funding model through industry funding arrangements

6.1 Introduction

The challenges outlined in the previous chapters regarding PSR’s activities are considerable and cover a broad range of key areas. The extent of the challenges indicate that the current operating model is not operating effectively and that it needs to be redesigned to facilitate the future delivery of PSR Scheme functions and enable sustainable, efficient and effective delivery.

This chapter outlines some initial considerations and views on the development of a new operating model for PSR. Additional work will need to be performed to further refine this model, and consideration will need to be given to the full range of elements relevant for PSR’s activities. Figure 23 below illustrates a framework of elements that should be considered whilst developing a new targeting operating model. Through the application of a framework of this type, each element of a future operating model can be considered in more detail, enabling an improved understanding of how resources (in terms of people, processes, facilities and technologies) interrelate and can best be deployed to sustainably deliver on PSR’s objectives.

Figure 23 - Illustrative target operating model elements



To facilitate the development of the new model this chapter outlines:

- a range of general factors that affect agencies such as PSR that will need to be included in future operating model considerations;
- identified key requirements for the Government and the professions for the future provision of PSR Scheme activities;
- provision for the PSR Advisory Committee to take a more structured role as a vehicle for oversight and consultation;
- potential operating models that have been considered through the review process and discussed with PSR and DOHA; and
- a high level overview of a proposed future operating model which provides an optimal approach to addressing identified challenges and stakeholder requirements.

6.2 Operating model considerations

PSR currently operates as a small, largely autonomous Government agency that has significant reliance on input from the professions to deliver its objectives. As such, it operates with some level of shared responsibility between the Government and the professions. Additionally, its operations are undertaken with some degree of independence from other Government departments, and the Minister's involvement with PSR is through an arms-length arrangement.

Organisations with operating models which are similar to PSR in scale and joint Government / profession involvement present both benefits and risks. In particular, small entities of this nature that incorporate elements of shared accountability can derive significant benefits from their ability to draw on specialist input from relevant professions. In the case of PSR, the quality and specialist expertise of individuals performing the roles of Director PSR, Determining Authority members and Panel members is of fundamental importance to the fulfilment of PSR functions and to meet stakeholder need. Arms length arrangements coupled with a small operational size can also enable a more flexible and agile approach to operational delivery, and facilitate a narrower functional focus.

However, this type of operating model also presents risks, and providing adequate mitigations to these risks is of primary importance to long term organisational effectiveness and its ongoing viability. Some of these risks, a number of which have been exhibited in PSR's recent performance highlighted in this review, are as follows:

- **Lack of clarity of the accountability of each stakeholder in the process:** In the case of PSR, this extends beyond the formal roles outlined in the legislation, and includes the manner in which stakeholders such the Department, AMA and Medicare participate in the ongoing monitoring of PSR operations and involvement with PSR to maintain and improve its functional effectiveness.
- **Tendency to pursue activities that are not strictly within its core purpose:** This tendency can be exacerbated should the level of stakeholder involvement discussed above be insufficient to identify and address moves away from the entities core purpose. In the case of PSR, it can be argued that the development of education and media activities is an example of this movement away from core functions which are not described in or required by the legislation.
- **Suboptimal operational performance can be difficult to detect:** This can arise as the small scale of operations can make meaningful comparisons with good practice challenging, as well as the significant impact on corporate knowledge that the loss of key staff can have. Similar to the above, any lack of clarity on the responsibility for stakeholder oversight can delay the identification of suboptimal performance until major operational impacts are evident.
- **Rigidity in workforce can impact on operational performance:** It can be more difficult for small organisations to achieve similar levels of efficiency to larger government organisations if similar employment conditions are in place. Whereas larger organisations can provide a relatively narrow scope of activities for each position, smaller organisations need to be able to move staff across different types of activities depending on current operational demand. Thus, workforce arrangements and employment conditions need to reflect this flexibility in order to deliver efficiency. This may include the use of a mix of permanent, part time, temporary and seconded staff, or the development of position descriptions with relatively broad scope of activities and responsibilities.
- **Government bears residual risk of failure:** While accountability is shared in some ways, the Government usually is held accountable for agency activities for any suboptimal operational or financial outcomes, regardless of whether it arose from the performance or actions of the agency, and regardless of the responsibility for governance, roles and responsibility in the agency's operating environment.
- **Flexibility impacting on regulatory effectiveness:** While flexibility is a benefit to the formation of small organisations, where functions have regulatory roles and responsibilities this same flexibility can work against the delivery of functions within the legal and procedural framework that protects against litigation.
- **Direct Government control mechanisms lacking when required:** Where operational performance is not being achieved, it can be problematic for Government to take direct, corrective action despite being held partially or wholly responsible for the organisation.

To mitigate against the potential for these factors to arise in the future, it is important that mechanisms to mitigate or avoid these matters be incorporated into a future PSR operating model and governance arrangements.

6.3 General considerations for a future operating model

A future PSR operating model will need to include consideration of stakeholder requirements and statutory independence, as well as the statutory roles and support functions that would enable the delivery of PSR's strategic purpose. The following items should be considered as part of the development of a future operating model.

Stakeholder requirements

Consultations with PSR stakeholders have identified a range of themes regarding stakeholder requirements for PSR's current and future operations which have been summarised below:

- compliance with legislative requirements, including the *Health Insurance Act 1973* and the *Financial Management and Accountability Act 1997*, as well as privacy and operational requirements (for example records management, workforce management, provision of IT systems);
- provision of PSR functions with appropriate financial and operational efficiency and effectiveness;
- transparency of operational activities to enable high quality management and oversight;
- a high quality, efficient and flexible workforce with skills that match operational requirements;
- the continued statutory and perceived independence of the Director PSR, the Determining Authority, the PSR Panel and Committees;
- a high quality, fair, just, transparent and timely process; and
- continuation of a high quality peer review process based on respected, current specialists, appropriately appointed in consultation with the profession.

A future operating model will need to address these stakeholder requirements to enable PSR's future functions to be sustainable, efficient and effective.

Maintaining statutory independence

As discussed above, one of the key stakeholder requirements for future PSR operations is the continuation of statutory independence for the Director PSR, the Determining Authority, the PSR Panel and Committees.

Figure 24 below summarises the key PSR stakeholders in recommending, approving, being consulted upon or informed of major decisions regarding the appointment of statutory positions and PSR's review process decisions.

Figure 24 - Key PSR decision making arrangements (recommend, approve, consult and inform)

Decision	Minister	Secretary, Department of Health and Ageing	Director PSR	Determining Authority	Committee / Panel	Chief Executive, Medicare	AMA / Profession
<i>Appointment of statutory appointees</i>							
Appoint Director	A	R		I		R	A
Appoint Determining Authority member	A	R	R		I		C
Appoint PSR Panel member	A		R	I	I		C
<i>PSR Process – Review by Director</i>							
Undertake review of practitioner			A			R	
Make finding of no further action			A			I	
Negotiated agreement			R	A		I	
<i>PSR Process – Review by Committee</i>							
Undertake review by Committee			R		A		
Make finding of no inappropriate practice			I		A		
Make finding of inappropriate practice				I	A		
<i>PSR Process – Determining Authority</i>							
Sanctions from finding of inappropriate practice			I	A		I	

R – Recommend A – Approve C – Consult I – Inform

The illustration demonstrates that:

- The appointment by the Minister is a key element in establishing the Director PSR³⁰, the Determining Authority and PSR Panel members with statutory roles that enable subsequent independence in their future activities and decision making; and
- The independence of the PSR process itself is based on the decision making functions of the Director, Committee and the Determining Authority in isolation from other stakeholders.

Maintaining the independence of these roles will be a key requirement for any future PSR operating model.

Statutory and operational roles, and support requirements

Understanding both the statutory roles of PSR and the support functions that are required to deliver these roles provides a basis for understanding the functional requirements of a future operating model. As illustrated in Table 8 below, the Director PSR, Determining Authority and Committees perform roles that derive either from the Act (e.g. PSR statutory process requirements) or result from PSR’s operational requirements (e.g. management oversight activities). A series of support functions are also required to enable statutory appointees to appropriately discharge their responsibilities, such as administration support, legal advice, management support and capability development. The development and implementation of a future operating model will need to consider how each of these functions are delivered.

³⁰ Ministerial appointment of the Director PSR is also subject to approval by the AMA

Table 8 - Statutory roles and support requirements

Statutory function requirements		
Director PSR	Panel/ Committees	Determining Authority
<p><i>Reviews</i></p> <ul style="list-style-type: none"> Review relevant documentation Decide whether reviews are warranted Meet with PURs Decide on appropriate actions Prepare reports Refer negotiated agreements to Determining Authority Establish and refer matters to committees <p><i>Consultation and communication</i></p> <ul style="list-style-type: none"> Consultation with professional bodies, Department and Medicare Referrals to AHPRA, professional bodies, Medicare, MPRC Communication of PSR activities <p><i>Organisational management</i></p> <ul style="list-style-type: none"> Statutory reporting (<i>HIA, PSA</i> etc) Oversee operations and ensure efficiency, effectiveness and adherence to statutory requirements (i.e. OHS, IR, HR, Environmental, Financial) Participate in management committees Ensure Determining Authority and Panel members have appropriate capability and support 	<p><i>Matters referred from Director PSR</i></p> <ul style="list-style-type: none"> Decide if hearings are required Review relevant documentation Conduct hearings Produce draft and final reports Review submissions on draft final report Refer matters to Determining Authority if required Refer matters to the Director if required 	<p><i>Matters referred from Director PSR</i></p> <ul style="list-style-type: none"> Review negotiated agreements Decide on ratification <p><i>Matter referred from Committees</i></p> <ul style="list-style-type: none"> Review Committee reports Invite and review submissions on Committee report and draft determinations Produce draft and final determinations Refer matters to the Director if required
Support function requirements		
<p><i>Administrative support</i></p> <ul style="list-style-type: none"> Records management Case management Meeting secretarial support Report and correspondence drafting Scheduling and logistics (e.g. payroll, travel, accommodation, financial approvals) Communications material development Stakeholder management and engagement support <p><i>Legal advice</i></p> <ul style="list-style-type: none"> Interpretation of legislation Advice on legal process, rules of evidence, FOI, privacy <p><i>Management support</i></p> <ul style="list-style-type: none"> Financial management Workforce management Operational coordination Statutory reporting obligation support 	<p><i>Administrative support</i></p> <ul style="list-style-type: none"> Records management Case management Evidence management Meeting secretarial support Report and correspondence drafting Scheduling and logistics (e.g. payroll, travel, accommodation, financial approvals) <p><i>Legal advice</i></p> <ul style="list-style-type: none"> Interpretation of legislation Advice on legal process, rules of evidence etc. <p><i>Capability</i></p> <ul style="list-style-type: none"> Member selection, appointment, training and development support 	<p><i>Administrative support</i></p> <ul style="list-style-type: none"> Records management Case management Evidence management Meeting secretarial support Report and correspondence drafting Scheduling and logistics <p><i>Legal advice</i></p> <ul style="list-style-type: none"> Interpretation of legislation Advice on legal process, rules of evidence etc. <p><i>Capability</i></p> <ul style="list-style-type: none"> Member selection, appointment, training and development support

6.4 PSR Advisory Committee

Under future arrangements we propose that the PSR Advisory Committee (PSRAC) would continue to operate, but with a broader remit and more formal arrangements for its operation and reporting.

The 2007 *Review of the Professional Services Review Scheme* recommended the establishment of the PSRAC to “maintain an overview of the PSR Scheme and provide ongoing guidance for its effective operation.”³¹ This recommendation derived from the lack of regular and formal mechanisms for discussion and feedback between stakeholders on the Scheme’s performance and operational at that time. In particular, the 2007 Review recommended that the PSRAC would:

- assess and review, on an ongoing basis, the effectiveness of the PSR Scheme’s performance;
- inform policy review and development; and
- facilitate any agreed change to the PSR Scheme, whether such change is legislative or administrative in nature.³²

Consultations with PSR executives have indicated that the PSRAC was established subsequent to the 2007 review. However, these consultations also indicated that the PSRAC discontinued operations prior to November 2010, and that no documentation was available to indicate either when or why PSRAC meetings were discontinued.

Under future arrangements we recommend that the PSRAC be responsible for:

- providing an annual statement to the Minister via the Secretary of the Department of its continuing satisfaction with the functional delivery and operational effectiveness of the PSR Scheme, and the continued confidence in key appointees; and
- advising the Minister if the PSRAC believes that the PSR Director, a member of the Determining Authority or a member of the PSR Panel is not acting at an appropriate level and should be removed from office.

We recommend that the PSRAC meet on a quarterly basis, or more frequently if required, with the number of meetings and stakeholder attendance records included in the PSR annual report.

As per the recommendations of the 2007 Review, we concur that the PSRAC:

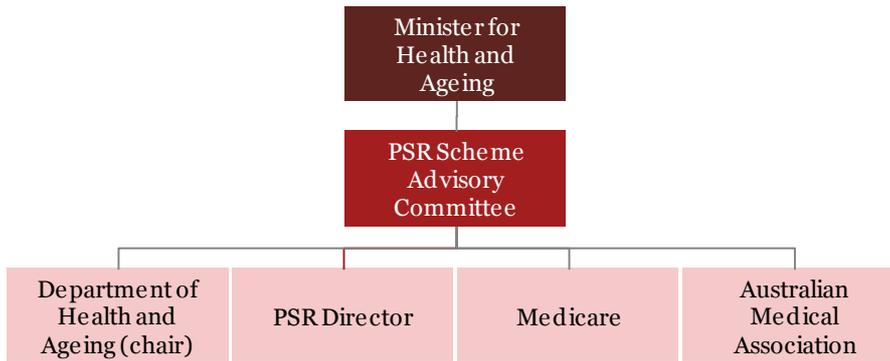
- should comprise of senior representatives from the Department, the AMA, PSR and Medicare;
- should be chaired by the relevant Departmental Deputy Secretary; and
- should not include representation from consumer health groups, as this does not align with PSRAC’s policy advisory role or reflect that PSR’s role does not extend to the consideration of the quality of clinical care.

These arrangements are illustrated in Figure 25 below.

³¹ 2007, *Review of the Professional Services Review Scheme* pg. 5.

³² 2007, *Review of the Professional Services Review Scheme* pg. 23.

Figure 25 - PSR Advisory Committee



Under this model each PSRAC participant would have responsibility for the quality of PSRAC activities, while the Department would be responsible for providing secretarial functions, including scheduling meetings, preparation of meeting materials, record keeping, and any subsequent reporting.

6.5 Potential future operating models

Three options for a future PSR operating model were considered through the review process. These were developed in consultation with PSR and DOHA based on an assessment of potential options that fit within current legislative requirements and have the potential to provide independent statutory functions and the support functions outlined above. Identified options were:

- Option 1: Maintaining PSR as an independent portfolio agency under current arrangements;
- Option 2: Providing statutory roles independently of Department provided support functions; and
- Option 3: Maintaining PSR as an independent portfolio agency, with increased involvement by the Department in terms of corporate support corporate support functions.

Based on an assessment of the potential benefits and risks of these models, our recommended model is Option 3. An overview of the key aspects to this option are outlined on page 57 and should form the basis for future operating model development.

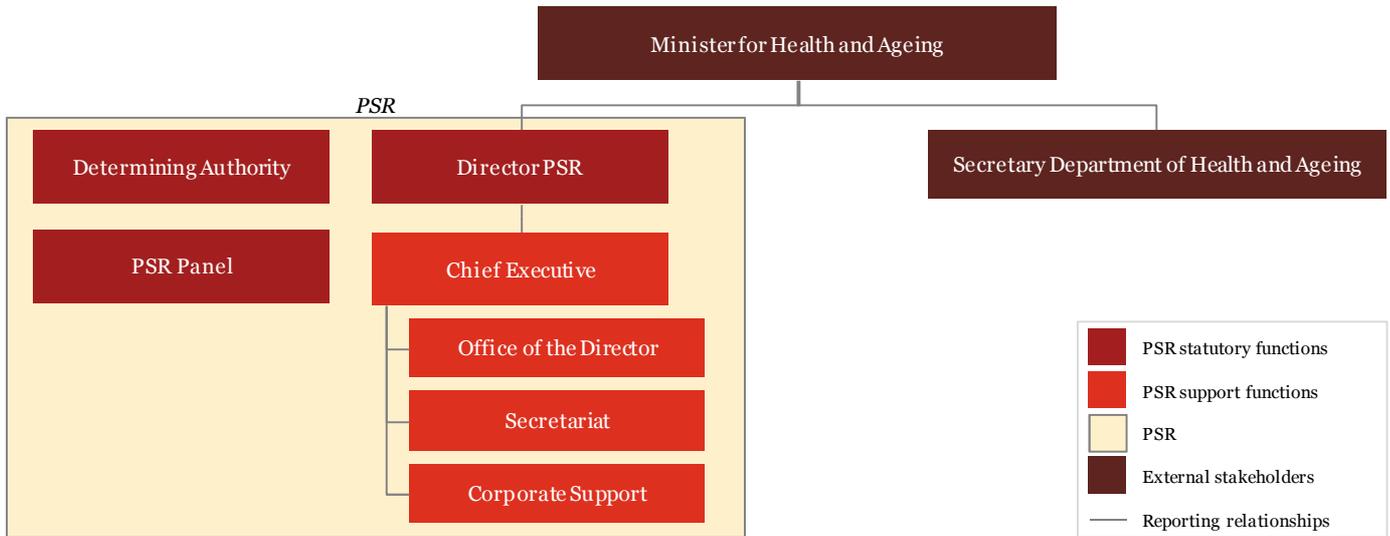
A summary of options 1 and 2 is provided in the sections below. While each option fulfils the independence and delivery of support functions outlined above, these options have been discounted from further consideration as:

- Maintaining PSR as an independent portfolio agency (option 1) cannot adequately address the challenges identified through the review process, does not provide for any improvements in Departmental oversight of PSR operations, and would continue to rely on the key individuals rather than structural elements to enable quality service delivery; and
- Providing statutory roles which are independent of Department provided support functions (option 2) may not provide a level of independence to adequately encourage levels of involvement by professionals in the PSR process, and may result in privacy concerns regarding the provision of patient files to the Department.

Option 1: Maintaining PSR as an independent portfolio agency

Figure 26 below provides a summary of a structure through which PSR would continue to be provided through a separate portfolio agency. This is broadly similar to current arrangements.

Figure 26 - Option 1 structure



The key elements of this structure are as follows:

- The Director, Determining Authority and PSR Panel would be maintained as statutory independent positions;
- A Chief Executive would be maintained by PSR to oversee all operational activities;
- An Office of the Director would provide legal support functions to the Director, Committees and Determining Authority (supplemented by external legal as required), as well as investigation support functions to Director;
- Secretariat functions would be provided through an internal business unit, delivering scheduling, logistics, document management, correspondence and report drafting to the Determining Authority and Committees, as well as learning and development functions for Determining Authority and Panel members; and
- Corporate support functions, such as workforce management and development, finance and IT services, would be provided internally.

The identified benefits and risks of this model are outlined in Table 9 below. As illustrated, while this model would preserve statutory independence, it would not address historic challenges, enable increase departmental oversight, and would continue to rely on the key individuals rather than structural elements to enable quality service delivery.

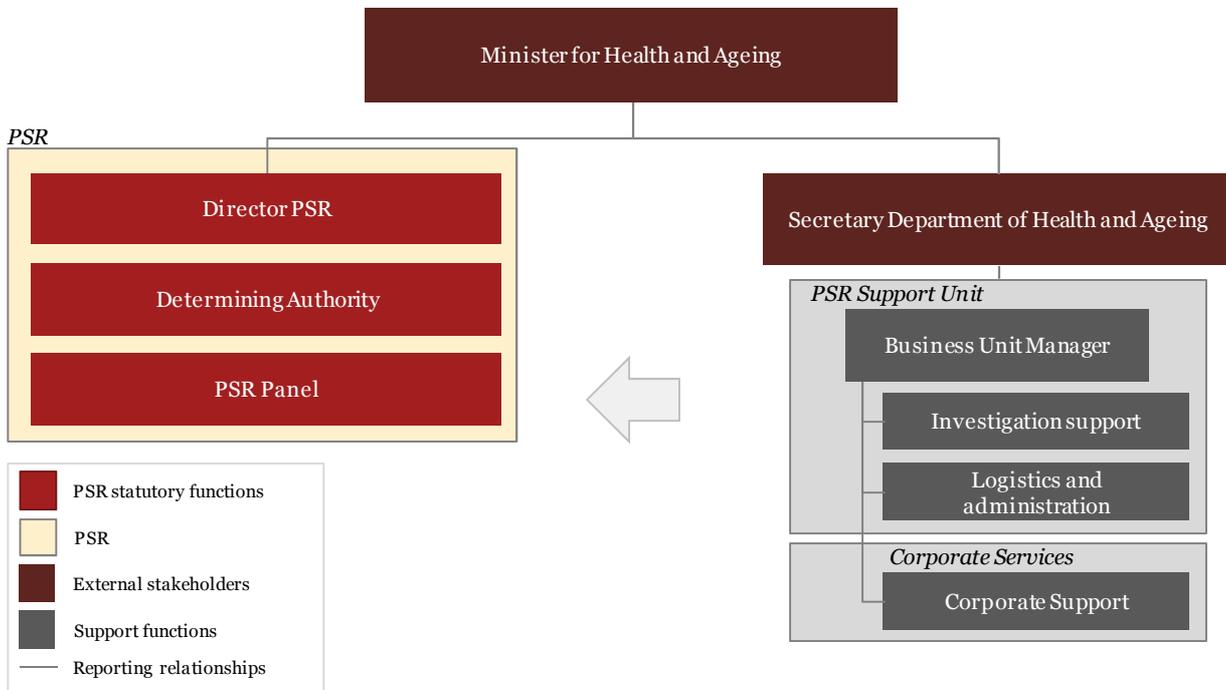
Table 9 - Identified benefits and risks

Benefits	Risks
<ul style="list-style-type: none"> • Statutory independence preserved • Actual and perceived independence by profession from separate agency structure • Enables specialisation of staff 	<ul style="list-style-type: none"> • Does not resolve historic challenges • Department oversight insufficient for early identification of suboptimal performance • Independent structure places reliance on key individuals rather than structural aspects to deliver quality • Inefficiency through lack of scalability and internal corporate functions

Option 2: Providing statutory roles independently of Department provided support functions

Figure 27 below provides a summary of a structure through which PSR would maintain the Director PSR, the Determining Authority and the PSR Panel independently of support functions. Support functions would then be provided through the Department.

Figure 27 - Option 2 structure



The key elements of this structure are as follows:

- The Director, Determining Authority and PSR Panel would be maintained as statutory independent positions;
- A Department based Business Unit Manager would be in charge of a PSR Support Unit, providing the delivery of all support functions from the Department to the Director PSR, the Determining Authority, the PSR Panel and Committees. The PSR Support Unit would incorporate:
 - An investigation support function providing legal support to the Director PSR, Committees and the Determining Authority (supplemented by external legal as required), as well as investigation support functions to Director; and
 - A logistics and administration function, delivering scheduling, logistics, document management, correspondence and report drafting to the Determining Authority and Committees, as well as learning and development functions for Determining Authority and Panel members.
- Corporate support functions would be provided through existing Department based corporate services functions.

The identified benefits and risks of this model are outlined in Table 10 below. As illustrated, while this model would preserve statutory independence, it may not provide a level of perceived independence to encourage adequate levels of involvement by professionals in the PSR process, and may result in privacy concerns regarding the provision of patient files to the Department.

Table 10 - Identified benefits and risks

Benefits	Risks
----------	-------

- | | |
|---|--|
| <ul style="list-style-type: none"> • Statutory independence preserved • Efficiency of service provision • Ability to leverage of Department systems, processes and workforce • Enables broader staff career options | <ul style="list-style-type: none"> • May not be perceived as independent by profession • Privacy of medical records in Department • Limits staff specialisation |
|---|--|

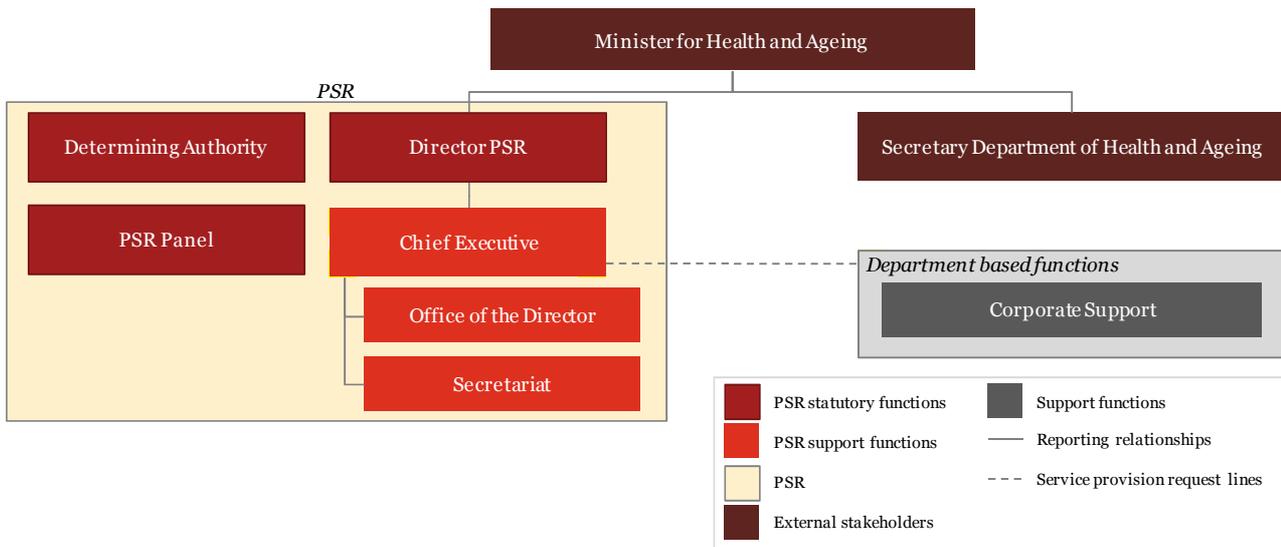
6.6 Recommended future operating model

This section outlines our recommended future operating model. The model provides for PSR to be maintained as an independent portfolio agency with corporate support functions by the Department:

- the independence of the Director PSR, the Determining Authority and PSR Panel members by maintaining current consultative appointment requirements, and enhances the timeliness of the peer review process through the use of Standing Committee(s) for General Practitioners;
- specialist advisory functions, including investigations support and legal advice, through an Office of the Director, administration functions through an internal Secretariat function, and Department provided corporate functions.

The proposed model is outlined in Figure 28 below, with each of the critical elements considered in greater detail below:

Figure 28 - Proposed future state PSR operating model



Director PSR, Determining Authority and the PSR Panel

Under this model, the statutory roles outlined in the legislation (i.e. the Director PSR, the Determining Authority and the PSR Panel) would continue to have statutory independence. In summary:

- The Director PSR would remain as a statutory appointee of the Minister and the appointment of the Director would require AMA agreement. The Director’s authorities to review provision of services as requested by the Medicare Chief Executive would continue, as would current arrangements for referral of matters to Committees and the Determining Authority;
- The PSR Panel would remain in its current form, providing an independent panel of practitioners who can be called upon to form Committees and conduct investigations; and

Potential future operating model

- The Determining Authority would continue to operate independently to consider ratification of agreements made between the Director and PUR's, and to make determinations based on Committee findings.

Executive Officer

Under this model, the Executive Officer (EO) would continue to provide a leadership position for operational aspects of PSR functions. The EO would be an employee of PSR with responsibility for overseeing PSR's activities on a day to day basis, reporting to the Director PSR as required to enable PSR functional delivery to be delivered efficiently and effectively. To enable Departmental oversight of PSR activities, the EO would also be required to report periodically to the relevant Secretary or Deputy Secretary regarding PSR's performance and operations.

The EO would oversee the activities of PSR's two internal business units (the Office of the Director and the Secretariat), as well as liaising with the Department for the provision of corporate functions.

Office of the Director

The Office of the Director (OD) would primarily provide investigative support to the Director and legal advice to the Director, Determining Authority and Committees. It would be resourced with a small number of staff with specific skill sets to:

- provide legal advice to the Director PSR, as well as the Determining Authority and Committees as required. The position of Legal Counsel would be created, with additional external legal counsel being sourced from time to time to supplement this position. Under this model external legal services may still be required, both due to operational demand and the limitations resulting from s. 106ZPL of the Act in relation to the provision of services to the Director, Committees and the Determining Authority by the same individuals;
- assist the Director in initial investigations and the development of reports and negotiated agreements; and
- coordinate stakeholder liaison with Medicare, the AMA and other professional organisations.

The OD would also work closely with departmental staff on the selection and appointment processes for Determining Authority and Committee members, as well as facilitating the PSR involvement in the PSRAC.

The OD's focus would be on specific, specialist functions, and the skill sets, seniority and spans of control would need to reflect these arrangements. The OD would not provide general administrative functions, such as secretarial, logistics support or corporate functions, which would be undertaken by the Secretariat and Department based corporate services staff.

Secretariat

The Secretariat would consist of a small team of staff providing general administrative support functions such as:

- drafting of Committee and Determining Authority reports and correspondence;
- management and updates to policies and processes;
- sourcing of medical records and general records management functions; and
- logistics and coordination functions to support the activities of the Director, the Determining Authority and Committees.

As the skill sets required would be administrative in nature, the Secretariat has the potential to be largely resourced by junior and middle ranking staff. The size of the Secretariat would be based on the workforce requirements to meet expected workload levels.

Corporate support

Corporate support functions under the proposed model would be provided through the Department. This approach would bring the broader skill sets and scale of the Department's corporate support functions, facilitating increased efficiency and flexibility in delivery arrangements, and enabling PSR to leverage existing capabilities in finance, IT,

human resources and learning and development. This approach could enable PSR to leverage existing systems (e.g. Finance, case management) relevant to its operations, along with existing support mechanisms for these systems (e.g. ICT, HR, Learning and Development).

6.7 Additional considerations

Given that PSR will undergo changes through the implementation of the operating model outlined above and the outcomes of current legal challenges, we believe that this is an opportune time to consider additional changes to some areas of PSR activities. Through the review process we have noted that there may be opportunities to:

- improve the effectiveness of Committee functions through a Standing Committee for General Practitioners;
- revise selection, appointment, induction and ongoing training of Determining Authority and PSR Panel members;
- review Audit Committee arrangements; and
- consider changes to PSR's funding model.

Observations on each of these areas are outlined below. Further analysis and consideration of each of these areas will be required prior to any implementation.

PSR Committee functioning

Consultations with PSR executives and former Committee members have indicated that the scheduling of Committee members and PUR's to attend Committee meetings is a significant challenge to timely Committee investigations. As many Committee members and PUR's may be booked months in advance for their regular professional services, it can be challenging to find suitable meeting times.

Under the proposed model, PSR Committee functions would incorporate both Standing Committees and committees commissioned for specific reviews as required. This approach is intended to facilitate a more rapid and process for considering matter referred from the Director by reducing scheduling challenges while maintaining the quality of the peer review process.

Standing Committee for General Practitioners

One or more Standing Committees would be established to cater specifically for matters related to General Practitioners (GPs), which historically account for approximately 75% of matters referred to PSR by Medicare. Prescheduling Standing Committees to meet on a regular basis (for example quarterly) has the potential to greatly facilitate the scheduling, as Committee members would have the dates of meetings confirmed well in advance. Where no matters require the Committee to meet, the scheduled meeting can be cancelled in sufficient time (for example 1-2 months) so that Committee members are not inconvenienced. When scheduling a Committee investigation for a GP, the matter can then be organised more effectively around the PUR's schedule, reducing the complexity of scheduling Committee meetings while providing more certainty to PURs.

Ensuring that the Standing Committee can be considered to be representative of the relevant peer group for General Practitioners should be included in the selection of Standing Committee members. Selection will need to consider both the characteristics of individual members and the combination of these characteristics on the Standing Committees overall expertise and representation. Consideration of potential members may include factors such as length of experience, metropolitan and regional practice, and diversity factors such as gender and ethnicity.

Standing Committees would not operate outside of reviews of GPs. For all other matters the current arrangements for Committee selection and commissioning would still apply. The current Committee functions would also apply for any reviews of GPs should the demand for these reviews exceed the capacity of the Standing Committees to deliver these reviews within an appropriate timeframe.

Capability development of Determining Authority and PSR Panel members

Our consultations with Determining Authority and former Committee members indicated that there are opportunities for improvement both in induction training and in continuing development programs. We note that improving induction and development programs may have potential to mitigate against future legal challenges, and that PSR is currently considering improvement opportunities as a result of the Federal Court findings in *Kutlu and Tisdall*.

Revising the induction and ongoing training may enable the relevant individuals to better fulfil their roles, for example, through supplementing existing role-play training materials with presentations by legal experts, or providing specific training in questioning and negotiating techniques.

Audit Committee arrangements

The Audit Committee currently consists of the Executive Officer and two members who are currently external consultants. As such, the Department does not have any direct involvement with the Audit Committee at present.

The Australian National Audit Office recently released its revised Better Practice Guide for Public Sector Audit Committees³³. Given the new better practice guide and the recommended changes outlined above, it may be appropriate to reconsider how the Audit Committee is constituted, including:

- whether the current membership and terms of reference of the Audit Committee continue to provide appropriate levels of assurance;
- how other agencies within Health and Ageing portfolio are providing audit committee functions, in terms of membership, terms of reference and functioning; and
- whether there is scope for the Department to play a greater role on the Audit Committee. This could potentially involve the inclusion of a Departmental representative on the Audit Committee.

Considerations for funding through cost recovery

Under current arrangements PSR is funded through budget appropriations. In 2010-11 appropriations amounted to \$7.8m. PSR's activities involve regulatory compliance of particular professions covered by the Act, and the primary driver for PSR activity levels, and therefore its costs, is the extent of inappropriate practice that exists within the profession. As per the *Australian Government Cost Recovery Guidelines*³⁴ (the Guidelines), these activities may be considered to fall within the category of a post-market activity³⁵ and may be appropriate for cost recovery.

Under the Guidelines, the relevance of cost recovery to PSR activities is dependent on (a) whether this approach is consistent with policy objectives, and (b) whether the charging would be efficiency and cost effective.

It can be argued that using cost recovery to support PSR's operations is in line with the overall policy objectives as incorporating a mechanism through which the professions are charged for PSR costs provides an incentive for the professions to take a more active role in reducing the level of inappropriate practice. This approach may also enhance the actual and perceived independence of PSR's functions from Government.

A cost recovery approach could take multiple forms, including the following:

- **A direct levy to all members of professions covered by the PSR Scheme:** this approach would involve practitioners directly in the cost of providing PSR activities, with any increase in PSR expenditure as a result of increased levels of inappropriate practice impacting on practitioners. The PSR Scheme covers

³³ Refer to Australian National Audit Office 2011, *Public Sector Audit Committees – Independent Assurance and Advice for Chief Executives and Boards*

³⁴ Department of Finance and Administration 2005, *Australian Government Cost Recovery Guidelines*

³⁵ A post-market activity refers to compliance activities that occur after a service has been provided

approximately 94,000 practitioners, allocating PSR's 2010-11 funding base of \$7.8m across these practitioners would result in an average levy of \$87.

- **A direct levy on professional bodies:** this approach would provide an incentive for professional bodies to increase their activities in actively discouraging levels of inappropriate practice. As the educative role of these organisations is well established, they may be able to effectively engage with their members regarding inappropriate practice. However, there may be some challenges in terms of deciding on the appropriate distribution of costs across the different professions, and equity issues relating to practitioners who are not members of a professional body.

Further consideration of the funding model employed by PSR can be undertaken as part of more detailed development of a future operating model. This could include discussions with key stakeholders as to their views on the appropriateness of different funding options, modelling of potential funding options in order to determine the cost effectiveness of delivery, and the identification of appropriate channels through which any levy arrangement could be most efficiently applied.

6.8 Next steps

This review has been focussed on establishing an operating profile of PSR, identifying key issues, risks and recommendations to feed into a potential future target operating model. The review has undertaken analysis of:

- Findings, judgements and determinations identified by previous reviews;
- PSR action taken in response, including internal policies, processes and procedures;
- Financial performance, including key cost drivers;
- Efficiency and effectiveness of PSR process; and
- Key criteria for development of possible target operating models.

As a result of this work, this review has recommended the need to develop a revised target operating model and has proposed a potential model for further consideration and discussion with the key stakeholders.

Key steps to progress the development of this operating model include:

- Host discussions with key internal and external stakeholders to gain general agreement on principles and criteria to inform the future operating model;
- Incorporate input from the Senate Inquiry; and
- Understand the impact of the potential High Court *Kutlu* appeal and the final outcome of Tisdall.

Alongside this, further work will need to be undertaken to move this conceptual target operating model to a detailed design phase. Considerations will need to include:

- Detailed organisational structure development, implementation planning and any transitional arrangements;
- Definition of roles, responsibilities, and capability requirements; and
- Internal process improvement through detailed process mapping and redesign.

Appendices

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Appendix A Glossary and Summary of Abbreviations

Abbreviation	Term
PSR	Professional Services Review
DPSR	Director Professional Services Review
PSRC	Professional Services Review Committee
AMA	Australian Medical Association
DA	Determining Authority
DoHA	Department of Health and Ageing
MBS	Medicare Benefits Schedule
PBS	Pharmaceutical Benefits Scheme
MA	Medicare Australia
The Act	<i>Health Insurance Act 1973</i>
Committee	A Professional Services Review Committee comprising at least three practitioners appointed under section 93 of the <i>Health Insurance Act 1973</i> . Sometimes referred to as PSRC
Department	Department of Health and Ageing
Deputy Director	A Deputy Director of Professional Services Review appointed under section 85 of the <i>Health Insurance Act 1973</i> who serves as the chair of the Committee
Determining Authority	The independent statutory body established under section 106Q of the <i>Health Insurance Act 1973</i>
Director	Director of Professional Services Review appointed under section 83 of the <i>Health Insurance Act 1973</i>
Director's Review	The process undertaken by the Director under Division 3A of Part VAA of the <i>Health Insurance Act 1973</i>
Draft Report	The preliminary findings of a Committee following a hearing as required by 106KD
Final Report	The final findings of a Committee following assessment of further submissions by a practitioner following the Draft Report as required by 106L
Draft Determination	The draft document containing what action is proposed to be taken in a case as required by 106T as delivered by the Determining Authority
Final Determination	The final document containing what action will be taken in a case as required by 106TA
Inappropriate practice	Is defined under Section 82 of the <i>Health Insurance Act 1973</i> as conduct in connection with rendering or initiating services that a Committee of the practitioner's peers could reasonably conclude was unacceptable to the general body of their profession
Negotiated Agreement	A written Agreement made under section 92 of the <i>Health Insurance Act 1973</i>
Panel	The Professional Services Review Panel established under subsection 84(1) of the <i>Health Insurance Act 1973</i> members of which are available for appointment to a Committee
Panel member	A practitioner appointed under subsection 84(2) of the <i>Health Insurance Act 1973</i>
Practitioner	Means a: <ul style="list-style-type: none"> • medical practitioner • dental practitioner • optometrist • midwife • nurse practitioner • chiropractor • physiotherapist • podiatrist • osteopath

Appendix B Interviews and meetings undertaken as part of Review

Consultations were undertaken with the following PSR stakeholders, executives and staff through the review process.

Date	Interviewee
29th August 2011	Dr Bill Coote, Director PSR
	Luke Twyford, Acting Executive Officer PSR
	Richard Bartlett, First Assistant Secretary Medical Benefits Division (DoHA) Penny Shakespeare, Assistant Secretary Medicare Benefits Branch (DoHA)
	Michael Ryan, Director Medical Benefits Division (DoHA)
	Mark Lewington, CFO PSR Murray Lembit, Manager - Corporate Unit PSR
	Geoff Turner, Manager - Operations Unit PSR
30th August 2011	Dr Nick Radford, Chair Determining Authority
	Dr Bernard Kelly, Deputy Director (Committee Chair)
	Dr Robyn Napier, Deputy Director (Committee Chair)
	David Rankin, Medicare Australia Jenny Benjamin, Medicare Australia David Hall, Medicare Australia Anthony Henry, Medicare Australia Norm Vesty, Medicare Australia
	Belinda Highmore, Senior Policy Advisor AMA Kate Kelly, Senior Policy Advisor AMA
	John Kosa, Manager – Quality, Information & Development Unit PSR
13th September 2011	Richard Bartlett, First Assistant Secretary Medical Benefits Division (DoHA) Penny Shakespeare, Assistant Secretary Medicare Benefits Branch (DoHA) Michael Ryan, Director Medical Benefits Division (DoHA)
19th September 2011	Dr Bill Coote, Director PSR Luke Twyford, Acting Executive Director PSR Richard Bartlett, First Assistant Secretary Medical Benefits Division (DoHA) Penny Shakespeare, Assistant Secretary Medicare Benefits Branch (DoHA) Michael Ryan, Director Medical Benefits Division (DoHA)
27th September 2011	Dr Bill Coote, Director PSR Luke Twyford, Acting Executive Director PSR
4th October 2011	Dr Bill Coote, Director PSR Luke Twyford, Acting Executive Director PSR

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