

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health

*Health Insurance Act 1973*

*Health Insurance (Medicare Compliance Shared Debt) Instrument 2019*

### **Authority**

Paragraph 129ACA(9)(c) of the *Health Insurance Act 1973* ('the Act') provides that the Minister may, by legislative instrument, prescribe a percentage of the recoverable amount due to a compliance debt under section 129ACA(1) of the Act that is recoverable from the secondary debtor or estate.

### **Purpose**

The *Health Insurance (Medicare Compliance Shared Debt) Instrument 2019* ('Instrument') prescribes that the default percentage of the recoverable amount to be recovered from the secondary debtor or estate under the Shared Debt Recovery Scheme ('SDRS') is 35 per cent. This amount reflects that the practitioner should take primary responsibility for ensuring that Medicare billing under their provider number is correct.

Under the SDRS, subsection 129ACA(2) of the Act provides for the making of a shared debt determination. The effect of making a shared debt determination is that Medicare benefits paid as a result of a false or misleading statement can be claimed in part from a 'secondary debtor' in addition to the 'primary debtor'.

Paragraph 129ACA(3)(b) of the Act provides that the shared debt determination must include the amount, referred to as the shared amount, equal to a percentage of the recoverable amount that is recoverable from the secondary debtor or estate. Subsection 129ACA(4) of the Act provides that the percentage determined by the Chief Executive Medicare ('CEM') for the purposes of paragraph 129ACA(3)(b) of the Act must be the percentage prescribed by the Minister under paragraph 129ACA(9)(c) of the Act, unless the CEM reasonably believes in all the circumstances that it is fair and reasonable that a different percentage be determined.

### **Background**

The SDRS in the Act commences on 1 July 2019 and acknowledges that where contractual or other arrangements exist between a health practitioner and an employer or organisation in relation to professional services, both the practitioner (known as the primary debtor) and the other person or entity (known as the secondary debtor) may be held responsible for the repayment of a compliance debt.

A secondary debtor is defined in paragraph 129ACA(2)(b) of the Act and includes an entity that employed or otherwise engaged the primary debtor to render professional services of the kind mentioned in paragraph 129ACA(1)(a), or an entity that had an arrangement or agreement with the primary debtor relating to professional services of that kind. In most circumstances it will be the person who employed or engaged the primary debtor. It is intended that the person who is granted a provider number continues to be held primarily responsible for professional services claimed in their name.

The aim of the SDRS is to apply a fairer and more reasonable approach to dealing with compliance debts due to the Commonwealth after an audit under the Act that were incurred as a result of incorrect organisational billing. The SDRS is designed to encourage practitioners and organisations to work together to minimise incorrect billing and promptly repay compliance debts.

### **Consultation**

The Department of Health undertook public consultation regarding whether 35 per cent was an appropriate default percentage to be recoverable from the secondary debtor under the SDRS. A consultation paper which addressed this issue in addition to other aspects of the SDRS was publicly released on 4 December 2018 and closed on 31 January 2019.

The Department of Health also met with representatives from key stakeholder groups, including State and Territory Health Departments, the Royal Australian College of General Practitioners and the Australian Medical Association to discuss the percentage of the recoverable amount that is recoverable from the secondary debtor or estate.

Stakeholders acknowledged the proposed default percentage and advised that the percentage to be recoverable from the secondary debtor under the SDRS in a particular case should take into consideration documents and submissions from each party.

The *Health Insurance (Medicare Compliance Shared Debt) Instrument 2019* is a legislative instrument for the purposes of the *Legislation Act 2003*.

The *Health Insurance (Medicare Compliance Shared Debt) Instrument 2019* commences on 1 July 2019.

The details of the *Health Insurance (Medicare Compliance Shared Debt) Instrument 2019* are set out in the Attachment.

Authority: Paragraph 129ACA(9)(c) of the *Health Insurance Act 1973*

**Details of the *Health Insurance (Medicare Compliance Shared Debt) Instrument 2019***

**Section 1 – Name of Instrument**

This section provides that the name of the Instrument is the *Health Insurance (Medicare Compliance Shared Debt) Instrument 2019*.

**Section 2 – Commencement**

This section provides that this Instrument commences on 1 July 2019.

**Section 3 – Authority**

This section provides that the Instrument is made under paragraph 129ACA(9)(c) of the *Health Insurance Act 1973*.

**Section 4 – Definition**

This section provides that *Act* means *Health Insurance Act 1973*.

**Section 5 – Percentage**

This section provides that for the purposes of paragraph 129ACA(9)(c) of the Act, the prescribed percentage of the recoverable amount that is recoverable from the secondary debtor or estate is 35 per cent.

## **Statement of Compatibility with Human Rights**

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

### ***Health Insurance (Medicare Compliance Shared Debt) Determination 2019***

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

### **Overview of the Legislative Instrument**

This Legislative Instrument is made pursuant to paragraph 129ACA(9)(c) of the *Health Insurance Act 1973* and determines that where a false or misleading statement has been made and the Chief Executive Medicare determines that the compliance debt should be shared between the practitioner (the primary debtor) and another person or entity (the secondary debtor), the default percentage of the recoverable amount that is recoverable from the secondary debtor or estate is 35 per cent.

### **Human rights implications**

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

### **Conclusion**

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

**Greg Hunt**  
**Minister for Health**