EXPLANATORY STATEMENT

Human Services (Medicare) (Designated Program Act) Specification 2011 (No. 1)

Background


The Amendment Act inserts a new section 43A (the “multiple secrecy provisions”) into the Medicare Act, with effect from 1 July. Section 43A sets out how secrecy laws apply in a situation where the Department of Human Services holds the same piece of information that it has obtained under two or more “designated program Acts”. Section 43A applies equally to information collected prior to 1 July 2011 and information obtained after 1 July 2011.

The effect of the multiple secrecy provisions is that where the Department of Human Services holds the same piece of information about a particular person under more than one program (such as family assistance and medicare), the Department is able to use and disclose that information if it complies with one of the secrecy provisions applicable to that information.

Further information on the operation of new section 43A can be found at pages 32-34 of the Revised Explanatory Memorandum to the Human Services Legislation Amendment Bill 2011.

A list of designated program Acts is set out in subsection 43A(3). In addition, an Act may be a designated program Act if it is specified in a legislative instrument made by the Minister for the purposes of paragraph 43A(3)(o).

The Human Services (Medicare) (Designated Program Act) Specification 2011 (No. 1) (the Specification) specifies the Australian Prudential Regulation Authority Act 1988 (APRA Act) as a designated program Act for the purposes of paragraph 43A(3)(o). Specification of this Act as a designated program Act avoids any legal uncertainty as to which set of secrecy provisions should apply to customer information that is protected by this Act and another Act that DHS delivers services under.

Since the Amendment Act received Royal Assent on 25 May 2011, subsection 4(1) of the Acts Interpretation Act 1901 allows the Minister to make the Specification under paragraph 43A(3)(o) prior to the commencement of section 43A.

DHS delivers the early release of superannuation benefits on compassionate grounds program (ROB program) on behalf of the Australian Prudential Regulation Authority (APRA). The ROB program is conducted under the Superannuation Industry
In the course of delivering the ROB program, DHS officers obtain information about customers that is protected information under section 56 of the APRA Act. DHS may already hold some of this customer information for the purposes of another program that DHS delivers. In many instances, this information would be protected by a different set of secrecy provisions that apply to DHS officers, such as the secrecy provisions in the Social Security (Administration) Act 1999. For example, one of the grounds on which a person can seek early access to their superannuation benefits is severe financial hardship, which requires that a person have been in receipt of a Commonwealth income support payment for at least 26 continuous weeks.

**Consultation**

The specification gives effect to Government policy on service delivery as enacted through the Amendment Act, by clarifying the secrecy regime that applies to certain programs delivered by the Department of Human Services. No public consultation in addition to that undertaken in connection with service delivery reforms and the Amendment Act was considered necessary.

The specification commences on 1 July 2011, at the same time as section 43A of the Medicare Act.

No statutory preconditions needed to be satisfied prior to the making of the Specification.