

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 294

Health Insurance Act 1973

Health Insurance Amendment Regulation 2012 (No. 4)

Subsection 133(1) of the *Health Insurance Act 1973* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 133(2) of the Act specifies that the manner of a referral of a patient to a consultant physician or specialist may be prescribed by regulations.

On 27 June 2012 the *Health Insurance Amendment (Professional Services Review) Act 2012* (the PSR Act) received the Royal Assent. The main purpose of the PSR Act is to improve the efficiency and scope of the PSR Scheme however the PSR Act also amended provisions of the Act relating to patient referrals to clarify those provisions.

Subsection 133(2) of the Act specifies that patient referrals to consultant physicians or specialists may be prescribed in manner contained in the regulations. Part 10 of Schedule 2 of the PSR Act repeals subsection 133(2) and replaces it with new section 132A. The provisions in new section 132A are similar to the repealed provisions, but allows for the Minister to make regulations dealing with referrals to any practitioner, not only consultant physicians or specialists. Whilst this is a wider power under the Act, there is no proposal to widen this power in the regulations.

Schedule 1 to the regulation contains consequential amendments to ensure that the *Health Insurance Regulations 1975* refer to the correct provision in the Act, which will be changed when the amendments in the PSR Act come into force on 27 December 2012.

The regulation does not impose any new requirements on health practitioners making referrals.

Details of the regulation are set out in the [Attachment](#).

The Act specifies no conditions which need to be met before the power to make the regulation may be exercised.

The regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The regulation commences on 27 December 2012.

Consultation

These changes are based on amendments to the *Health Insurance Act 1973* by the *Health Insurance Amendment (Professional Services Review) Act 2012* (the PSR Act). The PSR Act underwent an extensive consultation process. An exposure draft of the PSR Act was released

for consultation on 1 April 2010 and key professional bodies, such as the Australian Medical Association and Allied Health Professions Australia indicated their support of the Act.

Authority: Subsection 133(1) of the
Health Insurance Act 1973

ATTACHMENT**Details of the *Health Insurance Amendment Regulation 2012 (No. 4)*****Section 1 – Name of regulation**

This section provides for the regulation to be referred to as the *Health Insurance Amendment Regulation 2012 (No. 4)*.

Section 2 – Commencement

This section provides for the regulation to commence on 27 December 2012.

Section 3 – Amendment of *Health Insurance Regulations 1975*

This section amends the *Health Insurance Regulations 1975*.

Schedule 1 – Amendments**Item [1] – Regulation 29, heading**

This item substitutes the heading of regulation 29 and replaces it with a new heading that reflects the amendments that would be made to the regulation.

Item [2] – Subregulation 29(1)

This item substitutes subregulation 29(1) and replaces it with a new subregulation that replaces the reference to repealed section 133(2) to new section 132A.

Item [3] – Regulation 31, heading

This item substitutes the heading and replaces it with the new heading that better reflects the regulation.

Item [4] – Subregulation 31 (1)

This item omits reference to subregulations and clarifies the language of the regulation. This is a minor drafting change that does not impose any new requirements on any practitioners making referrals.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Health Insurance Amendment Regulation 2012 (No. 4)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The instrument amends the *Health Insurance Regulations 1975* (the Principal Regulations) to update a reference to a section in the *Health Insurance Act 1973* (the Act) that has been repealed by the *Health Insurance Amendment (Professional Services Review) Act 2012*.

Items 1-2 of Schedule 1 to the amending regulation corrects references and headings to section 133(2) in the Act that has been repealed by Part 10 of Schedule 2 of the PSR Act. These are minor consequential amendments that will not affect health practitioners in any additional manner.

Items 3-4 of Schedule 1 to the amending regulation provides drafting amendments. These amendments do not affect the operation of these provisions.

The amended regulation commences on 27 December 2012.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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