EXPLANATORY STATEMENT

Human Services (Medicare) (Designated Program Act) Specification 2011 (No. 2)

Background


The Amendment Act inserted a new section 43A (the “multiple secrecy provisions”) into the Medicare Act, with effect from 1 July 2011. Section 43A sets out how secrecy laws apply in a situation where the Department holds particular customer information in circumstances where, on their face, two or more different secrecy regimes apply to the use or disclose of that information by the Department. Section 43A applies equally to information collected by the Department prior to 1 July 2011 and to information collected on or 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) that have secrecy regimes, the Department is able to use and disclose that information if it complies with one of the secrecy regimes.

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.

Section 43A applies to secrecy regimes in “designated program Acts”. 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 Human Services for the purposes of paragraph 43A(3)(o).

The Human Services (Medicare) (Designated Program Act) Specification 2011 (No. 2) (the Specification) specifies the Taxation Administration Act 1953 (TAA) as a designated program Act for the purposes of paragraph 43A(3)(o).

The Australian Taxation Office (ATO) regularly discloses taxation information to the Chief Executive Medicare for the purpose of administering Part 2-2 and 6-4 of the Private Health Insurance Act 2007. Some of this taxation information is protected by on-disclosure restrictions in Division 355 of Schedule 1 of the TAA. This information is also protected by the secrecy provisions in the Private Health Insurance Act 2007. The specification of the TAA as a designated program Act for the purposes of paragraph 43A(3)(o) ensures that the Chief Executive Medicare and the Department are able to handle all customer information held for the purpose of the Private Health Insurance Act 2007 in accordance with the secrecy regime in that Act, including information disclosed by the ATO.
Consultation

No public consultation was undertaken in relation to the Specification as no consultation was considered necessary. The Specification makes a technical, machinery amendment to the law to provide certainty for the Chief Executive Medicare and employees of the Department in relation to the requirements for the handling of customer information. The Specification only affects the obligations of the Secretary of the Department, the Chief Executive Medicare and employees of the Department, not other parts of government or the community more generally.

The Specification commences on the day it is registered on the Federal Register of Legislative Instruments.

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