

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 207

Issued by the authority of the Minister for Human Services

Human Services Legislation Amendment Act 2005

Human Services Legislation Amendment Regulations 2005 (No. 1)

Background

The *Human Services Legislation Amendment Act 2005* (the Act) makes changes to the governance arrangements for Centrelink and the Health Insurance Commission (HIC) to give effect to the government's response to the *Review of the Corporate Governance of Statutory Authorities and Office Holders* conducted by Mr John Uhrig, AC.

Schedule 1 to the Act makes changes to the governance arrangements for Centrelink by making amendments to the *Commonwealth Services Delivery Agency Act 1997*, by making consequential amendments to other Acts and by providing transitional provisions. Schedule 2 to the Act makes changes to the governance arrangements for HIC by making amendments to the *Health Insurance Commission Act 1973* (including to change the name of HIC to Medicare Australia), by making consequential amendments to other Acts and by providing transitional provisions.

The Act:

- abolishes the governance boards of Centrelink and HIC;
- replaces HIC (a separate legal entity to the Commonwealth) with Medicare Australia (a body that will form part of the Commonwealth);
- creates the offices of Chief Executive Officer of Centrelink and of Medicare Australia, with statutory functions. Medicare Australia and Centrelink will each consist of their respective Chief Executive Officers and their staff, but legally will be part of the Commonwealth; and
- establishes new governance arrangements under which the Chief Executive Officers will be directly accountable to the Minister for Human Services.

At the commencement of the Act, HIC's staff become subject to the *Public Service Act 1999*, and HIC moves to the *Financial Management and Accountability Act 1997* framework as Medicare Australia. The responsibilities of the Chairman of the Centrelink Board under the *Financial Management and Accountability Act 1997* framework are transferred to the Chief Executive Officer of Centrelink.

These and other transitional arrangements are co-ordinated with the commencement of the Act to ensure that governance changes do not disrupt service delivery to customers.

Authority to Amend Regulations

The following sections of the following Acts provide that the Governor-General may make regulations, not inconsistent with the Acts, prescribing matters required or permitted by the Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Acts:

- subsection 98(1) of the *Civil Aviation Act 1988*,
- subsection 49(1) of the *Commonwealth Authorities and Companies Act 1997*,
- section 18 of the *Customs Administration Act 1985*,
- subsection 125(1) of the *Family Law Act 1975*,
- subsection 65(1) of the *Financial Management and Accountability Act 1997*,
- section 43 of the *Financial Transaction Reports Act 1988*,
- subsection 94(1) of the *Freedom of Information Act 1982*,
- subsection 133(1) of the *Health Insurance Act 1973*,
- section 44 of the *Health Insurance Commission Act 1973*,
- subsection 909-1(1) of the *Income Tax Assessment Act 1997*,
- section 140 of the *Lands Acquisition Act 1989*,
- section 15 of the *Maternity Leave (Commonwealth Employees) Act 1973*,
- subsection 79(1) of the *Medical Indemnity Act 2002*,
- subsection 140(1) of the *National Health Act 1953*,
- section 38 of the *Ombudsman Act 1976*,
- subsection 100(1) of the *Privacy Act 1988*,
- section 104 of the *Proceeds of Crime Act 1987*,
- subsection 40(1) of the *Public Works Committee Act 1969*, and
- subsection 10(1) of the *Superannuation (Productivity Benefit) Act 1988*.

None of the Acts specify conditions that need to be satisfied in the circumstances before the power to make the Regulations may be exercised.

Regulations to be Amended

The purpose of the *Human Services Legislation Amendment Regulations 2005 (No. 1)* is to make consequential amendments arising from the following Regulations:

- *Civil Aviation Safety Regulations 1998*
- *Commonwealth Authorities and Companies Regulations 1997*
- *Customs Administration Regulations 2000*
- *Family Law Regulations 1984*
- *Financial Management and Accountability Regulations 1997*
- *Financial Transaction Reports Regulations 1990*
- *Freedom of Information (Miscellaneous Provisions) Regulations 1982*
- *Health Insurance (Diagnostic Imaging Services Table) Regulations 2004*
- *Health Insurance (General Medical Services Table) Regulations 2004*
- *Health Insurance (Pathology Services) Regulations 1989*
- *Health Insurance (Vocational Registration of General Practitioners) Regulations*
- *Health Insurance Commission Regulations 1975*
- *Health Insurance Regulations 1975*

- *Income Tax Assessment Regulations 1997*
- *Lands Acquisition Regulations 1989*
- *Maternity Leave (Commonwealth Employees) Regulations*
- *Medical Indemnity Regulations 2003*
- *National Health (Pharmaceutical Benefits) Regulations 1960*
- *Ombudsman Regulations 1977*
- *Privacy (Private Sector) Regulations 2001*
- *Proceeds of Crime Regulations 1987*
- *Public Works Committee Regulations 1969*
- *Superannuation Benefit (Interim Arrangement) (Continuous Service) Regulations*

Impact and Effect of Amendments to Regulations

The purpose of the *Human Services Legislation Amendment Regulations 2005 (No. 1)* is to ensure the changes arising from the Act are reflected in various principal regulations.

The *Human Services Legislation Amendment Regulations 2005 (No. 1)* amends various principal regulations to:

- amend references to HIC in various principal regulations to read Medicare Australia or Chief Executive Officer of Medicare Australia (as appropriate);
- amend references to HIC Managing Director (also previously known as the General Manager) in various principal regulations to read the Chief Executive Officer of Medicare Australia;
- remove HIC's functions from the *Health Insurance Commission Regulations 1975* and remove references to those functions in various principal regulations. The functions of HIC are intended to be transposed into a Ministerial direction, pursuant to paragraph 5(d) of the *Medicare Australia Act 1973*;
- amend the *Health Insurance Commission Regulations 1975* to read *Medicare Australia Regulations 1975*;
- prescribe Medicare Australia as a prescribed agency for the purposes of the *Financial Management and Accountability Act 1997*;
- remove references to HIC from the *Commonwealth Authorities and Companies Regulations 1997*;
- transfer the responsibilities of the Centrelink Chief Executive under the *Financial Management and Accountability Act 1997* from the Chairman of the Centrelink Board to the Chief Executive Officer of Centrelink and update the references to the composition of Centrelink for the purposes of the *Financial Management and Accountability Act 1997*;
- remove HIC from a list of principal offices in respect of prescribed authorities under the *Freedom of Information (Miscellaneous Provisions) Regulations 1982*, as Medicare Australia will now fall within the definition of a prescribed authority under section 4 of the *Freedom of Information Act 1982*;
- remove HIC from a list of prescribed authorities under the *Maternity Leave (Commonwealth Employees) Regulations*, as Medicare Australia staff will be able to access the benefits provided to employees of the Australian Public Service;

- ensure that Medicare Australia is, like other agencies subject to the *Financial Management and Accountability Act 1997*, no longer exempt from the Public Works Committee scrutiny under the *Public Works Committee Act 1969* and requirements under the *Lands Acquisition Act 1989*;
- enable persons employed in Medicare Australia on a regular relief basis to maintain continuity of qualifying service for the interim benefit payable in certain circumstances under the *Superannuation (Productivity Benefit) Act 1988*;
- enable the Department of Human Services to receive identified information from the Australian Customs Service;
- amend certain outdated references to the Department of Social Security to read Centrelink;
- amend a reference to an officer of the Commonwealth Services Delivery Agency to read Centrelink officer; and
- amend the name of three Regulations to include the year of the Regulations.

Detailed Amendments to Various Principal Regulations

Regulation 1 – Name of Regulations

This regulation is a formal provision specifying the short title as *Human Services Legislation Amendment Regulations 2005 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for commencement at the same time as items 31 to 731 of Schedule 2 to the Act. These items commence immediately after, and not at the same time, as the other items of Schedule 2 because of a minor drafting technicality.

The Regulations commence on 1 October 2005, to coincide with the commencement of the Act.

Regulation 3 - Amendment of Legislation

This regulation sets out each of the principal regulations that are amended as set out in Schedule 1.

Schedule 1 of the *Human Services Legislation Amendment Regulations 2005 (No. 1)* amends various principal regulations as follows:

Items 1 to 3 – Amendments of *Civil Aviation Safety Regulations 1998*

These items amend these Regulations so that references to HIC read Medicare Australia.

Item 4 – Amendment of *Commonwealth Authorities and Companies Regulations 1997*

This item amends these Regulations to remove HIC from the list of bodies prescribed by Schedule 1, Part 1 of the *Commonwealth Authorities and Companies Regulations*

1997 as subject to government procurement requirements under section 47A of the *Commonwealth Authorities and Companies Act 1997*.

Item 5 – Amendment of *Customs Administration Regulations 2000*

This item amends these Regulations so that a reference to HIC reads Medicare Australia.

Item 6 – Amendment of *Customs Administration Regulations 2000*

This item amends these Regulations to add the Department of Human Services to a list of agencies that can receive identified information from the Australian Customs Service.

Items 7 and 8 – Amendments of *Family Law Regulations 1984*

These items amend these Regulations so that outdated references to the Department of Social Security read Centrelink.

Item 9 – Amendment of *Family Law Regulations 1984*

This item amends these Regulations so that a reference to HIC reads Medicare Australia.

Item 10 – Amendment of *Family Law Regulations 1984*

This item amends these Regulations so that an outdated reference to the Department of Social Security reads Centrelink.

Item 11 – Amendment of *Financial Management and Accountability Regulations 1997*

This item amends these Regulations to transfer the responsibilities of the Centrelink Chief Executive under the *Financial Management and Accountability Act 1997* from the Chairman of the Centrelink Board to the Chief Executive Officer of Centrelink. It also updates the description of Centrelink for the purposes of the *Financial Management and Accountability Act 1997* to include the Chief Executive Officer of Centrelink, staff and consultants (if any) engaged under the *Commonwealth Services Delivery Agency Act 1997*.

Item 12 – Amendment of *Financial Management and Accountability Regulations 1997*

This item amends these Regulations to prescribe Medicare Australia as a prescribed agency for the purposes of the *Financial Management and Accountability Act 1997*. Medicare Australia comprises, for these purposes, the Chief Executive Officer of Medicare Australia, staff and consultants (if any) engaged under the *Medicare Australia Act 1973*.

Item 13 – Amendment of *Financial Transaction Reports Regulations 1990*

This item amends these Regulations so that a reference to the Commonwealth Services Delivery Agency reads a Centrelink officer.

Item 14 – Amendment of *Financial Transaction Reports Regulations 1990*

This item amends these Regulations so that a reference to an officer of the Commonwealth Services Delivery Agency reads a Centrelink officer. This is not intended to change the meaning, but merely clarifies the reference.

Item 15 – Amendment of *Freedom of Information (Miscellaneous Provisions) Regulations 1982*

This item amends these Regulations to remove HIC from a list of principal offices in respect of prescribed authorities, as Medicare Australia will now fall within the definition of a prescribed authority under section 4 of the *Freedom of Information Act 1982*.

Item 16 – Amendment of *Health Insurance (Diagnostic Imaging Services Table) Regulations 2004*

This item amends these Regulations to remove a reference to HIC's functions which has been removed from the *Health Insurance Commission Regulations 1975*. The functions of HIC are intended to be transposed into a Ministerial direction to the Chief Executive Officer of Medicare Australia, pursuant to paragraph 5(d) of the *Medicare Australia Act 1973*.

Items 17, 18, 19 and 20 – Amendments of *Health Insurance (Diagnostic Imaging Services Table) Regulations 2004*

These items amend these Regulations so that references to HIC refer to the Chief Executive Officer of Medicare Australia.

Item 21 – Amendment of *Health Insurance (General Medical Services Table) Regulations 2004*

This item amends these Regulations so that a reference to HIC refers to the Chief Executive Officer of Medicare Australia.

Item 22 – Amendment of *Health Insurance (General Medical Services Table) Regulations 2004*

This item amends these Regulations to remove a reference to HIC's functions which has been removed from the *Health Insurance Commission Regulations 1975*. The functions of HIC are intended to be transposed into a Ministerial direction to the Chief Executive Officer of Medicare Australia, pursuant to paragraph 5(d) of the *Medicare Australia Act 1973*.

Items 23 and 24 – Amendments of *Health Insurance (General Medical Services Table) Regulations 2004*

These items amend these Regulations so that references to HIC refer to the Chief Executive Officer of Medicare Australia.

Item 25 – Amendment of *Health Insurance (Pathology Services) Regulations 1989*

This item amends these Regulations so that a reference to HIC reads Medicare Australia.

Item 26 – Amendment of *Health Insurance (Vocational Registration of General Practitioners) Regulations*

This item amends these Regulations so that the name of the Regulations includes the year of the Regulations.

Items 27 and 28 – Amendments of *Health Insurance (Vocational Registration of General Practitioners) Regulations*

These items amend these Regulations so that references to HIC's Managing Director read Chief Executive Officer of Medicare Australia.

Item 29 – Amendment of *Health Insurance Commission Regulations 1975*

This item amends these Regulations so that the name of the Regulations reads *Medicare Australia Regulations 1975*.

Item 30 – Amendment of *Health Insurance Commission Regulations 1975*

This item amends these Regulations so that a reference to an Act reads *Medicare Australia Act 1973*.

Items 31 and 32 – Amendments of *Health Insurance Commission Regulations 1975*

These items amend these Regulations to remove a reference to HIC's functions which has been removed from the *Health Insurance Commission Regulations 1975*. The functions of HIC are intended to be transposed into a Ministerial direction to the Chief Executive Officer of Medicare Australia, pursuant to paragraph 5(d) of the *Medicare Australia Act 1973*.

Items 33, 34 and 35 – Amendments of *Health Insurance Regulations 1975*

These items amend these Regulations so that references to HIC refer to the Chief Executive Officer of Medicare Australia.

Items 36 and 37 – Amendments of *Health Insurance Regulations 1975*

These items amend these Regulations so that references to Managing Director refer to the Chief Executive Officer of Medicare Australia.

Item 38 – Amendment of *Health Insurance Regulations 1975*

This item amends these Regulations so that a reference to HIC refers to the Chief Executive Officer of Medicare Australia.

Item 39 – Amendment of *Health Insurance Regulations 1975*

This item amends these Regulations so that a reference to HIC refers to the Chief Executive Officer of Medicare Australia on behalf of the Commonwealth.

Item 40 – Amendment of *Health Insurance Regulations 1975*

This item amends these Regulations so that a reference to HIC refers to the Chief Executive Officer of Medicare Australia.

Item 41 – Amendment of *Health Insurance Regulations 1975*

This item amends these Regulations to remove a reference to HIC's functions which has been removed from the *Health Insurance Commission Regulations 1975*. The functions of HIC are intended to be transposed into a Ministerial direction to the Chief Executive Officer of Medicare Australia, pursuant to paragraph 5(d) of the *Medicare Australia Act 1973*.

Items 42 and 43 – Amendments of *Health Insurance Regulations 1975*

These items amend these Regulations so that references to HIC and HIC's General Manager refer to the Chief Executive Officer of Medicare Australia.

Item 44 – Amendment of *Health Insurance Regulations 1975*

This item amends these Regulations so that an outdated reference to HIC's General Manager refers to the Chief Executive Officer of Medicare Australia.

Item 45 – Amendment of *Health Insurance Regulations 1975*

This item amends these Regulations so that a reference to HIC refers to the Chief Executive Officer of Medicare Australia.

Item 46 – Amendment of *Health Insurance Regulations 1975*

This item amends these Regulations so that an outdated reference to HIC's General Manager refers to the Chief Executive Officer of Medicare Australia.

Item 47 – Amendment of *Health Insurance Regulations 1975*

This item amends these Regulations so that a reference to HIC refers to the Chief Executive Officer of Medicare Australia.

Item 48 – Amendment of *Health Insurance Regulations 1975*

This item amends these Regulations so that an outdated reference to HIC’s General Manager refers to the Chief Executive Officer of Medicare Australia.

Item 49 – Amendment of *Health Insurance Regulations 1975*

This item substitutes a new delegation provision, with the effective changes being that:

- a reference to HIC’s General Manager refers to the Chief Executive Officer of Medicare Australia;
- the reference to a member of HIC is removed; and
- subsection 28(1) of the *Health Insurance Commission Act 1973* reads subsection 20(1) of the *Medicare Australia Act 1973*.

Items 50, 51, 52, and 53 – Amendments of *Health Insurance Regulations 1975*

These items amend these Regulations so that references to HIC refer to the Chief Executive Officer of Medicare Australia.

Item 54 – Amendment of *Income Tax Assessment Regulations 1997*

This item amends these Regulations so that a reference to HIC reads Chief Executive Officer of Medicare Australia.

Item 55 – Amendment of *Lands Acquisition Regulations 1989*

This item amends these Regulations to delete a reference to HIC, with the effect that Medicare Australia will not be exempt from requirements under the *Lands Acquisition Act 1989*.

Item 56 – Amendment of *Maternity Leave (Commonwealth Employees) Regulations*

This item amends these Regulations so that the name of the Regulations includes the year of the Regulations.

Item 57 – Amendment of *Maternity Leave (Commonwealth Employees) Regulations*

This item amends these Regulations to remove HIC from a list of “Prescribed Authorities — bodies corporate”, as employees of Medicare Australia will be able to access the benefits provided to employees of the Australian Public Service.

Item 58 – Amendment of *Medical Indemnity Regulations 2003*

This item amends these Regulations so that a reference to HIC refers to the Chief Executive Officer of Medicare Australia.

Items 59 and 60 – Amendments of *National Health (Pharmaceutical Benefits) Regulations 1960*

These items amend these Regulations so that references to HIC read Medicare Australia.

Item 61 – Amendment of *National Health (Pharmaceutical Benefits) Regulations 1960*

This item amends these Regulations so that a reference to HIC's Managing Director refers to the Chief Executive Officer of Medicare Australia.

Items 62 and 63 – Amendments of *National Health (Pharmaceutical Benefits) Regulations 1960*

These items amend these Regulations so that references to HIC read Medicare Australia.

Item 64 – Amendment of *Ombudsman Regulations 1977*

This item amends these Regulations so that a reference to HIC and an outdated reference to HIC's General Manager read Medicare Australia and Chief Executive Officer, respectively.

Items 65 and 66 – Amendments of *Privacy (Private Sector) Regulations 2001*

These items amend these Regulations so that a reference to HIC reads Medicare Australia, and the reference is moved into alphabetical order.

Item 67 – Amendment of *Proceeds of Crime Regulations 1987*

This item amends these Regulations so that a reference to HIC reads Medicare Australia, and the reference is moved into alphabetical order.

Item 68 – Amendment of *Public Works Committee Regulations 1969*

This item amends these Regulations to delete a reference to HIC, with the effect that Medicare Australia will not be exempt from the scrutiny of the Public Works Committee under the *Public Works Committee Act 1969*.

Item 69 – Amendment of *Superannuation Benefit (Interim Arrangement) (Continuous Service) Regulations*

This item amends these Regulations so that the name of the Regulations includes the year of the Regulations.

Items 70 and 71 – Amendments of *Superannuation Benefit (Interim Arrangement) (Continuous Service) Regulations*

These items amend these Regulations to enable persons employed in Medicare Australia on a regular relief basis to maintain continuity of qualifying service for the

interim benefit payable in certain circumstances under the *Superannuation (Productivity Benefit) Act 1988*. Appropriate punctuation is added to the previous paragraph to facilitate the addition of Medicare Australia to the list.

Consultation

The proposed commencement date was determined after consultation with both HIC and Centrelink (including the Centrelink and HIC Boards), a number of other policy Departments and their Ministers, and the Australian Public Service Commission.

The proposed amendments to the Regulations were agreed to after consultation with both HIC and Centrelink, and a number of other policy Departments and their Ministers.

The Office of Regulation Review was consulted during the preparation of these Regulations.

The Regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.