

# Letter of Transmittal

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## Professional Services Review

Director

Dr John Holmes

The Hon. Tony Abbott MHR  
Minister for Health and Ageing  
Parliament House  
Canberra ACT 2600

Dear Minister

In accordance with subsection 63(1) of the Public Service Act 1999 and section 106ZQ of the Health Insurance Act 1973, I provide you with the 2003-2004 Annual Report of Professional Services Review for your presentation to Parliament.

This report has been prepared in accordance with the Requirements for Annual Reports approved on behalf of the parliament by the joint Committee of Public Accounts and Audit under section 63 of the Public Service Act 1999.

Yours sincerely

**John Holmes**

5 October 2004

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# Director's report

This is my tenth and final report as Director of Professional Services Review. It ranges over not only the past years activities but also events covered in previous reports which have shaped the current structure, form and processes of this accountability process for the health care funding arrangements in Australia.

It is worth setting out at the beginning some broad statistics on the total work carried out by PSR over the period 1994–2004 with 442 referrals received, 112 referrals dismissed by the Director, 58 agreements negotiated, 181 committees established, 57 referrals where no further action was possible, 98 final determinations issued, 31 appeals to PSR Tribunals, 44 appeals by individual practitioners to the Federal Court with many awaiting judgement.

The past year, as outlined in this report, has been a period of steady work with a considerable amount of committee activity both in hearings and in report preparation. As in previous years, this activity was modified by responses to legal decisions in cases where the process was challenged. It has been heartening that the results of most court and tribunal decisions this year have been in favour of the Professional Services Review (PSR). I note again this year, two committees arrived at findings that the practitioners had not engaged in inappropriate practice.

The decision in July 2003 in the *Daniel* matter did pose some problems initially but many of these were addressed and resolved in subsequent Court decisions. These cases are outlined later in the report. It is salutary to realise that a simple administrative oversight can lead to potentially serious effects beyond those of the original case.

All recent PSR Tribunal and Federal Court decisions and their implications are discussed in this report. In taking a broader view of the past decade, the various legislative amendments made to the scheme in response to problems identified by the Courts over the years has ensured the PSR process has become increasingly robust.

The major court decisions affecting the scheme since its inception in 1994 are the *Yung* and *Pradhan* cases. *Yung* was decided by the Full Court of the Federal Court on 15 May 1998. This led to a major review conducted by a Review Committee comprising the Australian Medical Association (as chair), the Department of Health and Aged Care, the Health Insurance Commission and the Director of Professional Services Review. The report of the Review Committee led to significant amendments to the scheme from 1 August 1999.

Subsequently, the *Pradhan* decision in the Federal Court of Australia in November 2001 led to further amendments clarifying the intention of the earlier Review Committee and addressing other concerns of the court. These decisions have been fully described in previous reports and can be found on the PSR web site at <[www.psr.gov.au](http://www.psr.gov.au)>.

Most recent court decisions have been supportive of the PSR scheme and the manner in which it is being implemented. The actions and decisions of the Director and PSR committees continue to be challenged but recent decisions in the Federal Court are extremely supportive. It is interesting and instructive to note that overseas experience with similar schemes is that it takes some seven or eight years from initiation of such schemes for them to be understood and accepted by the courts.

Schemes such as PSR cannot exist and prosper without the commitment of all those involved. Members of the PSR Panel who serve on committees are responsible for the success and professional acceptance of this scheme and their contribution, which goes largely unrewarded, cannot be underestimated. Without this involvement of clinicians in active practice the scheme would have difficulty being effective and indeed surviving.

I thank each and every Panel member for their involvement; acceptance of the difficulties faced, and their commitment to ensuring proper and professional judgments are made on their colleagues. It is extremely pleasing to be able to advise professional gatherings that, in 10 years, no member of the PSR Panel has raised a significant concern as to the fairness, balance and professionalism given by colleagues to a difficult and sensitive responsibility. There continues to be strong support from the various professional associations.

The committees and myself are well supported by a committed PSR staff who make a valuable contribution to the effectiveness of the process and their efforts are greatly appreciated. It is always pleasing to receive laudatory comments on the efforts and performance of the staff who sometimes have to deal with difficult and sensitive situations. In the past year we have reviewed our secretariat process, looking for improvements. Within the next two months we will be relocating to new premises and the office design should lead to improved efficiency and staff satisfaction.

With the amended legislation, more emphasis is placed on the review process following a request from the Health Insurance Commission with respect to a practitioner's conduct. Clinical records for a random sample of the services under question are examined by consultant clinicians as the legislation allows. The PSR is fortunate in being able to use the services of experienced practitioners in a range of disciplines for this purpose and their reports are important in assessing the Commission's request. Their involvement and interest is appreciated and highly valued. I note with regret the death in May of Dr John Dawson, a very experienced general practitioner, who assisted me for a number of years in such examinations.

This report notes receipt of 38 requests for review from the Health Insurance Commission in the past year. The practitioners whose conduct has been referred for review include consultant physicians, specialists, dermatologists, optometrists and chiropractors. Receipt of a request for review from the Commission leads to an examination of the reasons the Commission gave, the statistical data and any other relevant information before a decision to undertake a review is made.

Increasingly more practitioners are interested in entering into a section 92 agreement under the *Health Insurance Act 1973* often on advice from their legal counsel. In this event the practitioner concedes inappropriate practice and accepts a sanction as provided in the Act. Often these discussions involve the practitioner and his or her legal advisers and myself and usually a PSR Deputy Director. Agreements must be ratified by the Determining Authority and, should there be a second adverse finding, count as an adverse finding with respect to a possible referral to a Medicare Participation Review Committee. This is a valuable component of the legislative arrangements.

The past decade has shown this to be a highly litigious area: there have been over 60 attacks on the integrity of the scheme and process (from a total of 442 cases). The few losses we receive in Court decisions receive considerable publicity but do enable modification of the legislation and process so that over the years the scheme has become legally stronger. Our legal advisers in Canberra, Minter Ellison, and their interstate colleagues continue to provide first-class legal advice and support to both myself and committees engaged in hearings. I also express appreciation for Counsel who have appeared for us in the various legal forums. Our legal teams have always kept us fully informed on the issues being argued and the prospects and progress of the litigation.

Training workshops for members have not been held over the past year but are scheduled for the near future. The work undertaken at previous training workshops has continued to prove its value. It is interesting to note that the Council of Administrative

Tribunals is working towards educative programs for Tribunal members. A couple of Australian medical registration boards have expressed interest in our training workshops and at least one has undertaken a similar exercise. Panel members have over the years developed a respect for the legal profession and the court process. A measure of the effectiveness of this training is that recent legal challenges have been based on interpretation of the legislation and not on deficiencies in hearing or PSR procedural processes.

Regular liaison with groups involved in the Australian health care environment who relate to the PSR scheme has continued. These groups include the state and territory medical and other professional regulatory boards and the numerous professional colleges and craft groups. The scheme applies to optometrists, dentists, physiotherapists, chiropractors and podiatrists as well as to medical practitioners.

In October 2003 I had the pleasure of being invited to present a paper on the PSR scheme at the Annual Meeting of Australian and New Zealand Medical Boards, hosted by the Medical Board of the Australian Capital Territory and held in Canberra. Time has overcome any difficulties Medical Boards had with PSR activities, and there is now full understanding and acceptance of referrals from the Director, whether these are initiated by a Committee or in the Director's review process.

The presentation I gave on the PSR scheme at the 6th World Conference of Medical Regulatory Bodies, in Dublin in April 2003, was well received and elicited considerable interest from jurisdictions grappling with similar problems. Development of the scheme over the years in response to Court decisions was understood and appreciated.

The subsequent visit to the Annual Meeting of the Federation of State Medical Boards of the United States, in Washington, allowed further discussions with bodies with similar responsibilities. The meeting with officials of the Office of Inspector General of the Department of Health and Human Services showed both the similarities and the differences of dealing with like problems in systems of vastly different scale. It is readily apparent that the Office of Inspector General also deals with frankly criminal behaviour to an extent not evident in Australia.

Final Determinations made following an adverse finding by a PSR committee generally contain directions that the practitioner be reprimanded and/or counselled by the Director or the Director's nominee. Throughout the year I have undertaken a number of formal reprimands and counsellings and it has again proven to be a most valuable exercise and I have generally been pleased by the way in which counselling has been received.

The impression following most counsellings has been that the hearing process and judgment by a peer group has been a salutary and educational experience, albeit stressful and unwelcome. I believe it unlikely that most counselled practitioners will again be the subject of an adverse finding. Nonetheless, I am aware that some practitioners will not learn from this experience and this report details cases in which this has occurred. The effect of a second finding, leading to a mandatory referral to a Medicare Participation Review Committee, is stressed at these counsellings.

As mentioned in my report of last year, I am concerned that a number of younger practitioners have had adverse findings recorded against them and strongly suspect they have been badly advised by their early mentors in professional practice. Indeed, some of these mentors themselves have been the subjects of adverse findings.

The advice, based on case experience, I have given in a number of previous annual reports remains valid and is worth repeating. That is:

- Good record keeping is a vital element of defence in any accountability process as well as being crucial for good patient care; this is an essential element of practice under the legislation and a formal requirement of many Medical Boards. The Medical Defence Organisations and their legal advisers regularly give similar advice. A finding is that some practitioners fail to keep even the most basic clinical notes recording their activities in practice.
- Advice given by Health Insurance Commission medical advisers raising perceived concerns should alert practitioners to review their conduct and even seek advice from colleagues and professional associations. The Medical Advisers are available and willing to answer queries regarding Medicare and interpretation of Medicare Benefit Schedule items. It is wise to document such advice.
- It continues to be my strong belief that medicine is a collegiate profession and professional associations and colleagues are always pleased to offer guidance. I recommend that practitioners keep in regular contact with these associations.
- A number of practitioners have come to PSR notice due to inappropriate delegation—to colleagues, employers, management or staff—of responsibility for professional and practice management decisions. Other practitioners have claimed to be unaware of changes to legislative requirements affecting Medicare. It is a practitioner responsibility and they should be aware peers have not accepted such a defence.

Based on the experience of the past year I would add to the above the advice that practitioners should read the Medicare Benefits

Schedule Book when it is received each year in November and especially the Notes For Guidance. Item descriptors change and other changes occur in interpretation or requirements of the Medicare arrangements which are highlighted in the Medicare Benefits Schedule Book. Frequently such changes are not noticed by practitioners until a PSR referral.

The past year has been successful with continuous modification to and improvement of the framework by experience and consideration of legal decisions. It has also become clear that practitioners, as a result of PSR outcomes and publicity, are significantly modifying inappropriate professional conduct.

There will always be a need for an effective, efficient accountability process in the Australian funding system. I am convinced this is best based on a peer review model. The PSR scheme continues to contribute to ensuring the Australian public receives the quality professional health care it deserves. The intent of Parliament, now expressed in the legislation, that the PSR scheme not only protects Commonwealth revenue but also Australian patients against the risks inherent in inappropriate practice, is being fulfilled as shown by the outcomes evident in the first decade of its existence.

I have enjoyed the opportunity of being involved in establishing and developing this unique and valuable scheme. I again express my appreciation for all those involved over the years, such as departmental officers in both the policy area and in administrative support, the Health Insurance Commission staff who respond to requests for further information and the Deputy Directors and Panel members and a wonderful staff. I am sure my successor will enjoy and appreciate a similar level of support.

*John Holmes*  
Director

# 2003–04

## Key events at a glance

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### Date Activity

|                |   |
|----------------|---|
| 28 July        | Dr Steve Daniel, Victoria—The Federal Court upheld an application by Dr Daniel.   |
| 21 August      | Dr Paul David Crowley, Queensland—The Full Court of the Federal Court dismissed Dr Crowley's appeal.  |
| 22 August      | Dr Peter Thomas Tisdall, Victoria—At the Hearing of Full Court of the Federal Court Dr Tisdall consented to the appeal being dismissed.                         |
| 3–5 September  | 3rd Asia Pacific Forum on Quality Improvement in Health Care held in New Zealand attended by the Director.  |
| 21–22 November | Australian and New Zealand Medical Boards and Councils' Annual Seminar held in Canberra.  |
| 27–28 November | The Institute of Public Administration Australia National Conference—Vision 2020: Government for the future held in Brisbane attended by the Executive Officer. |
| 6 February     | Dr Steve Daniel, Victoria—The Full Court of the Federal Court dismissed PSR's appeal.   |
| 13 February    | Dr Paul David Crowley, Queensland—The High Court dismissed a special leave application made by Dr Crowley.  |
| 25–26 March    | Deputy Directors' conference held in Victoria.  |
| 7 April        | Dr Il Song Lee, New South Wales—The Full Court of the Federal Court dismissed an appeal by Dr Lee and ordered that he pay respondent's costs.                   |
| 19 April       | Dr Jack Freeman, Victoria—The Federal Court dismissed an application by Dr Freeman and ordered him to pay respondent's costs.                                   |
| 21–24 April    | 6th International Conference on Medical Regulation held in Dublin attended by the Director.   |

|                |   |
|----------------|---|
| 28 April       | Dr Paul David Crowley, Queensland—The Federal Court refused a request by Dr Crowley for an injunction to stop Committee proceedings.                          |
| 29 April–1 May | Annual Meeting of the Federation of State Medical Boards of the United States held in Arlington, Virginia attended by the Director and the Executive Officer. |
| 10–11 June     | 7th Annual Australian Institute of Judicial Administration Tribunals Conference held in Brisbane attended by the Director and several staff.                  |
| 29 June        | Workshop for PSR Secretariat and Review staff held in Canberra.   |

# Agency overview

The object of the Professional Services Review (PSR) scheme is to protect the integrity of the Medicare and Pharmaceutical Benefits Schemes by:

- protecting patients and the community in general from the risks associated with inappropriate practice
- protecting the Commonwealth from having to meet the cost of services provided as a result of inappropriate practice.

The role and function of PSR is to administer Part VAA of the *Health Insurance Act 1973* (the Act). The current scheme, effective 1 January 2003, is an avenue for review and investigation of cases of suspected inappropriate practice by practitioners who render or initiate services attracting a Medicare benefit or who prescribe under the Pharmaceutical Benefits Scheme (see Appendix 3). After undertaking a review, the Director must decide to either take no further action, or provide the practitioner with a written report and invite submissions on any further action.

After time for submissions, the Director must:

- decide to take no further action
- enter into an agreement, or
- establish and make a referral to a peer review committee.

## No further action

Where the Director decides to take no further action, the Director writes to the person under review informing them of the outcome of the review.

## Agreement

If the person under review enters into an agreement with the Director, a formal document is drawn up for signature by both parties and given to the Determining Authority to decide whether or not ratification is appropriate.

## Peer review

Where the Director determines the conduct of the person under review needs further investigation, a PSR committee is established. The committee comprises members drawn from a panel appointed by the Minister for Health and Ageing. The committee conducts a hearing where the person under review can provide both oral and written evidence in support of their case. The Act allows for them to be accompanied by a lawyer or another adviser but limits a lawyer's role to providing advice to the person under review, addressing the committee on questions of law and making a final address on the merits of the matter. After considering all the evidence and taking into account any submissions received, the committee produces a draft report containing findings on the conduct of the person under review. After the person under review has been given time to make submissions on the draft report, a final report is forwarded to the Determining Authority.

## Determining Authority

In cases where the committee finds that the person under review has engaged in inappropriate practice the Determining Authority must invite written submissions on any sanctions that may be applied, issue a draft determination, seek comments from the person under review, and issue a final determination containing sanctions.

When a final determination comes into effect the Director can publish certain details, including practitioners' names and addresses, profession or specialty, the nature of the unacceptable conduct and the sanctions imposed.

## Federal Court

At any stage in the process the person under review may seek judicial review in the Federal Court.

## Natural justice

There is strong process of natural justice throughout the PSR scheme that was further consolidated by the 2002 amendments to the Act.

## Legislation—August 1999 to December 2002

The essential differences under the post 1 August 1999 to 31 December 2002 legislation is as follows:

- the Health Insurance Commission (the Commission) referred a person to the Director for investigation
- following an investigation, the Director could dismiss a referral
- the Director was not required, following an investigation, to give a person a notice of intention to refer the person to a committee
- the Determining Authority was not required to seek submissions from a person before making a draft determination.

## Legislation—pre 1 August 1999

The essential differences under the pre 1 August 1999 legislation are as follows:

- the Director did not have the same powers of investigation
- a Determining Officer determined the sanctions
- the person under review could take their case to a Professional Services Review Tribunal after the sanctions were established.

As at 30 June 2004, there were four pre 1 August 1999 cases awaiting final determinations or Tribunal hearings.

## Our vision

As an independent authority, PSR contributes to ensuring access through Medicare to cost effective medical services, medicines and health care for all Australians.

## Our mission

Examination of health practitioners' conduct to ascertain whether or not practitioners have practiced inappropriately in relation to services which attract Medicare benefits or have prescribed inappropriately under the Pharmaceutical Benefits Scheme.

## Our values

In doing our job, all members of PSR will:

- act with fairness, consistency, impartiality and integrity
- demonstrate dedication and commitment
- act with professionalism
- value and respect each other and work as a team
- show timeliness.

## Our strategies

The strategies we employ to achieve our mission and values are to:

- review requests expeditiously and effectively to enable courses of action to be decided
- provide support services to PSR committees to enable them to carry out the PSR mission
- provide support to the Determining Authority to enable it to function
- manage relationships with stakeholders to maintain and enhance credibility of, and provide information about, the PSR scheme
- provide effective and efficient human resource management, financial management and corporate planning services

- ensure PSR legislation remains relevant.

## Our relationships

The PSR has strong working relationships with the Health Insurance Commission, the Commonwealth Department of Health and Ageing, the Professional Services Review Tribunals, and health registration boards nationwide.

### Health Insurance Commission

Professional Services Review’s workload is dependent on requests sent by the Commission. The Commission, which administers the Medicare and Pharmaceutical Benefits Schemes, can request the Director to review the provision of services by a practitioner for suspected inappropriate practice.

Cases of possible fraud identified during the PSR process are referred back to the Commission for action.

### Department of Health and Ageing

The Department of Health and Ageing has policy responsibility for providing advice to the Minister on development and maintenance of the PSR scheme. The Department liaises with stakeholders in the scheme and performs the broader tasks of policy review and development of legislation.

A senior officer of the Department—the First Assistant Secretary, Medical and Pharmaceutical Services Division—has been appointed, by the Minister, to the position of Determining Officer for cases referred to PSR prior to 1 August 1999. Once all the referrals made before that date have been completed the Determining Officer role will cease to function. (The Determining Authority has an expanded role to that of the Determining Officer for cases referred after 1 August 1999.)

### Professional Services Review Tribunals

The *Health Insurance Amendment (Professional Services Review) Act 1999* preserves the right of practitioners to seek a review of determinations made by the Determining Officer in relation to matters referred by the Commission before that legislation came into effect in August 1999. Once all the referrals made before 1 August 1999 have been completed, the Tribunals will cease to function. The Tribunals are not, however, empowered to review decisions of the Determining Authority, which took over the role of the Determining Officer for cases referred after August 1999.

### Health Registration Boards

The Act allows PSR to refer persons under review to appropriate bodies when a significant threat to the life or health of a patient is identified or where the person under review has failed to comply with professional standards.

# Report on performance

## Outcome and output structure

PSR contributes to the Health and Ageing Portfolio Outcome 2—Access to Medicare. The PSR scheme is funded to ensure that any suspected cases of inappropriate practice referred by the Commission are investigated and, if necessary, reviewed by a committee of the practitioner’s peers. Regulatory activity is the only output for PSR.

PSR Output specified in the Portfolio Budget Statement 2003–04:

| Output Groups   | Performance Measures  |
|---|---|
| <p><b>1 Program Management</b></p> <p>Examination of health practitioners’ conduct to ascertain whether or not the practitioner has practiced inappropriately</p> | <p><b>Quality:</b> Court challenges made in regard to committee processes, findings and Determining Authority determinations are resolved successfully.</p> |

|  |   |
|--|---|
| in relation to services which attract Medicare or pharmaceutical benefits. | <p>Rate of re-referral against a target of zero.</p> <p><b>Quantity:</b> Approximately 50 referrals received from the Commission.</p> <p>Approximately 80 referrals finalised.</p> <p><b>Price:</b> \$7.613 million</p> |
|--|---|

## Performance assessment

Table 1—2003–04 Achievements at a glance

|   | Target | Outcome |
|---|--------|---------|
| <b>Court challenges resolved successfully</b> | 100%   | 75%     |
| <b>Rate of re-referral</b>                    | 0      | 4       |
| <b>Referrals from the Commission</b>          | 50     | 38      |
| <b>Referrals finalised</b>                    | 80     | 46      |

\* Six of eight decisions were made in PSR's favour. The two against PSR were from the same practitioner (*Daniel*) first in the Federal Court and then in the Full Court of the Federal Court.

### Court challenges

The backlog of cases, held up because of *Pradhan v Holmes*, continued to be reduced following passage of the *Health Insurance Amendment (Professional Services Review and Other Matters) Act 2002* which came into effect on 1 January 2003. As at 30 June 2004 there were 23 cases yet to be finalised by the Federal Court.

This year, the dominating case, with adverse affects on the PSR scheme, was that of *Daniel v Kelly* handed down firstly by Ryan J of the Federal Court on 28 July 2003 and then in a Full Federal Court appeal decision on 6 February 2004. These decisions delayed all cases that had been referred for a prescribed pattern of service—the so called '80/20 cases'. The major difficulties to the PSR scheme arising from these decisions were modified, firstly in a decision by North J in *Freeman* (Federal Court 19 April 2004) and then confirmed in a series of decisions in *Crowley* (North J, 18 December 2002; Full Federal Court, 21 August 2003; and the High Court, 13 February 2004). All these cases are reported later in this chapter under Federal Court and Full Court of the Federal Court cases and High Court cases.

Appeals to the Federal Court were lodged in five referrals concerning '80/20' cases based on the original *Daniel* decision. The vast majority of these remain unheard by the Court. In virtually all cases, the underlying appeal point is the claim that committees had incorrectly interpreted the issues concerning what constitutes 'exceptional circumstances'.

Table 2—Court actions

|  | 2003–04 | 2002–03 |
|--|---------|---------|
|  |         |         |

|   |    |     |
|---|----|-----|
| <b>Court applications</b>   | 13 | 22  |
| <b>Review</b>   | 0  | nsa |
| <b>Committees</b>   | 6  | nsa |
| <b>Determining Officer</b>  | 0  | nsa |
| <b>Professional Services Review Tribunal</b>                                    | 0  | nsa |
| <b>Determining Authority</b>  | 7  | nsa |
| <b>Federal Court hearings held</b>  | 0  | 9   |
| <b>Full Federal Court hearings held</b>   | 3  | 5   |
| <b>Federal Court decisions handed down in favour of the person under review</b> | 2  | 1   |
| <b>Federal Court decisions handed down in favour of PSR</b>                     | 5  | 9   |
| <b>High Court applications by the person under review</b>                       | 1  | 1   |
| <b>High Court decisions in favour of the person under review</b>                | 0  | 0   |
| <b>High Court decisions in favour of PSR</b>                                    | 1  | 2   |

<sup>a</sup> This figure is the total number of Court applications for 2002–03 and it has not been broken down into the same categories reported on this year.

<sup>b</sup> Both these decisions were from the same practitioner (*Daniel*) first in the Federal Court and then in the Full Court of the Federal Court

<sup>c</sup> One decision was in favour of PSR; the other application was withdrawn.

nsa = No statistics available

## Re-referrals

### *Re-referral case 1*

The Commission referred this practitioner to the Director for the fourth time in November 2003 for having a high volume of rendered services (21 242), high daily servicing and high volume of prescribing under the Pharmaceutical Benefits Scheme (PBS) (36 039 items). After reviewing the case, the Director has established a committee to further investigate the practitioner's conduct.

In September 1997, the Commission first referred this practitioner to the Director for having a high volume of rendered services (27 700), a high average number of services per patient (6.35) and a high level of prescribing (35 000 pharmaceutical items to a patient base of 4300). The Director established a committee in February 1999 to investigate the practitioner. The committee found

that the practitioner had practiced inappropriately. The practitioner challenged these findings in the Federal Court but was unsuccessful and the PSR is currently pursuing costs.

The Determining Officer made a final determination directing the practitioner be reprimanded, counselled, repay Medicare benefits and be fully disqualified for one year and partially disqualified from services in group A1 of the Medical Benefits Scheme (MBS) for two years. The practitioner has requested a review by the Professional Services Review Tribunal.

The practitioner was referred for a second time in December 2001 for having rendered 80 or more professional attendances on 66 days in an eight-month period in 2000. The Director established a committee in February 2002 to further investigate the practitioner's conduct. The committee found there were no exceptional circumstances involved and that the practitioner had engaged in inappropriate practice. The practitioner appealed the committee finding to the Federal Court and is still awaiting a hearing.

The Commission referred this practitioner to the Director for the third time in December 2002 for having rendered 80 or more professional attendances on 23 days in an eight-month period in 2001. The Director established a committee to investigate the practitioner. The committee held a hearing and the report is being prepared.

#### *Re-referral case 2*

The Commission referred this practitioner to the Director for a second time in January 2004 for having a high volume of rendered services (19 769), per patient (average of 7.21), multiple servicing and high volume of prescribing under the PBS (11 881 items). The Director has established a committee to further investigate the practitioner's conduct.

The Commission first referred this practitioner to the Director in September 2000 for having a high volume of rendered services (16 394) and high daily servicing. The Director undertook a review and after meeting with the practitioner to discuss his findings, determined that there was insufficient grounds on which a committee could reasonably find that inappropriate practice had occurred. Therefore, the referral was dismissed under section 91 of the Act.

#### *Re-referral case 3*

The Commission referred this practitioner to the Director for a second time in June 2004 for having a high volume of rendered services (14 125), high daily servicing and high volume of prescribing under the PBS (13 313 items). The Director is currently undertaking a review.

The Commission first referred this practitioner to the Director in February 1997 for having a high volume of rendered services (18 007). The Director established a committee in April 1997 to investigate the practitioner. The committee found that the practitioner had practiced inappropriately. The Determining Officer made a final determination directing that the practitioner be counselled. The practitioner requested a review of the determination by the Professional Services Review Tribunal but subsequently withdrew the request. The final determination became effective in March 2000.

#### *Re-referral case 4*

The Commission referred this practitioner to the Director for a second time in June 2004 for a high volume of rendered services (16 622), high daily servicing, rendering and itemisation of a number of procedural services, such as electrocardiography, burns, wound repair, tumours, basal cell carcinomas and squamous cell carcinomas, removal of foreign body from cornea and sclera and fractures items.

The Director is currently undertaking a review.

The Commission first referred this practitioner to the Director in February 1997 for having a high volume of rendered services (20 680) and high initiation of pathology (7292 services). The Director established a committee in April 1997 to investigate the practitioner and it found that the practitioner had engaged in inappropriate practice. The Determining Officer made a final determination directing that the practitioner be reprimanded, counselled, repay Medicare benefits and undertake a period of disqualification. The final determination became effective in early 2001.

### **Referrals from the Health Insurance Commission**

The Commission sent 38 referrals to the PSR this year. After conducting a review, the Director dismissed 20 referrals as he considered there would be insufficient grounds on which a committee could reasonably find the practitioner had engaged in inappropriate practice. The Director negotiated 14 agreements with practitioners where he was not satisfied a committee would not find the practitioner had engaged in inappropriate practice. The Determining Authority ratified seven agreements and a further

seven were still under consideration. Another six cases were sent to committees for further examination (see Table 3).

For those referrals the Director dismissed, it took an average of 211 days to carry out the investigation and an average of 247 days to investigate a referral that ended with a negotiated agreement (both against a legislative timeframe of 13 months for completion).

### Referrals to Committees

The Director sent six referrals to committees during the year (see Table 4). Thirty-two committees reported to the Determining Authority and two to the Determining Officer. There were 26 cases in various stages of the process at the time of reporting.

With the exception of the ‘prescribed pattern of services’ cases before committees during the year, most committees have used a sampling method to help quantify levels of inappropriate practice and allow for extrapolation of repayment should the Determining Authority choose this as a sanction.

Committees have suspended activity in six referrals where the practitioners have appealed to the Federal Court

The average time taken for the 32 committees to report to the Determining Authority was 532 days. Many committees were required to suspend hearing activity as a result of either the *Pradhan* or *Daniel* decisions. An average time to report is not available for the two cases sent to the Determining Officer because they were in train prior to the inception of PSR’s database.

Table 3—Referrals from the Commission

|  | 2003–04 | 2002–03 |
|--|---------|---------|
| <b>Referrals received from the Commission</b>                | 38      | 52      |
| <b>Referrals dismissed</b>                                   | 20      | 18      |
| <b>Agreements negotiated</b>                                 | 14      | 21      |
| <b>Referrals withdrawn or lapsed</b>                         | 1       | 1       |
| <b>Re-referrals</b>  | 4       | 8       |
| <b>Committees established</b>                                | 6       | 17      |
| <b>Referrals to medical boards initiated by the Director</b> | 0       | 1       |
| <b>Disqualifications from Medicare</b>                       | 0       | 1       |
| <b>Suspected fraud</b>                                       | 0       | 0       |

<sup>a</sup> Disqualified in January 2003 for failing to produce medical records with the practitioner remaining disqualified at the time of reporting.

Table 4—Referrals to committees

|  | 2003–04 | 2002–03 |
|--|---------|---------|
|  |         |         |

|  |    |     |
|--|----|-----|
| <b>Referrals sent to committees</b>                              | 6  | 17  |
| <b>Committee sessions held</b>                                   | 70 | 101 |
| <b>Reports being drafted as at 30 June 2004</b>                  | 9  | 46  |
| <b>Draft reports with person under review as at 30 June 2004</b> | 12 | nsa |
| <b>Submissions received on draft reports</b>                     | 33 | nsa |
| <b>Final reports with person under review as at 30 June 2004</b> | 5  | nsa |
| <b>Final reports sent to the Determining Authority</b>           | 32 | 18  |
| <b>Final reports sent to the Determining Officer</b>             | 2  | nsa |
| <b>Adverse findings</b>  | 37 | 17  |
| <b>Practitioner cleared</b>                                      | 2  | 1   |
| <b>Investigation impossible</b>                                  | 2  | nsa |
| <b>Hearings in progress</b>                                      | 1  | 17  |
| <b>Referrals to medical boards initiated by committees</b>       | 13 | 4   |
| <b>Disqualifications from Medicare</b>                           | 0  | 0   |
| <b>Suspected fraud</b>   | 0  | 0   |

<sup>a</sup>Includes teleconferences, meetings and sittings.

nsa = No statistics available

### Determining Officer

The Determining Officer's role applies to all cases referred by the Commission before 1 August 1999. (For cases referred after that date, the Determining Authority takes the role.) Currently the Determining Officer position is held by the First Assistant Secretary, Medical and Pharmaceutical Services Division in the Department of Health and Ageing. The Determining Officer makes determinations in respect of practitioners who have been found, by a committee of their peers, to have engaged in

inappropriate practice.

In making a determination, one or more of the directions specified in section 106U of the Act is applied. These include:

- reprimanding and/or counselling by the Director or his nominee
- repaying to the Commonwealth the whole or part of the Medicare benefit paid for services in connection with which the practitioner was found to have engaged in inappropriate practice
- full or partial disqualification from Medicare for periods of up to three years.

During the year, the Determining Officer received the last of the committee reports relating to referrals made by the Commission prior to 1 August 1999. The Determining Officer issued seven final determinations in relation to committee reports (see Table 5). Directions in respect of the final determinations included a total repayment of \$315 520.90.

*Table 5—Determining Officer cases*

|   | 2003–04 | 2002–03 |
|---|---------|---------|
| <b>Committee reports received</b>         | 2       | 5       |
| <b>Draft determinations issued</b>        | 4       | 4       |
| <b>Final determinations issued</b>        | 7       | 1       |
| <b>Request for review to PSR Tribunal</b> | 4       | 0       |

### Professional Services Review Tribunal

Practitioners, about whom the Determining Officer has made a final determination, may ask the Minister for Health and Ageing to refer the determination to a Tribunal for review. A Tribunal comprises a President, who is a former judicial office holder, and two members of the same profession as the person under review. Proceedings before a Tribunal are conducted with as little formality and legal technicality as a proper consideration of the matter permits. Unlike proceedings before committees, the person under review may be legally represented.

PSR Tribunals are not empowered to review decisions of the Determining Authority, which takes over the role of the Determining Officer for cases referred after 1 August 1999.

In the year, the Minister received four requests for review of a final determination. While the Tribunal conducted hearings in all four matters, two cases were resolved. In one case the Tribunal affirmed the final determination; in the other, the practitioner withdrew the request for review after three days of hearing. Decisions by the PSR Tribunal in the remaining two cases were pending. These cases are discussed in full later in this chapter.

There are no more cases able to be appealed to a Tribunal.

### Determining Authority

Forty-seven cases were sent to the Determining Authority this year. All seven agreements negotiated between the Director and the practitioners were ratified. Eighteen final determinations were issued from the findings in committee reports (see Table 7).

The Determining Authority has suspended activity on 16 committee reports pending appeals by the practitioners to the Federal Court.

Table 6—Professional Services Review Tribunal cases

|   | 2003–04 | 2002–03 |
|---|---------|---------|
| <b>Requests for review received</b>                               | 4       | 0       |
| <b>Hearings held</b>  | 4       | 1       |
| <b>Decisions handed down in favour of the person under review</b> | 0       | 0       |
| <b>Decisions handed down in favour of PSR</b>                     | 1       | 2       |
| <b>Appeal withdrawn</b>   | 1       | 0       |

<sup>a</sup> The decisions for two of these cases were handed down on 1 July 2004—one was affirmed and one modified.

Table 7—Determining Authority cases

|   | 2003–04 | 2002–03 |
|---|---------|---------|
| <b>Negotiated agreements received</b>     | 7       | 21      |
| <b>Negotiated agreements ratified</b>     | 7       | 21      |
| <b>Negotiated agreements not ratified</b> | 0       | 0       |
| <b>Committee reports received</b>         | 33      | 15      |
| <b>Final determinations issued</b>        | 18      | 8       |
| <b>Effective final determinations</b>     | 11      | 0       |
| <b>Medical Board referrals</b>            | 1       | 0       |

The Determining Authority took an average of 76 days to issue a draft determination and another 134 days to issue the final determination. This is against a legislated timeframe of one month for a draft determination and 28 days for a final determination (including the 14 days for the practitioner to make submissions). All time limits on the Determining Authority have an exemption clause.

### Agreements

The seven negotiated agreements were ratified in an average of 18 days against a legislated timeframe of one month.

Sanctions agreed as part of the negotiations were that:

- all seven practitioners be reprimanded
- one practitioner was fully disqualified from Medicare for six weeks
- five practitioners to make repayments totalling \$122 500 (from \$12 500 to \$50 000 and averaging \$24 500 per agreement).

### Final determinations

When a practitioner has had two effective final determinations the Director must provide a written notice to the Medicare Participation Review Committee. Pursuant to section 106X of the Act the Director wrote to the Chairperson of the Medicare Participation Review Committee on 2 June 2004 providing information relating to a recent determination against a practitioner and a determination made in December 1999. The Medicare Participation Review Committee has a discretionary range of options available from taking no further administrative action against the practitioner to counselling and reprimand and full or partial disqualification from participating in Medicare benefits arrangements for up to five years. As required under the Act the practitioner was notified of the correspondence to the Medicare Participation Review Committee.

During the year 18 final determinations were issued and 11 became effective, one of which had been issued in the previous financial year. Of the 11 effective final determinations, seven involved a range of MBS items rendered by general and medical practitioners, two involved prescribed patterns of service and two concerned MBS items from the optometrical schedule.

Of the 18 final determinations issued, four practitioners appealed to the Federal Court, two were practitioners who committees found had not engaged in inappropriate practice and two were yet to become effective.

Sanctions imposed as part of the effective final determinations included:

- reprimand and counselling on all determinations
- repayment across nine determinations totalling \$332 034.53 (from \$1327.20 to \$125 000 and averaging \$36 900 per determination)
- full disqualification periods from six weeks to three years totalling 60 months over five determinations.

As the Director is authorised to publish certain information on practitioners where a final determination comes into effect, details of those, in order of effective date, are given below:

#### *Dr Marianito Teng, Medical Practitioner, Vic.*

Dr Teng practiced at Werribee, Laverton, Wyndham Vale and Altona North in Victoria during the referral period of 1 January 2000 to 19 June 2000 inclusive.

His conduct was found by a committee to be unacceptable to the general body of medical practitioners in that he rendered 80 or more attendances on 39 days in the referral period. The Commission data showed that on eight of those 39 days Dr Teng had performed attendances of between 90 and 100.

During the hearing Dr Teng submitted that exceptional circumstances existed to explain the number of attendances. For example, he contended that the clinic was unable to attract practitioners to join them and there was a heavy patient demand because of flu vaccinations and treatment. The committee considered all of the circumstances and detailed its reasons for rejecting them in its final report provided to the Determining Authority.

After considering submissions on a draft determination, the Determining Authority issued a final determination directing that Dr Teng be reprimanded, counselled, repay \$60 211.85 and be fully disqualified for a period of two months. The determination came into effect on 7 July 2003.

#### *Dr Anthony Dick, General Practitioner, Qld*

Dr Dick practiced at Cairns in Queensland during the referral period of 2 January 2000 to 3 December 2000 inclusive. His conduct was found by a committee to be unacceptable to the general body of general practitioners in that he rendered 80 or more attendances on 22 days in the referral period. The Commission data showed that on 14 of those 22 days Dr Dick had performed attendances of between 90 and 107.

During the hearing Dr Dick submitted that the exceptional circumstances during the referral period were a severe shortage of doctors in the medical centre, and minimal services in Cairns after hours and on weekends.

The committee considered all the circumstances and detailed its reasons for rejecting them in its final report provided to the Determining Authority.

After considering submissions on a draft determination, the Determining Authority issued a final determination directing that Dr Dick be reprimanded, counselled, repay \$45 905.55 and be fully disqualified for a period of 10 weeks. The determination came into effect on 3 September 2003.

*Dr Stamatios Ktenas,  
General Practitioner, NSW*

Dr Ktenas practiced at Maroubra Junction and Maroubra in New South Wales during the referral period of 1 January 2000 to 31 December 2000 inclusive. His conduct was found by a committee to be unacceptable to the general body of general practitioners because his:

- medical records had major deficiencies
- management of patients was essentially ‘episodic’ in that he appeared to limit himself to dealing with presenting problems without clinical management plans or strategies
- patients with long-term chronic problems, such as diabetes and hypertension, were not dealt with within an overall management plan. Multiple conditions were not managed concurrently and often no follow-up plan was put in place after initial investigations.

The committee examined the services in accordance with an approved sampling methodology and found that the conduct in association with 28 out of 30 of both MBS item 36 and item 44 services examined was unacceptable.

The committee detailed its reasons for the finding in a final report to the Determining Authority and after considering submissions received on a draft determination, the Authority issued a final determination directing that Dr Ktenas be reprimanded, counselled, repay \$125 000 and be fully disqualified for a period of 18 months. The determination came into effect on 13 February 2004.

*Mr Malcolm Lee See, Optometrist, Qld*

Mr Lee See practiced at Kingaroy and Nanango in Queensland during the referral period of 1 January 1998 to 31 December 1998 inclusive. His conduct was found by a committee to be unacceptable to the general body of optometrists because he provided some services more often than was necessary for the proper care of the patient and on one occasion did not provide adequate professional clinical input. He also used the Medicare Benefits Schedule for Consultation by Optometrists items 10912, 10913 and 10914 services in place of item 10900, thereby accessing a full fee without the required time restrictions. The committee detailed its reasons for the finding in its final report to the Determining Authority and after considering submissions on a draft determination, the Authority issued a final determination directing that Mr Lee See be reprimanded and counselled. The determination came into effect on 13 February 2004.

*Dr Charles Terence Russell,  
General Practitioner, Qld*

Dr Russell practiced at Macgregor and Browns Plains in Queensland during the referral period of 1 January 1999 to 31 December 1999 inclusive.

In relation to the rendering of MBS item 30278 (repair of tongue-tie) Dr Russell’s conduct was found by the committee to be unacceptable to the general body of general practitioners. In the majority of services examined, the patients had seen Dr Russell for circumcision procedures. He subsequently performed repairs to tongue-ties. Given this pattern, the committee was concerned that while parents consulted with Dr Russell for circumcisions, he opportunistically diagnosed tongue-tie. The committee found there were no clinical indications for the services.

The services were examined in accordance with an approved sampling methodology which resulted in a finding that 90 per cent of MBS item 30278 services rendered by Dr Russell during the referral period were inappropriate. The committee detailed its reasons in a final report to the Determining Authority. Dr Russell did not make a submission on the draft determination. The Authority issued a final determination directing that Dr Russell be reprimanded, counselled and repay \$4 488.88. The determination came into effect on 13 February 2004.

*Dr Leslie Smith, Medical Practitioner, Qld*

Dr Smith practiced at Labrador in Queensland during the referral period of 1 January 2000 to 31 December 2000 inclusive. His conduct was found by a committee to be unacceptable to the general body of medical practitioners because he:

- provided an inappropriate level of clinical input into some of the services
- kept records that were deficient in essential clinical information
- prescribed or administered drugs in the absence of clinical indications

- did not satisfy the requirements of the relevant items in the MBS or PBS.

As part of his oral evidence given during the hearing Dr Smith told the committee that:

- he never used a thermometer to determine patients' temperatures, rather he assessed by 'rigors, shakes and their story, and just the examination of the patient will tell you whether they've got a significant temperature or not'. The committee considered this practice to have the potential to jeopardise patient care.
- as his receptionist did not work on Saturday mornings generally there were no progress notes made. He stated that he sometimes wrote on scraps of paper and did not require access to the medical records of patients he knew. The committee found that Dr Smith had demonstrated an inability to accurately recall details of consultations and through his inadequate medical records he potentially put patients at risk of adverse drug interactions or adverse results from changes in treatment plans.
- 'an injection of B12 has a mental effect on them [patients] and makes them [patients] feel better and gives them [patients] a pick-me-up'. The committee found that Dr Smith did not record the clinical indications warranting the prescription and administration of Vitamin B injections.

The services were examined in accordance with an approved sampling methodology which resulted in a finding that the conduct in association with 83 per cent of MBS item 54 services rendered by Dr Smith during the referral period was unacceptable.

The committee detailed its reasons for the finding in a report to the Determining Authority and after considering submissions received on a draft determination, the Authority issued a final determination directing that Dr Smith be reprimanded, counselled, repay \$20 000 and be fully disqualified for a period of three years. The determination came into effect on 26 March 2004.

#### *Dr Allan Bond, General Practitioner, Vic.*

Dr Bond practiced at Fitzroy in Victoria during the referral period of 1 January 2000 to 31 December 2000 inclusive. A committee examined Dr Bond's rendering of 10 MBS item 23 services and determined that there had not been inappropriate practice. The committee also examined Dr Bond on 11 patients to whom he had prescribed benzodiazepines. The committee found Dr Bond's conduct would be unacceptable to the general body of general practitioners in all 11 cases because he did not provide an appropriate level of clinical input into the services, and he kept records that were deficient in essential clinical information.

During oral evidence Dr Bond told the committee that his practice was essentially a drug and alcohol practice. The committee found that Dr Bond failed to adhere to guidelines he himself mentioned during the hearing. It also concluded that it was Dr Bond's policy, in regard to therapeutic withdrawal programs, not to pursue review of the program once the prescriptions had been issued.

The committee detailed its reasons in a final report to the Determining Authority and after considering submissions received on a draft determination, the Authority issued a final determination directing that Dr Bond be reprimanded, counselled and disqualified from prescribing all benzodiazepines or benzodiazepine derivatives for which a PBS benefits is payable for a period of three months. The determination came into effect on 1 April 2004.

#### *Dr Sarwat Moawad, General Practitioner, NSW*

Dr Moawad practiced at Lakemba in New South Wales during the referral period of 1 January 2000 to 31 December 2000 inclusive. His conduct was found by a committee to be unacceptable to the general body of general practitioners in that he:

- rendered services that were not necessary
- did not provide an appropriate level of clinical input into the services
- did not provide appropriate 'professional services' to his patients
- kept inadequate records
- did not satisfy the requirements of the relevant items in the MBS.

The committee examined the services in accordance with an approved sampling methodology and found that the conduct in association with 14 out of 30 MBS item 23 services examined was unacceptable.

The committee detailed its reasons for the finding in a final report to the Determining Authority. Submissions received on a draft determination significantly helped the Authority make its final determination that Dr Moawad be reprimanded, counselled, repay \$20 000 and be disqualified for a period of 12 months from items in Group A1 of the MBS. The determination came into effect on 25 May 2004.

#### *Dr Elizabeth Orbach,*

### *General Practitioner, Vic.*

Dr Orbach practiced at Moorabbin and Ormond in Victoria during the referral period of 1 January 1998 to 31 December 1998 inclusive. Her conduct was found by a committee to be unacceptable to the general body of general practitioners in that she:

- took inadequate histories and/or made inadequate examinations of her patients, or otherwise provided inadequate clinical input into the services
- formulated inadequate management plans for her patients
- kept medical records deficient in essential clinical information
- wrongly used MBS item 30192 to treat skin lesions that were not premalignant or used it to treat premalignant skin lesions when fewer than 10 lesions were treated
- wrongly used MBS item 30195 when she treated skin lesions with cryotherapy rather than electrosurgical destruction, simple curettage or shave excision.

The services were examined in accordance with an approved sampling methodology which resulted in a finding that the conduct in association with 84 per cent of MBS item 36, 86 per cent of MBS item 30192 and 90 per cent of MBS item 30195 services rendered by Dr Orbach during the referral period was unacceptable.

The committee detailed its reasons for the finding in a final report to the Determining Authority and after considering submissions received on a draft determination, the Authority issued a final determination directing that Dr Orbach be reprimanded, counselled, repay \$42 794.42 and be fully disqualified for a period of six weeks. The determination came into effect on 26 May 2004.

### *Dr Roslyn Tanner, General Practitioner, NSW*

Dr Tanner practiced from Greenacre in New South Wales during the referral period of 1 January 1999 to 31 December 1999 inclusive. Dr Tanner's conduct was found by a committee to be unacceptable to the general body of general practitioners because she failed to satisfy the requirements of the MBS and did not manage some patients properly.

During the referral period Dr Tanner had a total of 66 patients to whom she provided 1172 services of which 400 were MBS item 37 services (level C home visits) and 642 MBS item 43 services (level C nursing home visits). Dr Tanner told the committee that her practice was 'out in the field in nursing homes'.

In oral evidence Dr Tanner admitted to the committee that she included the time spent in non face-to-face contact with the patient and claimed to be unaware that time spent writing up scripts and patient records cannot be billed to Medicare when these items were not written in the presence of the patient. The committee made individual findings on MBS item 37 services. The committee examined MBS item 43 services in accordance with an approved sampling methodology which resulted in a finding that the conduct in association with 83 per cent of those services was unacceptable.

The committee detailed its reasons for its finding in a final report to the Determining Authority and after considering submissions on a draft determination, the Authority issued a final determination directing that Dr Tanner be reprimanded, counselled, repay \$12 261.63 and be disqualified for a period of three months from items in Group A1 of the MBS. The determination came into effect on 26 May 2004.

### *Mr Angus Law, Optometrist, NSW*

Mr Law practiced at Campsie, Chatswood and Eastwood in New South Wales during the referral period of 1 January 1999 to 31 December 1999 inclusive. His conduct was found by a committee to be unacceptable to the general body of optometrists because he failed to satisfy the requirements of the Medicare Benefits Schedule for Consultation by Optometrists in one or more ways when using item 10921. Mr Law did not make a submission on the draft determination. The Determining Authority issued a final determination directing that Mr Law be reprimanded, counselled and repay \$1372.20. The determination came into effect on 28 June 2004.

## Reasons for referral

### *Commission requests for review*

The reasons the Commission requests a review of the provision of services by a practitioner generally fall within select and distinctive categories (see Table 8). As the Commission only has access to claims data and any information elicited by a medical adviser during a visit, the categories are limited to the results of statistical analysis.

Table 8—Types of concerns in commission referrals

|  | 2003–04 | 2002–03 |
|--|---------|---------|
| <b>Prescribed pattern of services</b>                            | 0       | 9       |
| <b>High volume of services</b>                                   | 16      | 30      |
| <b>High Medicare Benefits Schedule level C and/or D services</b> | 6       | 8       |
| <b>High services per patient</b>                                 | 8       | 4       |
| <b>High ordering of pathology and diagnostic imaging</b>         | 12      | 10      |
| <b>High Pharmaceutical Benefits Scheme prescribing</b>           | 17      | 11      |
| <b>Other Concerns</b>  | 18      | 0       |

<sup>a</sup> A prescribed pattern of services also forms a reason for a referral from the Director to a committee.

Some referrals contained more than one of the above concerns.

#### *Committee referrals*

When the Director makes a decision to review, he has the power to obtain patient records and other relevant documents that are examined by appropriately qualified and experienced practitioners. This gives a greater insight into the particular practitioner's behaviour than was available to the Commission. Consequently, issues become apparent following a review and may form part of the following reasons for referral to a committee:

- inadequate clinical input
- Medicare Benefits Schedule item descriptor not satisfied
- services not medically necessary
- particular services or types of services
- inadequate medical records.

The types of service and the reasons for referral to committees are outlined in Tables 9 and 10.

Table 9—Types of services referred to committees

|                                       | 2003–04 | 2002–03 |
|---------------------------------------|---------|---------|
| <b>Prescribed pattern of services</b> | 2       | 6       |
| <b>Standard consultations</b>         | 3       | 5       |

|   |   |   |
|---|---|---|
| <b>Long consultations</b>                         | 1 | 4 |
| <b>Prolonged consultations</b>                    | 1 | 1 |
| <b>Other Medicare Benefits Schedule items</b>     | 7 | 1 |
| <b>Pharmaceutical Benefits Scheme prescribing</b> | 2 | 2 |
| <b>Pathology and/or Diagnostic Imaging</b>        | 0 | 3 |

Note: some referrals contained more than one type of service.

*Table 10—Reasons for referral to committees*

|   | 2003–04 | 2002–03 |
|---|---------|---------|
| <b>Inadequate clinical input</b>                | 4       | 8       |
| <b>Unacceptable standard of record keeping</b>  | 3       | 8       |
| <b>Services not medically necessary</b>         | 4       | 8       |
| <b>Medicare Benefits Schedule not satisfied</b> | 4       | 8       |

Note: all referrals contained more than one reason.

### Other types of concerns

There are three other areas of concern that can become apparent during an investigation or during a committee process. These are:

- professional isolation
- unusual medical practice
- alteration of documents.

A discussion of the different types of concerns in Commission referrals, reasons for referral to committees and other types of concerns follows.

### *Prescribed pattern of services*

Following a 1999 review of the scheme by the Australian Medical Association (AMA), the Commission, the Department of Health and Ageing and PSR<sup>1</sup> legislative changes were made to include a method of examining the conduct of practitioners who have high volumes of services. The legislation came into effect for services rendered after 1 January 2000, and the first wave of these referrals was received last year.

In a significant departure from other types of referrals, a practitioner who performs a nominated number of services in a particular period is deemed by the legislation to have practiced inappropriately, unless they can provide evidence that exceptional circumstances existed. That is, the onus is on the practitioner to demonstrate that he or she is practicing appropriately.

Although a prescribed pattern of services can be applied to any medical specialty or type of service, so far the regulations<sup>2</sup> only apply to general practitioners and other medical practitioners rendering professional attendances. Professional attendances are essentially consultations and do not include other services, such as procedural items.

The 1999 review committee, in consultation with the AMA Federal Council, the AMA Council of General Practice, the Royal Australian College of General Practitioners, the Rural Doctors' Association of Australia and the Australian Divisions of General Practice, recommended a combination of 80 or more professional attendances on 20 or more days in a 12 month period as indicative of inappropriate practice. In general, the profession considered that practitioners providing such high volumes of services could not possibly be providing adequate clinical care for their patients.

The Director has limited power in respect of these referrals and although he can receive and consider submissions from the person under review, it is a committee that can determine claims of exceptional circumstances.

The regulations provide some guidance—they declare exceptional circumstances to be:

*an unusual occurrence causing an unusual level of need for professional attendances, and an absence of other medical services for patients of the person under review during the relevant period, having regard to the location of the practice and the characteristics of the patients.*

Of course, committees are not limited to these circumstances and are free to use their combined professional judgment in deciding what is an exceptional circumstance.

The review committee was firmly of the view that a high level of skill, competence and organisational arrangements were important for practitioners. But while these factors may have a great effect on a practitioner's ability to provide 50, rather than 20, consultations regularly per day, the review committee indicated skill, competence and organisational arrangements would have little effect on the practitioner's ability to provide 80 or more attendances per day.

#### *High volume of services*

It is important to appreciate that the prescribed pattern of services is not a 'speed limit'. Apart from those practitioners referred under this concern, there is a small number who regularly provide a high number of services at or above the 99th percentile of approximately 15 000 services per annum. Rendering services at a level below that of a prescribed pattern of services does not prevent a practitioner from being asked to justify their conduct.

The majority of general practitioners have great difficulty understanding how such large numbers of patients can be seen on a regular basis and still be provided with proper medical care. Proper medical care requires a range of activities by the treating practitioner, such as:

- obtaining the history of the presenting complaint and, on occasions, a family and past history from the patient
- an appropriate examination, even if a focused examination, which may involve arranging for relevant diagnostic tests (pathology and/or diagnostic imaging tests)
- a diagnosis
- implementation of a management plan that may include prescribing drugs, referral for consultant advice, or treatment and explanation of the management plan to the patient.

All of this takes time and no step can be omitted without jeopardising the patient's health and/or increasing the risk of patient harm.

It may be financially rewarding for a practitioner to see high volumes of patients, but this style of practice generally only allows time for addressing the presenting symptom or complaint and is of little overall benefit to the patient. So far, committees have not accepted arguments that excessively high throughputs can be explained by claims of superior ability and organisation or vast experience.

#### *High number of services per patient*

Practitioners who provide, on average, a higher number of services per patient than their peers sometimes try to explain it by claiming to have a smaller and older (and 'sicker' with multiple pathology) patient base. Committees have often found such behaviour to be the result of a practitioner acceding too easily to patient demands without due regard to the medical or clinical necessity for the frequency of service. These practitioners usually also have high unexplainable prescribing rates. Practitioners can demonstrate, where their practice demographic has a high proportion of aged patients, a distinctly different profile.

### *High prescribing of Pharmaceutical Benefits Scheme drugs*

A high volume of prescribing under the Pharmaceutical Benefits Scheme often leads to a Commission referral. Many of these referrals involve prescribing of addictive pharmaceuticals, such as benzodiazepines, painkillers and narcotics. This year, 17 referrals expressed concern about prescribing of drugs, some of which resulted in referral to the relevant Medical Board. It seems, from evidence gathered by committees, that on occasions, high prescribing is again a result of the practitioner acceding to patient demand or as a way for the practitioner to end the consultation.

### *Inadequate medical records*

A significant proportion of the Director's referrals to committees contained a concern that the practitioner had failed to keep adequate and contemporaneous medical records. Given the significant effort made recently to educate practitioners, this must be of some concern to the profession.

A good record is an important element to justify the service initiated or rendered. In cases where the Director has dismissed a referral, or a committee has not made an adverse finding, the medical records have been such that they supported the practitioner's conduct and claims. This highlights the importance of maintaining comprehensive medical records.

From 1 January 2000, Commonwealth legislation required a committee, in consideration of a referral, to have regard to whether a practitioner has kept adequate and contemporaneous medical records. The committee is further required to take this into account when making decisions on whether the practitioner has engaged in inappropriate practice.

The Commonwealth's requirement for patient records is broad and not as onerous as some state and territory legislation. For a record to be adequate, it must:

- clearly identify the patient
- contain a separate entry for each attendance
- provide clinical information to explain the service/s rendered or initiated
- be sufficiently comprehensible so another practitioner can undertake ongoing care of the patient.

To be contemporaneous, the record must be completed at the time of the service or as soon as is practicable afterwards.

The extent that the practitioners referred for a prescribed pattern of services kept adequate or inadequate records is unknown because the Director does not need to order production of records in these cases. However, if previous experience with the records of other practitioners rendering high volumes of services is an indication, it is suspected that these practitioners' records would also be significantly deficient.

### *Inadequate clinical input*

There were four referrals to committees this year that concerned possible inadequate clinical input. During investigation, examination of medical records sometimes suggests the practitioner may not have provided adequate clinical input when treating patients.

The Act defines a professional service on which a Medicare benefit is paid, but leaves the decision of the clinical relevance of that service to what is generally accepted by practitioners' peers as the appropriate treatment for patients.

### *Medicare Benefits*

#### *Schedule item not satisfied*

In four cases referred to committees this year it appeared to the Director that the item of service the practitioner claimed may not have actually been provided at the appropriate level. In most cases, following examination of patient records and submissions by the practitioner, the Director was of the view the practitioner may have claimed a Medicare Benefits Schedule item of greater value than the records or submissions demonstrated.

Common examples involved claiming a long, rather than a standard, consultation or claiming for suturing a deep wound, rather than a superficial wound. Although this could be considered a fraudulent claim, it would be difficult, if not impossible, to have such a finding upheld in an Australian court because of the difficulty, after a lapse of time, of proving intent to defraud. In North America this is commonly known as 'up-coding'.

The other common type of 'error' occurs where a practitioner regularly includes the time for procedural services as part of the overall time spent with the patient and hence itemises a longer consultation than actually took place. Some practitioners claim to be unaware that by billing a separate benefit for procedural services they are not entitled to add the time taken to the consultation component.

### *Services not medically necessary*

This year four referrals to committees contained the concern of services not being medically necessary. When a patient consults a practitioner for a particular problem the expectation is that they are going to be treated for that complaint, but it appears that some practitioners also perform services that are not clinically indicated and therefore not medically necessary.

This situation is often revealed upon examination of medical records which show the patient's presenting complaint then the resulting treatment. At times there appeared to be no correlation between the complaint and some of the treatment.

### *Particular services or types of services*

Once the Director has completed a review (by examining patient records and submissions from the practitioner) of the broadly-framed initial referral from the Commission, it becomes more apparent where the concerns lie. The Director is then able to focus the referral, for specific attention by a committee, on concerns within a particular Medicare Benefits Schedule item or items. Often this will lead to a referral of particular MBS services, for example, item 36 or 44 services. Sometimes the referral will be for a particular procedural or diagnostic service. Questioning in the committee hearing often reveals there was no proper clinical indication for the procedure. The conclusion likely to be reached is that the indication for the procedure was because the practitioner had access to the necessary equipment.

### *Professional isolation*

Practitioners referred by the Commission are often professionally isolated. They have little contact with professional colleagues and/or fail to keep their professional knowledge up-to-date. Others are manipulated by more senior practitioners or 'employers', or have deluded themselves. In the course of hearings, committees sometimes find impaired practitioners, mainly due to illness or substance abuse, and have referred these practitioners to the relevant Medical Board.

A number of practitioners who work as independent contractors or employees in medical centres have claimed that office staff are responsible for itemisation on documents for Medicare benefit. This defence has been accorded little weight because the practitioner alone is responsible for the accuracy of the information provided for the purposes of a Medicare claim and this responsibility cannot be delegated or abdicated.

### *Unusual medical practice*

It is important for practitioners to remember that the PSR scheme applies to services rendered or initiated under the Medicare benefits arrangements and medications prescribed under the Pharmaceutical Benefits Scheme. Within the legislation encompassing both schemes there are strict criteria about benefit eligibility.

Practitioners providing medicine that can be characterised as alternative or complementary need to be aware that, for their services to be eligible for a benefit, they must still meet the prescribed criteria.

The most important point is that the service must be clinically relevant. That is, the service must be generally accepted by the medical profession as being necessary for the appropriate treatment of the patient.

### *Alteration of documents*

On a number of occasions, during both the initial investigation and at committee hearings, suspicion has been raised that the medical records produced have been altered subsequent to the notice ordering their production. This is an offence under Commonwealth legislation and arrangements are in place to enable prosecution of cases involving such fraudulent activity. State and territory medical boards are also concerned by such conduct and have significant penalties at their disposal.

## **Professional Services Review Tribunal decisions**

Full copies of PSR Tribunal and Federal Court decisions are available on the PSR web site at <[www.psr.gov.au](http://www.psr.gov.au)>.

### *Dr David Simpson,*

#### *General Practitioner of Toowoomba, Qld*

The Commission referred Dr Simpson in June 1999 because of his high volume of rendered services with high daily servicing (17 976 services to 4 183 patients), the high volume of MBS item 30192 (removal of premalignant skin lesions) and MBS item 173 (acupuncture) services, between 1 July 1997 and 30 June 1998.

The committee reported in January 2003 that Dr Simpson had engaged in inappropriate practice because there was insufficient clinical input, he failed to make a meaningful written record or the level of treatment exceeded that recommended by experts. In June 2003 the Determining Officer directed that Dr Simpson be reprimanded, counselled, repay Medicare benefits totalling \$193 359, be partially disqualified from Medicare for two years, and fully disqualified for one year.

Dr Simpson sought review by the PSR Tribunal on a wide range of grounds. However, after a three-day Tribunal hearing, but before the Tribunal delivered its decision, Dr Simpson withdrew his request for review on 22 December 2003, whereupon the Determination took effect.

*Dr Miguelito del Fierro Mercado,*

*Medical Practitioner of Essendon, Vic. but lately of Dodges Ferry, Tas.*

The Commission referred Dr Mercado in June 1999 because of his high volume of rendered services (16 754) between 1 July 1997 and 30 June 1998. It was concerned that the appropriate level of clinical input may not be able to be maintained at this servicing rate on a regular and continuing basis.

A committee was established in October 1999. During the hearing, Dr Mercado went to the Federal Court and challenged the scope of the investigation and alleged that bias existed. He was successful on both counts at first instance. The bias issue (only) was appealed to the Full Court of the Federal Court which reversed the earlier finding. Details appear in the Annual Reports for 1999–2000 and 2000–01.

The committee completed its investigation and reported in January 2003 that Dr Mercado had engaged in inappropriate practice in connection with rendering most of the MBS item 54, 57 and 173 services examined. The main reasons were that there was insufficient clinical input to warrant use of the item and/or that the treatment was episodic in nature.

In August 2003 the Determining Officer directed that Dr Mercado be reprimanded and counselled, repay Medicare benefits totalling \$15 391, and be fully disqualified from Medicare for four months. Dr Mercado sought review by the PSR Tribunal on numerous grounds.

The Tribunal affirmed the Determination. It stated that disqualification seems ‘to be the only way of bringing home to Dr Mercado and to others who may engage in similar conduct the seriousness of the acts and omissions which are involved, in other words the overall conduct which is in question’. It noted that, for most professions, proper record keeping is essential.

It further noted, with respect to the temporary closure of Dr Mercado’s practice, that it is not much good if there is access to treatment which, because of the failure of a doctor to keep proper records, cannot really be regarded as adequate and is thus incompetent.

Dr Mercado did not appeal to the Federal Court within the permitted time and the Determination came into effect on 29 June 2004.

*Dr John Howard Grey,*

*General Practitioner of Frankston, Vic.*

The Commission referred Dr Grey in November 1997 because it was concerned that he could not maintain an appropriate level of clinical input at his high servicing (24 774) rate on a regular and continuing basis. The period referred was 1 January 1996 to 31 December 1996.

In October 2000 the committee provided Dr Grey with a draft report for comment. Dr Grey instituted (ultimately unsuccessful) proceedings in the Federal Court which culminated in a refusal of special leave by the High Court in February 2003. The Full Court of the Federal Court decision was of particular importance for the PSR scheme as it returned the focus to investigation of inappropriate practice safe-guarded by procedural fairness. Details were provided in the Annual Reports for 2000–01, 2001–02 and 2002–03.

The Committee reported in May 2003 that Dr Grey had engaged in inappropriate practice in connection with rendering MBS item 36 and 44 services. In all cases examined, there was insufficient clinical input to meet the needs of the patient and/or warrant use of the item. Other issues included provision of some consultations by a nurse rather than by Dr Grey personally, initiation of unnecessary screening tests, and inappropriate prescribing or treatment.

In November 2003, the Determining Officer directed that Dr Grey be reprimanded and counselled, repay Medicare benefits totalling \$16 132, be fully disqualified from Medicare for three months and partially disqualified for six months. Dr Grey sought review by the PSR Tribunal.

On 1 July 2004<sup>3</sup> the Tribunal affirmed the Determination. With respect to the period of disqualification, the Tribunal stated that no useful analogy can be drawn between the circumstances to which guidelines issued for Medicare Participation Review Committees relate and the circumstances that give rise to the questions before the Tribunal.

It further stated that the PSR committee’s findings disclose a systematic departure by Dr Grey from standards that would be acceptable to the general body of general practitioners and they disclose matters of serious concern. The Tribunal also stated that

it agreed with the committee's comments that it 'considers that the accreditation of the practice in which Dr Grey works has no relevance to the consideration of his conduct in respect of services rendered during the referral period'.

The Tribunal took the lengthy period elapsed since the referral period into account, but noted the absence of evidence that Dr Grey had since made his style of practice more acceptable. Dr Grey did not appeal the Tribunal decision.

*Dr Nicholas Sevdalis,*

*Medical Practitioner of Fairfield, Vic.*

The Commission referred Dr Sevdalis in November 1997 for his high average number of services per patient (6.5), high level of long consultations (908 of a total of 7572 consultations), prolonged consultations (1381) and home visits (2264), and high level of prescribing 14 200 items to 1404 patients).

A committee was established, a hearing was held but one member resigned before it reported. Dr Sevdalis preferred the establishment of a new committee, rather than the two re-main-ing members completing the report. As Dr Sevdalis failed to produce medical records to this second committee he was disqualified from Medicare arrangements until, in 2002, it was agreed that the second committee could be provided with copies of records originally provided to the first committee.

The second committee reported in September 2003 that Dr Sevdalis had engaged in inappropriate practice in rendering certain MBS item 57 and 65 services. It found that his prescribing was not based on clinical indications or scientific evidence, excessive doses were prescribed, some prescribing did not comply with PBS requirements, and some issues could have been dealt with in less than the time required for these MBS items. Although no formal finding was made in this regard, poor medical records were also a concern to the committee.

In February 2004, the Determining Officer directed that Dr Sevdalis be reprimanded, counselled, and fully disqualified from Medicare for one month. Dr Sevdalis sought review by the PSR Tribunal.

On 1 July 2004<sup>4</sup> the Tribunal made a fresh determination that Dr Sevdalis be reprimanded and counselled. The Tribunal had regard to the circumstances of the disqualification of Dr Sevdalis for failing to produce records to the committee,<sup>5</sup> the nature of the conduct criticised by the committee, the investigation of only 20 services, lack of evidence that these were representative of his general standard of practice, and the length of time elapsed.

The Tribunal nevertheless indicated that it took a serious view of the applicant's conduct, particularly regarding prescribing. It strongly recommended that, after the counselling and unless the Commission was convinced Dr Sevdalis had changed his pattern of practice to accord with what would be acceptable to the general body of general practitioners, a more extensive investigation be undertaken to reassess his practice. Dr Sevdalis did not appeal the Tribunal decision.

**Federal Court,**

**Full Court of the Federal Court and High Court of Australia decisions**

*Dr Steve Daniel,*

*Medical Practitioner of Werribee, Vic.*

Last year it was reported that the Commission referred Dr Daniel in December 2001 for having rendered 80 or more professional attendances on 24 days between 12 August 2000 and 8 January 2001.

Dr Daniel had been counselled by a Medical Adviser from the Commission's Victorian office in September 2001 about his high volume of services and was told his practice would be reviewed after three to six months and he might be referred to PSR if the Commission still had concerns. In December 2001, the Commission's Canberra office referred Dr Daniel to the PSR and in February 2002 he was referred by the Director to a PSR committee for investigation. In June 2002, before the committee commenced its hearing (delayed because Dr Daniel was working overseas), the Commission's Victorian office advised Dr Daniel that their concerns appeared to have been allayed since he was counselled and no immediate action would be taken with respect to a referral to the PSR.

Dr Daniel then sought Federal Court review of the Commission's decision to make the investigative referral and the Director's decision to make the adjudicative referral. On 28 July 2003, the Court upheld Dr Daniel's appeal and set aside both referrals (*Daniel v Health Insurance Commission* [2003] FCA 772). Ryan J held that:

- The Commission could not rely on section 106KA of the Act alone to make an investigative referral. The section only applied to a committee and, as for ordinary referrals, the Commission had to take all relevant factors into account prior to referral to PSR.
- The Director could not rely only on section 106KA of the Act to make an adjudicative referral.

- The Director should take into account all services during the two years preceding the referral but, given his broad discretion with investigation, failure to do so would not, alone, invalidate an adjudicative referral.
- The previous Commission counselling was a relevant consideration which had not been taken into account and therefore made the investigative referral invalid.
- As a matter of procedural fairness, Dr Daniel should have been invited to consider the possibility of an agreement under section 92 of the Act.

On 6 February 2004 the Full Court of the Federal Court refused an appeal by the Acting Director and for the majority of issues raised it agreed with Ryan J. It differed from Ryan J as to the meaning of ‘referral period’ and considered that it was not necessarily the whole two years preceding the date of referral.

For various reasons, neither of the two different offices of the Commission was in possession of all the facts pertaining to Dr Daniel’s case which then lead the Courts to agree that he was denied natural justice.

*Dr Paul Crowley,*

*General Practitioner of Lowood, Qld—Case 1*

The 2002–03 Annual Report summarised the Federal Court proceedings regarding Dr Crowley’s referral for 80 or more professional attendances on 129 days during the period 1 January 2000 to 31 October 2000. He had applied to the Court for orders to stop PSR Committee 296 investigating on the grounds that, he claimed, both the investigative and adjudicative referrals included irrelevant and prejudicial information, and that the Director should have been persuaded by evidence of exceptional circumstances.

The Court had rejected his application and Dr Crowley appealed to the Full Court of the Federal Court. On 21 August 2003 the Full Court dismissed the appeal and held that the committee was entitled to consider the relevance and weight of Dr Crowley’s prior conduct.

The limitation on the services about which the committee could make findings was not a limitation on material relevant to that task. Inclusion of irrelevant and prejudicial material did not invalidate the referral and a fairminded observer would not perceive bias merely because the committee knew of previous issues between Dr Crowley and the Commission.

Courts and tribunals are relied on to determine facts by weighing evidence, often rejecting or discounting some, and there was no justification for thinking that the committee was unwilling or unable to set aside material which was not proper for its consideration.

Dr Crowley sought special leave to appeal to the High Court, which was refused on 13 February 2004.

Dr Crowley then sought an interlocutory injunction from the Federal Court to stop the committee proceeding with its hearing on the grounds that:

- The Commission allegedly failed to consider that between 9 March 2001 and 13 December 2001 he had not breached the ‘80/20’ rule; he had employed foreign doctors to assist him; and his subsequent compliance with the Act and Regulations from 9 March 2001 suggested that any previous inappropriate practice was due to particular factors which had now ended. Furthermore, even given the ‘80/20’ statistics, Dr Crowley questioned whether the Commission should have referred him in all the circumstances.
- The Director allegedly failed to consider the referral in terms of anything other than the ‘80/20’ rule and also failed to consider whether an agreement under section 92 of the Act could be appropriate.

On 28 April 2004, Sundberg J refused the application because, while Dr Crowley’s conduct after the referral period and the availability of foreign doctors to assist him might be relevant to exceptional circumstances, they were not relevant to whether the Commission should make a referral. The evidence did not show that the Commission had not considered whether his conduct would be unacceptable to the general body of general practitioners, and the Director had plainly had regard to Dr Crowley’s submissions of exceptional circumstances. Further, the Director clearly considered a section 92 agreement, as his letter of 4 June 2001 to Dr Crowley had listed it as an option.

On 29 April 2004 the committee resumed and completed its hearing. At the end of the reporting period the substantive application to the Court had not proceeded further.

*Dr Paul Crowley,*

*General Practitioner of Lowood, Qld—Case 2*

Last year it was reported that Dr Crowley had made a separate application to the Federal Court regarding a subsequent referral from the Commission and that Goldberg J had refused an injunction to restrain the committee from performing its functions. The committee has completed its hearing but not yet finalised its report. The substantive Federal Court hearing has been delayed by consent pending resolution of an appeal in *Freeman v HIC* [2004] FCA 453.

*Dr Jack Freeman,*

*General Practitioner of North Melbourne, Vic.*

Last year it was reported that a PSR committee found that Dr Freeman had rendered 80 or more professional attendances on 92 days in less than a six-month period in 2000 and that no exceptional circumstances existed. The final determination imposed sanctions of reprimand, counselling, repayment of \$225 378 in Medicare benefits and full disqualification from Medicare for two years and nine months.

Dr Freeman appealed to the Federal Court on grounds that the investigative referral was invalid for the same reasons as that in *Pradhan v Holmes* [2001] FCA 1560 (essentially, lack of specificity); that the determination failed to take into account Dr Freeman's belief that the committee investigation had been resolved on an agreed basis; and that the Commission erroneously believed the Health Insurance Act required it to make an investigative referral once it had identified a prescribed pattern of services, without regard to the merits of the particular case (see the *Daniel* decision).

On 19 April 2004, North J dismissed the appeal. He held that the referral was distinguishable from that in *Pradhan* because it clearly stated the conduct referred. It was clear that, because the determination set out the applicant's contentions as to the committee's resolution of the matter and the process of reasoning adopted by the Determining Authority, it had had regard to those contentions when coming to its conclusion.

On 10 May 2004, Dr Freeman appealed to the Full Court of the Federal Court against the decision of North J.

*Dr Il Song Lee,*

*General Practitioner of Eastwood, NSW*

Last year it was reported that Dr Lee had appealed to the Full Court of the Federal Court against a Professional Services Review Tribunal decision of 8 April 2003. The Tribunal had set aside the Determining Officer's determination and made a new determination directing that Dr Lee be reprimanded, counselled, partially disqualified for 12 months and fully disqualified for six months.

Dr Lee sought to have the determination and the Tribunal's decision set aside because the draft and final determinations were made by different Determining Officers; because the committee did not follow the Full Court decision in *Yung*; and because Dr Lee was denied procedural fairness as he was not given an opportunity to answer adverse findings made by the committee and the Tribunal about certain patients.

On 7 April 2004, the majority of the Full Court (Hill and Marshall JJ) dismissed the appeal. It held that:

- Having regard to the nature and administrative practicalities of the power under consideration, the change of Determining Officer did not invalidate the determination. The Act did not contemplate more than one draft determination, as could be required if there was a change of office-holder.
- *Adams v Yung* was distinguishable because in that case the committee had not kept to its reference, whereas in Dr Lee's case it considered a wide cross-section of his patients, took into account 'representative cases' and considered records which Dr Lee indicated were typical of the way he kept his records and dealt with his patients during the referral period.
- Procedural fairness was required. However, from the beginning of the committee process, and at least by the time the committee prepared its draft report and submitted it to Dr Lee for comment, it was made clear to Dr Lee that committee concerns included:
  - that only the presenting problem or symptom was addressed in a rapid consultation and no effort was made to engage in whole patient care
  - whether Dr Lee's level of clinical input was satisfactory for services he rendered and which were the subject of Medicare claims
  - that Dr Lee had failed to follow standard protocols for managing particular conditions (including diabetes and asthma)
  - that Dr Lee had a possible lack of knowledge of drug prescribing, particularly in relation to drugs of addiction

- a lack of satisfactory management of psychiatric patients and a lack of satisfactory counselling skills on the part of Dr Lee.

All the Tribunal did was to spell out that the medical records supported the findings made by the committee. The Court said that no denial of natural justice occurred as a result of the processes adopted before the committee. Dr Lee complained that the draft report contained matters upon which he had received no prior opportunity to comment. The Tribunal explained why this complaint lacked merit and the Court agreed.

Finkelstein J agreed that the requirements of *Yung* had been met. However, he differed from his colleagues in a number of other respects. The Determination became effective on 6 May 2004.

*Dr Peter Thomas Tisdall,*

*General Practitioner of Kyabram, Vic.*

As reported in footnote 5 in last year's Annual Report, on 22 August 2003 Dr Tisdall withdrew his appeal and the Full Court of the Federal Court dismissed the matter.

The Determining Officer has since made a final determination and Dr Tisdall has requested a review by a Professional Services Review Tribunal.

## Federal Court—current cases

### *Prescribed pattern of services*

The following practitioners who were referred from the Commission to determine whether attendances had been rendered as a prescribed pattern of services, have lodged appeals with the Federal Court and are awaiting substantive hearings.

A common issue among the appeals is the definition of exceptional circumstances. Unless a practitioner can provide evidence to a committee that exceptional circumstances existed on a day or particular days during the referral period they are deemed to have practiced inappropriately. While the regulations provide guidance to committees they are not limited to those circumstances and are free to use their combined professional judgement. Of the cases listed below, none of the committees considered that the evidence practitioners put forward constituted an exceptional circumstance. It is mainly this consideration that has been challenged in the Federal Court.

*Dr Boguslaw Bartos,*

*General Practitioner, Green Valley, NSW*

The Commission referred Dr Bartos on 13 December 2001 to determine whether he had engaged in inappropriate practice in connection with the rendering of services constituting a prescribed pattern. During the referral period of 1 January 2000 to 4 September 2000 inclusive the Commission's data showed that Dr Bartos had rendered 80 or more professional attendances per day on 27 occasions.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Bartos has appealed to the Federal Court on the issues of whether exceptional circumstances existed, and the validity of the referral decisions, on the same grounds as in *Daniel v Kelly*.

*Dr Hien Thanh Do,*

*General Practitioner, Merrylands, NSW*

The Commission referred Dr Do on 13 December 2001 to determine whether he had engaged in inappropriate practice in connection with the rendering of services constituting a prescribed pattern. During the referral period of 1 January 2000 to 23 June 2000 inclusive the Commission's data showed that Dr Do had rendered 80 or more professional attendances per day on 56 occasions.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Do has appealed to the Federal Court on the issues of whether exceptional circumstances existed, and the validity of the referral decisions on the same grounds as in *Daniel v Kelly*.

*Dr Donald Hatcher,*

*General Practitioner, Roma, Qld*

The Commission referred Dr Hatcher on 13 December 2001 to determine whether he had engaged in inappropriate practice in connection with the rendering of services constituting a prescribed pattern. During the referral period of 1 January 2000 to 6

November 2000 inclusive the Commission's data showed that Dr Hatcher had rendered 80 or more professional attendances per day on 37 occasions.

A committee was established, a hearing held and a final report produced with an adverse outcome. The Determining Authority issued a final determination directing that Dr Hatcher be reprimanded, counselled, repay \$67 796.75 and be fully disqualified for a period of four weeks. Dr Hatcher has appealed to the Federal Court on the issues of whether exceptional circumstances existed, and the validity of the Investigative Referral and of the Determining Authority's decisions.

*Dr Hugo Huu Hiep Ho,*

*General Practitioner, Merrylands, NSW*

The Commission referred Dr Ho on 13 December 2001 to determine whether he had engaged in inappropriate practice in connection with the rendering of services constituting a prescribed pattern. During the referral period of 1 January 2000 to 6 November 2000 inclusive the Commission's data showed that Dr Ho had rendered 80 or more professional attendances per day on 24 occasions.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Ho has appealed to the Federal Court on the issues of whether exceptional circumstances existed, and the validity of the referral decisions on the same grounds as in *Daniel v Kelly*.

*Dr Il Song Lee,*

*General Practitioner, Eastwood, NSW—Case 1*

The Commission referred Dr Lee on 13 December 2001 to determine whether he had engaged in inappropriate practice in connection with the rendering of services constituting a prescribed pattern. During the referral period of 1 January 2000 to 25 September 2000 inclusive the Commission's data showed that Dr Lee had rendered 80 or more professional attendances per day on 37 occasions.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Lee has appealed to the Federal Court on the issues of whether:

- the Commission made an automatic referral
- the Director failed to consider how to investigate Dr Lee's conduct unconstrained by section 106KA of the Act
- the Committee wrongly thought that exceptional circumstances could not arise from events that affected the rendering of services throughout the referral period.

*Dr Il Song Lee,*

*General Practitioner, Eastwood, NSW—Case 2*

The Commission again referred Dr Lee on 3 June 2002 to determine whether he had engaged in inappropriate practice in connection with the rendering of services constituting a prescribed pattern. During the referral period of 8 January 2001 to 12 October 2001 inclusive the Commission's data showed that Dr Lee had rendered 80 or more professional attendances per day on 37 occasions.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Lee has appealed to the Federal Court on the issues of whether exceptional circumstances existed; and the validity of the referral decisions on the same grounds as in *Daniel v Kelly*.

*Dr Sou Kao Ly,*

*General Practitioner, Cabramatta, NSW*

The Commission referred Dr Ly on 13 December 2001 to determine whether he had engaged in inappropriate practice in connection with the rendering of services constituting a prescribed pattern. During the referral period of 1 January 2000 to 9 April 2000 inclusive the Commission's data showed that Dr Ly had rendered 80 or more professional attendances per day on 28 occasions.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Ly has appealed to the Federal Court on the issues of whether:

- the respondents erroneously construed the Act as establishing a separate procedure for 80/20 Investigative Referrals
- the Commission was required to make an Investigative Referral once it identified a prescribed pattern of services

- the Committee adequately considered the services provided in the relevant period
- exceptional circumstances existed.

*Dr George Maragoudakis,  
Medical Practitioner, Parkdale, Vic.*

The Commission referred Dr Maragoudakis on 18 December 2001 to determine whether he had engaged in inappropriate practice in connection with the rendering of services constituting a prescribed pattern. During the referral period of 4 January 2000 to 4 September 2000 inclusive the Commission's data showed that Dr Maragoudakis had rendered 80 or more professional attendances per day on 31 occasions.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Maragoudakis has appealed to the Federal Court on the issues of whether exceptional circumstances existed, and the decisions of the Determining Authority were valid.

*Dr Zelko Oreb,  
General Practitioner, Newtown, NSW*

The Commission referred Dr Oreb on 13 December 2001 to determine whether he had engaged in inappropriate practice in connection with the rendering of services constituting a prescribed pattern. During the referral period of 24 January 2000 to 8 August 2000 inclusive the Commission's data showed that Dr Oreb had rendered 80 or more professional attendances per day on 33 occasions.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Oreb has appealed to the Federal Court on the issues of whether exceptional circumstances existed, and the validity of the referral decisions on the same grounds as in *Daniel v Kelly*.

*Dr Charles Russell-Smith,  
General Practitioner, Kwinana, WA*

The Commission referred Dr Russell-Smith on 13 December 2001 to determine whether he had engaged in inappropriate practice in connection with the rendering of services constituting a prescribed pattern. During the referral period of 6 January 2000 to 17 July 2000 inclusive the Commission's data showed that Dr Russell-Smith had rendered 80 or more professional attendances per day on 45 occasions.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Russell-Smith has appealed to the Federal Court on the issues of whether exceptional circumstances existed, and the validity of the referral decisions on the same grounds as in *Daniel v Kelly*.

*Dr Peter Tisdall,  
General Practitioner, Kyabram, Vic.*

The Commission referred Dr Tisdall on 13 December 2001 to determine whether he had engaged in inappropriate practice in connection with the rendering of services constituting a prescribed pattern. During the referral period of 5 January 2000 to 21 August 2000 inclusive the Commission's data showed that Dr Tisdall had rendered 80 or more professional attendances per day on 66 occasions.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Tisdall has appealed to the Federal Court on the meaning of the terms 'within a specified location' and 'exceptional circumstances'.

The following practitioners, all referred from the Commission for a range of issues such as high volume of rendered services and high daily services, have lodged appeals with the Federal Court and are awaiting substantive hearings. The appeal issues vary widely.

*Dr Peter Andrianakis,  
Medical Practitioner,  
Thornbury and Yarraville, Vic.*

The Commission referred Dr Andrianakis on 10 May 2000 because it was concerned that he may have engaged in inappropriate practice in rendering a high volume of services (17 004) and high daily services during the referral period of 1 July 1998 to 30 June 1999 inclusive. The Director conducted a review and decided that a committee should further investigate Dr Andrianakis' conduct.

A committee was established, a hearing held and a final report produced with an adverse outcome. The Determining Authority issued a final determination directing that Dr Andrianakis be reprimanded, counselled and fully disqualified for a period of two months. Dr Andrianakis has appealed to the Federal Court on the issue of whether the committee and the Determining Authority erred in their decisions in relation to the inadequacy of his patient medical records.

*Dr Jerzy Cywinski, General Practitioner,  
Austral and Bonnyrigg, NSW*

The Commission referred Dr Cywinski on 17 May 2000 because it was concerned that he may have engaged in inappropriate practice in rendering a high volume of services (16 448), high daily servicing and high level of pathology and diagnostic imaging initiation during the referral period of 1 July 1998 to 30 June 1999 inclusive. The Director conducted a review and decided that a committee should further investigate Dr Cywinski's conduct.

A committee was established, a hearing held and a final report produced with an adverse outcome. The Determining Authority issued a final determination directing that Dr Cywinski be reprimanded, counselled, repay \$55 327.82 and be fully disqualified for a period of two months and partially for 12 months from services in Group A1 of the MBS. Dr Cywinski has appealed to the Federal Court for a review of the determination and penalty imposed by the Determining Authority.

*Dr Rifaat Dimian,  
Medical Practitioner, Merrylands, NSW*

The Commission referred Dr Dimian on 17 May 2000 because it was concerned that he may have engaged in inappropriate practice through high daily servicing and a high volume of rendered services (19 870) during the referral period of 1 July 1998 to 30 June 1999 inclusive. The Director conducted a review and decided that a committee should further investigate Dr Dimian's conduct.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Dimian has appealed to the Federal Court on a number of issues, one of which concerns procedural fairness.

*Dr Constantinos Perkoulidis,  
Medical Practitioner, Brunswick, Vic.*

The Commission referred Dr Perkoulidis on 18 December 2001 because it was concerned that he may have engaged in inappropriate practice through a high proportion of long surgery consultations to total surgery consultations, high proportion of long and prolonged home visits to total home visits and services per patient during the referral period of 1 January 2000 to 31 December 2000 inclusive. The Director conducted a review and decided that a committee should further investigate Dr Perkoulidis' conduct.

A committee was established, a hearing held and a final report produced with an adverse outcome. The Determining Authority issued a final determination directing that Dr Perkoulidis be reprimanded, counselled, repay \$88 712.67 and be fully disqualified for a period of two months. Dr Perkoulidis has appealed to the Federal Court challenging whether the penalties directed by the Determining Authority were appropriate.

*Dr Ashraf Selim,  
General Practitioner, Punchbowl, NSW*

The Commission referred Dr Selim on 18 December 2001 because it was concerned that he may have engaged in inappropriate practice through a high level of rendered services and high daily servicing during the referral period of 1 January 2000 to 31 December 2000 inclusive. The Director conducted a review and decided that a committee should further investigate Dr Selim's conduct.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Selim has appealed to the Federal Court on the basis that none of the PSR decision-making bodies considered his services over the whole two years immediately preceding the Investigative Referral, but instead looked at a 12-month period that fell within those two years. He also alleges that the committee did not inform him of its concerns before producing its draft report and that it applied the wrong test, comparing his conduct to an optimal level rather than to a range of conduct that would be considered acceptable.

*Dr Chris Siamidis,  
Medical Practitioner, North Fitzroy, Vic.*

The Commission referred Dr Siamidis on 2 June 2000 because it was concerned that he may have engaged in inappropriate practice through rendering a high volume of home visits (6748 to 863 patients) and services per patient during the referral period of 1 July 1998 to 30 June 1999 inclusive. The Director conducted a review and decided that a committee should further investigate Dr Siamidis' conduct.

A committee was established, a hearing held and a final report produced with an adverse outcome. The Determining Authority issued a final determination directing that Dr Siamidis be reprimanded, counselled, repay \$75 000 and be fully disqualified for a period of 12 months. Dr Siamidis has appealed to the Federal Court on whether the committee and the Determining Authority erred in their decisions in relation to the inadequacy of the patient records he provided to the Director during the investigative stage of the referral.

*Dr Chee Kan Kenneth Wong,  
General Practitioner, Merrylands and Parramatta, NSW*

The Commission referred Dr Wong on 10 May 2002 because it was concerned that he may have engaged in inappropriate practice through rendering a high volume of services and high daily servicing during the referral period of 1 July 2000 to 30 June 2001 inclusive. The Director conducted a review and decided that a committee should further investigate Dr Wong's conduct.

A committee was established, a hearing held and a final report produced with an adverse outcome. Dr Wong has appealed to the Federal Court on whether he should have been offered an agreement under section 92 of the Act before the Director's referral to a committee.

*Dr John Piesse,  
General Practitioner, Kew, Vic.*

As reported last year, the Commission referred Dr Piesse on 18 December 2001 with concerns that he may have engaged in inappropriate practice in rendering long and prolonged consultations and in initiating excessive pathology services. The Director conducted an investigation and decided that a committee should further investigate Dr Piesse's conduct. After the first day of the committee's hearing, Dr Piesse applied to the Federal Court seeking judicial review of the committee's decision to refuse to provide him, free of charge, with a copy of the transcript of proceedings, or alternatively, refusing to allow him to make his own recording.

In January 2003, Dr Piesse sought an injunction restraining the committee from holding further hearings until the issue of the transcript had been decided. Justice Gray refused to direct the committee to provide Dr Piesse with a copy of the transcript free of charge, observing that Dr Piesse was able to purchase a copy. He also concluded that Dr Piesse's application was premature because until the committee provided him with its findings, making reference to the evidence on which those findings were based, Dr Piesse did not have cause to complain that he had been denied natural justice.

Dr Piesse was provided with a copy of a draft report in October 2003 on which he made submissions. After consideration of those submissions, Dr Piesse was provided with a copy of the final report in March 2004, the Determining Authority received its copy in April 2004 and is yet to make a final determination.

The appeal is to be given a hearing date after the Determining Authority has made its final determination.<sup>6</sup>

#### *Court costs*

In nine recent Court decisions, legal costs averaging \$130 000 have been awarded to PSR. The Commonwealth is actively pursuing recovery of these from the applicants. These practitioners will also have to pay their own costs which will often be higher because the Commonwealth limits its fees to barristers.

## Agency activities

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### **Deputy Directors' conference**

A two-day conference for Deputy Directors (committee chairpersons) was held in Victoria on 25–26 March 2004. The 16 Deputy Directors attending reviewed the past year's activities and were deeply involved in wide ranging discussions on:

- status of completed and current PSR Tribunal, Federal Court and High Court cases

- impact of legislative changes which came in to effect from 1 January 2003
- Secretariat role and committee Members' role and responsibilities
- outcomes of a project to streamline committee report writing processes.

These annual meetings continue to prove their value in ensuring that the PSR process is as far as is possible uniform across Australia and allows participants to learn from their colleagues' experience.

## Secretariat workshop

A one day workshop was held in Canberra on 29 June 2004 for Secretariat Officers and Review Unit staff. The workshop was coordinated by Mr Dale Boucher and attended by 17 staff—a Deputy Director, Dr Lynette Edwards, lawyers from Minter Ellison and the lawyer to the Determining Authority.

The main aim of the workshop was to provide an open forum for discussion on the committee report writing processes. Following on from the issues discussed at the Deputy Directors' conference in March, the workshop participants provided their insight into the current processes and suggested a number of modifications and improvements which will be taken forward by a working group.

## External conferences

During the year, the Director and staff attended a number of external conferences in Canberra, Brisbane, New Zealand, Ireland and the United States of America.

### *Australia and New Zealand Medical Boards and Councils' Annual Seminar, Canberra*

The Director, Executive Officer and other staff attended the Australia and New Zealand Medical Boards and Councils' Annual Seminar in Canberra on 21–22 November 2003. The seminar was opened by Prof. John Horvath, the Commonwealth's Chief Medical Officer and was followed by an address by Dr Tom Frame the Anglican Bishop to the Australian Defence Force.

Seminar sessions included talks on medical regulation, issues confronting medical boards and council's interaction with associated bodies (where the Director was one of the presenters), new genetics and end-of-life decisions. It is interesting, but definitely not surprising, that the same issues confront medical boards and councils as the PSR scheme.

### *National Conference of the Institute of Public Administration Australia, Brisbane*

The Executive Officer attended the National Conference of the Institute of Public Administration Australia in Brisbane on 27–28 November 2003. The theme of the conference was 'Vision 2020: Government for the Future'. Issues were presented in four modules: Government, Globalisation, Collaboration and Society.

The Institute of Public Administration Australia, established in 1928, is the only professional association in Australia that provides a focal point for all three sectors of government—Commonwealth, State and Local. It has a diverse membership of over 4500 public servants, academics, students and other community members who share its aims.

In general the speakers highlighted that governments of the future will be influenced by globalisation, technology, security and the growing expectations of citizens for greater input and choice; making them very different to what we know today. Recent world events have sped the pace of change and many old institutions are being forced to re-evaluate their roles.

### *7th Annual Australian Institute of Judicial Administration Tribunals Conference, Brisbane*

The Director, Executive Officer and several staff attended the 7th Annual Australian Institute of Judicial Administration Tribunals Conference in Brisbane on 10–11 June 2004. The theme of the conference was 'Tribunals: Improving Access to Justice' and 236 delegates from Australia, New Zealand and Malaysia attended. The Conference topics included:

- processes of tribunals and courts
- the role of consensual dispute resolution in tribunals
- benchbooks for tribunals
- comparing processes in the mental health review tribunals
- experiences of sessional tribunal members
- writing decisions
- eliciting and evaluating evidence.

The Conference provided valuable information on the experiences, processes and procedures followed by other Australian

tribunals and committees.

### *New Zealand*

The Director attended the 3rd Asia Pacific Forum on Quality Improvement in Health Care held in New Zealand on 3–5 September 2003. The Forum attracted over 1000 delegates with representation from a broad range of countries in the Asiatic region along with numerous European delegates.

The Forum aims to:

- provide education on how to improve health care
- exchange sound, practical ideas on improving health care
- provide a setting for discussion and shared learning
- build the research base of methods to improve health care.

A key issue discussed at the Forum was the importance of equity as a measure of quality. The Forum provided useful insights for PSR into the changes in health care in the region and how this ever-changing environment can be best harnessed for regulators.

### *Ireland*

The Director attended and presented at the 6th International Conference on Medical Regulation held in Dublin on 21–24 April 2004. The theme of the conference was ‘Collaborating for Professional and Patient Safety’ and it was attended by more than 250 delegates from over 42 countries.

Along with a number of plenary sessions the conference speakers covered the following topics:

- medical regulation—the World Health Organisation perspective
- performance assessment of physicians
- clinical performance indicators
- medical education and accreditation—vehicles for change in medical practice
- medical mobility—an Australian perspective presented by the Australian Ambassador to Ireland, the Hon. Dr John Herron.

The Director’s presentation, entitled ‘An Australian Accountability Scheme’, detailed the development of the PSR Scheme since its inception 10 years ago. He also provided an insight into the peer review process—its decision making and results.

### *United States of America*

The Director and the Executive Officer attended the 92nd Annual Meeting of the Federation of State Medical Boards of the United States held in Arlington, Virginia from 29 April to 1 May 2004.

The Federation was founded in 1912 as the result of a merger between the National Confederation of State Medical Examining and Licensing boards and the American Confederation of Reciprocating Examining and Licensing Boards. Its role is to make contributions to the effectiveness and integrity of medical licensing and discipline systems to assist medical quality in the United States. Its core values are public protection and accountability, leadership and service and excellence.

The Annual Meeting provides a forum for discussion on all aspects of licensing, discipline and regulatory issues. ‘Capitalizing on Collaboration’ was the theme of the meeting and the presentations included topics such as:

- the legislative process—building relationships
- influencing public policy—achieving your legislative goals
- professionalism—a continuum of accountability
- scope of practice—balancing access with safety
- disciplinary hearing or consent agreement.

Ms Rosemary Gibson, author of *Wall of Silence* and leading advocate for patient safety issues, spoke to the delegates about strategies medical boards can employ to reduce medical errors in their jurisdictions.

Secretary Tom Ridge of the United States Department of Homeland Security spoke to the delegates about their role in assuring preparedness and mobility of medical personnel in case of a national disaster. Secretary Ridge is developing and coordinating a comprehensive national strategy to strengthen the United States against terrorist threats and attacks.

While in the United States, the Director and Executive Officer took the opportunity to meet with several senior officials of the

Office of Inspector General of the Federal Department of Health and Human Services. Once again, this meeting proved to be eye-opening when compared with the Australian situation.

As an example, Special Agents with the Office of Inspector General, tasked with detecting and investigating criminal and civil fraud, waste and abuse in health programs, take a more aggressive approach than is used in Australia by regularly employing the following tools:

- search warrants
- arrest warrants
- interviews
- surveillance
- undercover operations.

As suggested in last years report, the web site for the Office of Inspector General

[www.oig.hhs.gov](http://www.oig.hhs.gov) is worthy of a visit to see the effect of investigations (or 'audits' as the Office calls them) on agencies entitled to federal funds.

The Executive Officer also travelled to Troy/Albany New York to hold talks with the Director and his staff in the Information Systems Branch at the Office of Professional Medical Conduct New York State Department of Health. Rather than a single database containing all the information about each individual practitioner, the Office has a number of separate databases containing data on things like registration, workflow and complaints. The Office finds it difficult to reconcile the circumstances of each practitioner across each of their systems because they need to draw data from a number of places to paint a true picture.

The Executive Officer discussed the benefits and experiences of the single PSR database which holds all relevant information for each practitioner. Considering Australia as a whole has around 50 per cent of the licensed medical practitioners of New York State alone, the PSR database and case reporting system (MALCOLM) equates quite favourably with the Office of Professional Medical Conduct systems.

# Management and accountability

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## Corporate governance

The Director of Professional Services Review is a statutory officer appointed by the Minister for Health and Ageing (with agreement from the AMA) to manage the PSR process. The Director reports directly to the Minister and his actions are governed by the Act.

## Structure and organisation chart

Dr John Holmes, was the inaugural Director, appointed on 21 July 1993. His current term ends on 31 December 2004.

An Executive Officer, three Unit Managers and their staff and legal counsel support the Director in his role (see Figure 1).

The Executive Officer reports to the Director and has a leadership role in achieving organisational objectives through management of financial and human resources, policy development and provision of governance advice.

The Review Unit assists the Director with the review of requests received from the Commission. It also produces the agreements sent to the Determining Authority following negotiations and the documentation for referrals of practitioners to committees. The Committees Unit provides secretariat support to committees. The Corporate Unit provides financial and human resources and information technology services and support for the whole organisation.

General legal assistance is outsourced to the Minter Ellison law firm. A Minter Ellison legal officer is outposted to PSR and Minter Ellison lawyers in each state provide assistance at committee hearings.

In addition, secretariat support for the Determining Authority is located within PSR's offices. Legal support is provided to the Determining Authority by the law firm Clayton Utz.

*Figure 1: Organisation chart*

## Management Committee

The Management Committee, comprising the Director, the Executive Officer and the Unit Managers, meet monthly to consider all relevant issues. The committee's agenda varies depending on current issues but they regularly discuss:

- policy maintenance and development
- corporate governance issues
- finances
- human resources
- occupational health and safety
- productivity.

## Risk management

Following on from last year's workshops, Acumen Alliance prepared a draft risk management and fraud control plan for 1 July 2003 to 30 June 2004. The draft plan covered the activities in the planning, monitoring and controlling of actions that would address the threats and problems identified as part of the analysis of risk process and the likelihood of PSR as an organisation achieving its stated objectives.

A review of the draft plan conducted by PSR Management in May 2004 included:

- updating the risk register by conducting a revised risk analysis (identifying new risks, updating the assessment of risks; removing risks which were no longer relevant)
- updating action plans to address the risks for new key risks
- identifying new action plans.

The Risk Management Plan is inclusive of the outcomes of the aforementioned review and incorporates the subsequent follow-up action required to ensure that PSR's risk management is responsive to the changing needs of the organisation. The review has enabled a revised PSR Risk Management and Fraud Control Plan to be developed for 2004–05.

To date, PSR has not lodged any insurance claims and all other risks have been managed effectively.

## External scrutiny

During the year the PSR scheme was scrutinised in a number of cases before PSR Tribunals and/or the Courts. This report contains summaries of those cases, the impact of which is discussed in the performance assessment.

## Management of human resources

Staff were employed under the *Public Service Act 1999* and most ongoing staff were employed on a permanent full-time basis. Two staff members were employed on a part-time basis and another on a casual non-ongoing basis.

To accommodate the expanded legislative role, PSR has actively recruited staff to meet its needs but is yet to reach maximum staffing. During the year one staff member transferred permanently to the Department of Health and Ageing.

Tables 11 and 12 show the actual permanent staffing levels against the staffing budget and the classification levels of all staff.

*Table 11—Staffing Budget and Levels*

| 2003–04 Budget | 2003–04 Actual | 2002–03 Actual |
|----------------|----------------|----------------|
|----------------|----------------|----------------|

35

30

27

Table 12—Staff Classification Levels as at 30 June 2004

| Classification                   | Male      | Female    | Total     |
|----------------------------------|-----------|-----------|-----------|
| Statutory Office Holder          | 1         | 0         | 1         |
| Senior Executive Service Officer | 1         | 0         | 1         |
| Executive Officer Level 2        | 2         | 2         | 4         |
| Executive Officer Level 1        | 4         | 4         | 8         |
| APS 6                            | 1         | 5         | 6         |
| APS 5                            | 0         | 1         | 1         |
| APS 4                            | 2         | 4         | 6         |
| APS 3                            | 1         | 1         | 2         |
| APS 2                            | 1         | 0         | 1         |
| <b>Total</b>                     | <b>13</b> | <b>17</b> | <b>30</b> |

APS = Australian Public Service

Note: Two staff were on 12 months long-term leave without pay.

Thirteen per cent of staff are from non English-speaking backgrounds, and there are no staff of Aboriginal or Torres Strait Islander origin nor do any have a disability.

### Staff training and development

Through its performance development scheme, staff training needs were identified which allowed the Human Resources Coordinator to develop a training schedule of external and internal courses. Those courses included:

- Statistical Analysis
- Writing Skills
- TRIM Training
- Occupational Health and Safety.

Three staff are currently studying for formal qualifications under the Studybank scheme.

The expenditure devoted to training in 2003–04 was 2.2 per cent. This figure does not include the training provided to staff through the Memorandum of Understanding with the Department of Health and Ageing. As there were only nine new members

appointed this year there were no committee member training sessions held which accounts for the expenditure decrease from 3.6 per cent in 2002–03.

There is strong Management commitment to developing staff and committee members so they are better able to perform their duties.

### Ethical standards

The Australian Public Service values are promoted to staff and, as shown in the Agency Overview, PSR has developed values specific to the organisation.

### Certified Agreement and Australian Workplace Agreements

PSR staff were covered by the third Certified Agreement with a nominal expiry date of 31 December 2005. The Remuneration Tribunal sets the Director's salary and conditions. Australian Workplace Agreements covered PSR's Executive Officer, plus an additional 11 staff.

Some of the major features of the Certified Agreement include:

- salary adjustments in July 2003 (average increase of 1.5%) a 3.5 per cent pay rise in January 2004, and a 4 per cent pay rise in January 2005
- an enhanced performance development scheme
- formation of a Policy Review Committee
- higher duties allowance of more than five days paid from the first day and paid after aggregation of five days in a calendar year
- two weeks paid paternity leave
- revised travel time arrangements
- school holiday family care subsidy
- expanded study assistance through Studybank
- Australian Workplace Agreements available for all staff.

The salary ranges for Australian Public Service employees covered by the Certified Agreement are set out in Table 13.

*Table 13—PSR Salary Ranges*

| APS classification | 10 January 2003    | 1 July 2003        | 1 January 2004     |
|--------------------|--------------------|--------------------|--------------------|
| APS 1              | \$28 973 to 32 495 | \$29 058 to 32 630 | \$30 075 to 33 772 |
| APS 2              | \$32 790 to 36 898 | \$33 961 to 37 082 | \$35 149 to 38 380 |
| APS 3              | \$37 348 to 40 905 | \$39 146 to 43 297 | \$40 516 to 44 813 |
| APS 4              | \$41 626 to 45 863 | \$44 265 to 46 877 | \$45 814 to 48 518 |
| APS 5              | \$46 428 to 49 958 | \$48 163 to 50 942 | \$49 849 to 52 725 |
| APS 6              | \$50 146 to 58 453 | \$53 352 to 59 985 | \$55 220 to 62 085 |
| EL1                | \$64 286 to 71 576 | \$65 366 to 71 934 | \$67 654 to 74 451 |

|            |                    |                    |                    |
|------------|--------------------|--------------------|--------------------|
| <b>EL2</b> | \$74 143 to 88 151 | \$74 512 to 88 585 | \$77 120 to 91 685 |
|------------|--------------------|--------------------|--------------------|

APS = Australian Public Service EL = Executive Level

## Performance pay

Guidelines for performance pay are contained in individual Australian Workplace Agreements. This year PSR paid a total of \$22 211 in performance pay to three staff.

## Occupational health and safety

In recognition of the legal responsibility to safeguard the health of its employees while they work, the agency provides and maintains occupational health and safety standards in relation to its offices and equipment. The Occupational Health and Safety Committee met on a quarterly basis during the year. The Occupational Health and Safety Committee regularly makes recommendations to the PSR Management Committee for consideration. In all cases PSR Management has supported the recommendations of the Occupational Health and Safety Committee.

If required, policy advice relating to occupational health and safety is given by the specialist area in the Department of Health and Ageing as an element of the Memorandum of Understanding. Also included in the Memorandum of Understanding is access for staff and/or their immediate families to counselling services by trained professionals, using an employment assistance program.

Nine occupational health and safety incidents were reported in 2003–04 none of which resulted in a claim to Comcare. Two of these incidents related to motor vehicle accidents on the way to work and a further two related to falls outside the workplace. There were no notices issued or received under any of the relevant sections of the Occupational Health and Safety Committee Act during the year.

## Workplace diversity

In its commitment to workplace diversity PSR ensures all staff are treated fairly and without direct, indirect or systemic discrimination. All staff have had equal access to employment, career and development opportunities and PSR encourages appropriate representation from the target groups specified in workplace diversity policies.

Because of its size, PSR has no separate workplace diversity plan but has embraced that of the Department of Health and Ageing.

## Industrial democracy

Staff were consulted on all major issues during the year. The minutes of the monthly Management Committee meetings are circulated to all staff. Staff meetings are held within Units and information is channelled to and from management meetings.

Because of the increase in staff numbers, the premises PSR currently occupies no longer meets the needs of the organisation. Management sourced several other options, took staff on visits to prospective premises and held staff meetings to gain and evaluate opinions prior to making a decision. Since deciding to move premises staff have also been consulted on the floor plan, outfitting and furniture.

## Commonwealth Disability Strategy

Our programs and services are not delivered to the general public and, to date, we have not had any person under review claim a disability. If the need arose, PSR considers it is able to satisfactorily cater to any circumstance.

The PSR web site <[www.psr.gov.au](http://www.psr.gov.au)> contains public information about the scheme and meets the Government Online minimum standards with regard to accessible formats for people with disabilities.

With regard to contract tendering, we have adopted the purchasing policies of the Department of Health and Ageing which encompass the Commonwealth Disability Strategy.

There is currently no staff with a disability employed at PSR. However, our employment policies, procedures and practices comply with the requirements of the *Disability Discrimination Act 1992*.

## Finance

The 2003–04 budget appropriation was \$7.616 million. This is the first year of a further four years of funding that was agreed in

the 2003–04 Budget, subject to a review of the scheme before the 2005–06 Budget process.

The Australian National Audit Office's report on our 2003–04 financial statements was unqualified and was signed on 16 September 2004 (see Appendix 1).

## **Purchasing**

Through a Memorandum of Understanding with the Department of Health and Ageing, PSR purchased services, such as payment of accounts, personnel functions, library, rec-ords management, training and coverage for programs including workplace diversity, occupational health and safety and industrial democracy. An agreed annual fee is paid for these services. We adopt the Department of Health and Ageing's purchasing policies and participate in joint purchasing arrangements for such things as travel, banking and office supplies.

## **Asset management**

All PSR assets are securely housed at our premises in Yarralumla. PSR maintains an asset register and an asset stocktake occurs annually. All assets loaned to staff are signed for in a register.

## **Consultants and competitive tendering and contracting**

There was no activity relating to the contracting out of the delivery of government activities, previously performed by a Commonwealth agency, to another organisation.

In accordance with Senate Orders on government contracts (the Murray Motion), all PSR contracts in excess of \$100 000 are displayed on the PSR web site. Any other contracts or purchases in excess of \$2000 are recorded in the Commonwealth Purchasing and Disposal Gazette.

PSR let five new consultancy contracts, with a contract value of \$10 000 or more, and spent \$229 734 on consultants during 2003–04.

Under the *Health Insurance Act 1973*, the Director may consult with medical advisers or professional bodies to obtain assistance in making his decision on a review. The seeking of this advice comprises the majority of the agency's consultancies.

The details of consultancy contracts let in 2003–04 with a contract value of \$10 000 or more are at Professional Services Review's web site, <[www.psr.gov.au](http://www.psr.gov.au)>.

Ministerial appointments to PSR Committees are outside of the consultancy scope and, therefore, are not included in Professional Services Review's Annual Report or on the web site.

## **Ecologically sustainable development and environmental performance**

On account of its small size, PSR has no formal method of reporting its environmental performance, but has endeavoured to reduce its energy costs and encourages ecologically sustainable practices, such as paper recycling.

To aid a gradual transition from paper records to electronic record keeping, PSR has been using the Tower Records Information Management (TRIM) system since 2002. In late 2003 PSR upgraded to the next version of TRIM called Context. The TRIM system enables PSR to reduce its paper usage because most documents created internally will only be produced electronically and documents received electronically should not need to be printed.

## **Information technology**

First level information technology support is provided in-house. Infront Systems, an external provider, continued to provide routine maintenance and second and third level information technology support. During the year, Catalyst Interactive (with LNB Computing) completed a major upgrade of MALCOLM (a customised database for tracking and re-ported all stages of referrals).

## **Publications**

There was one new publication produced this year: the 2002–03 Annual Report. This and past reports are available on the PSR web site at <[www.psr.gov.au](http://www.psr.gov.au)>. See Appendix 2 for a list of publications held by PSR.

# Appendixes

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## Appendix 1 Financial statements

Australian National Audit Office

### Independent Audit Report

To the Minister for Health and Ageing

#### Scope

The financial statements comprise:

- Statement by the Chief Executive and Chief Finance Officer;
- Statements of Financial Position, Financial Performance and Cash Flows;
- Schedules of Commitments and Contingencies; and
- Notes to and forming part of the Financial Statements

of the Professional Services Review Scheme for the year ended 30 June 2004.

The Professional Services Review Scheme's Chief Executive is responsible for the preparation and true and fair presentation of the financial statements in accordance with the Finance Minister's Orders. This includes responsibility for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial statements.

#### Audit approach

I have conducted an independent audit in order to express an opinion to you. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing and Assurance Standards, in order to provide reasonable assurance as to whether the financial statements are free of material misstatement. The nature of an audit is influenced by factors such as the use of professional judgement, selective testing, the inherent limitations of internal control, and the availability of persuasive, rather than conclusive, evidence. Therefore, an audit cannot guarantee that all material misstatements have been detected.

While the effectiveness of management's internal controls over financial reporting was considered when determining the nature and extent of audit procedures, the audit was not designed to provide assurance on internal controls.

The audit did not involve an analysis of the prudence of business decisions made by the Chief Executive or management.

Procedures were performed to assess whether, in all material respects, the financial statements present fairly, in accordance with the Finance Minister's Orders made under the Financial Management and Accountability Act 1997, Accounting Standards and other mandatory financial reporting requirements in Australia, a view which is consistent with my understanding of the Professional Services Review Scheme's performance as represented by the statements of financial performance, financial position and cash flows.

The audit opinion is formed on the basis of these procedures, which included:

- examining, on a test basis, information to provide evidence supporting the amounts and disclosures in the financial statements; and
- assessing the appropriateness of the accounting policies and disclosures used, and the reasonableness of significant accounting estimates made by the Chief Executive.

#### Independence

In conducting the audit, I have followed the independence requirements of the ANAO, which incorporate Australian professional ethical pronouncements.

#### Audit Opinion

In my opinion, the financial statements:

- (i) have been prepared in accordance with Finance Minister's Orders made under the Financial Management and Accountability Act 1997 and applicable Accounting Standards; and
- (ii) give a true and fair view, of the matters required by applicable Accounting Standards and other mandatory professional reporting requirements in Australia, and the Finance Minister's Orders, of the financial position of the Professional Services Review Scheme as at 30 June 2004, and its financial performance and cash flows for the year then ended.

Australian National Audit Office

**Richard Rundle**

Executive Director  
 Delegate of the Auditor-General  
 Canberra  
 16 September 2004

Statement By The Chief Executive

In our opinion, the attached financial statements for the year ended 30 June 2004 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the Financial Management and Accountability Act 1997.

Signed ..... Signed .....

**Dr John Holmes**

Director  
 Professional Services Review  
 September 2004

**Tracey Jones**

Finance Manager  
 Professional Services Review  
 September 2004

**PROFESSIONAL SERVICES REVIEW**

**Statement of Financial Performance**

for the year ended 30 June 2004

|  | Notes | 2004<br>\$              | 2003<br>\$       |
|--|-------|-------------------------|------------------|
| <b>Revenues from ordinary activities</b>       |       |                         |                  |
| Revenues from Government                       | 4A    | <b>7,604,200</b>        | 7,528,200        |
| Goods and services                             | 4B    | <b>2,531</b>            | 1,079            |
| Revenue from sale of assets                    | 5E    | -                       | 2,022            |
| Other revenues                                 | 4C    | -                       | 1,606            |
| Prior Period Prepayment Adjustment             | 4D    | <b>210,000</b>          | -                |
| <b>Total revenues from ordinary activities</b> |       | <b><u>7,816,731</u></b> | <u>7,532,907</u> |
| <b>Expenses from ordinary activities</b>       |       |                         |                  |
| Employees                                      | 5A    | <b>2,382,640</b>        | 2,043,000        |
| Suppliers                                      | 5B    | <b>4,366,855</b>        | 3,352,655        |
| Depreciation and amortisation                  | 5C    | <b>180,638</b>          | 113,590          |
| Write-down of assets                           | 5D    | <b>81,619</b>           | 3,383            |

|   |                              |                         |
|---|------------------------------|-------------------------|
| <b>Total expenses from ordinary activities</b>                            | <u><b>7,011,752</b></u>      | <u>5,512,628</u>        |
| <b>Net surplus / (deficit) from ordinary activities before income tax</b> | <u><b>804,979</b></u>        | <u>2,020,279</u>        |
| <b>Net surplus / (deficit) from ordinary activities after income tax</b>  | <u><u><b>804,979</b></u></u> | <u><u>2,020,279</u></u> |
| <b>Total changes in equity other than those resulting from</b>            | <u><u><b>804,979</b></u></u> | <u><u>2,020,279</u></u> |
| <b>transactions with the Australian Government as owner</b>               |                              |                         |

The above statement should be read in conjunction with the accompanying notes.

## PROFESSIONAL SERVICES REVIEW

### Statement of Financial Position

as at 30 June 2004

|                                     | Notes | 2004<br>\$              | 2003<br>\$       |
|-------------------------------------|-------|-------------------------|------------------|
| <b>ASSETS</b>                       |       |                         |                  |
| <b>Financial Assets</b>             |       |                         |                  |
| Cash                                | 6A    | <b>5,709,212</b>        | 4,145,985        |
| Receivables                         | 6B    | <b>160,283</b>          | 151,541          |
| <b>Total financial assets</b>       |       | <u><b>5,869,495</b></u> | <u>4,297,526</u> |
| <b>Non-financial assets</b>         |       |                         |                  |
| Land and buildings                  | 7A,7C | <b>12,886</b>           | 103,631          |
| Infrastructure, plant and equipment | 7B,7C | <b>239,150</b>          | 148,252          |
| Intangibles                         | 7D    | <b>295,188</b>          | 245,465          |
| Other non-financial assets          | 7E    | <b>651,629</b>          | 1,348,916        |
| <b>Total non-financial assets</b>   |       | <u><b>1,198,853</b></u> | <u>1,846,264</u> |

|   |    |                  |                  |
|---|----|------------------|------------------|
| <b>TOTAL ASSETS</b>                       |    | <b>7,068,348</b> | <b>6,143,790</b> |
| <b>LIABILITIES</b>                        |    |                  |                  |
| <b>Provisions</b>                         |    |                  |                  |
| Employees                                 | 8A | <b>783,537</b>   | 760,441          |
| <b>Total provisions</b>                   |    | <b>783,537</b>   | 760,441          |
| <b>Payables</b>                           |    |                  |                  |
| Suppliers                                 | 9A | <b>431,568</b>   | 335,085          |
| <b>Total payables</b>                     |    | <b>431,568</b>   | 335,085          |
| <b>TOTAL LIABILITIES</b>                  |    | <b>1,215,105</b> | 1,095,526        |
| <b>NET ASSETS</b>                         |    | <b>5,853,243</b> | 5,048,264        |
| <b>EQUITY</b>                             | 10 |                  |                  |
| Contributed equity                        |    | <b>700,000</b>   | 700,000          |
| Reserves                                  |    | <b>30,324</b>    | 30,324           |
| Retained Surpluses/(Accumulated deficits) |    | <b>5,122,919</b> | 4,317,940        |
| <b>TOTAL EQUITY</b>                       |    | <b>5,853,243</b> | 5,048,264        |
| <b>Current assets</b>                     |    | <b>6,521,124</b> | 5,646,441        |
| <b>Non-current assets</b>                 |    | <b>547,224</b>   | 497,349          |
| <b>Current liabilities</b>                |    | <b>691,002</b>   | 558,442          |
| <b>Non-current liabilities</b>            |    | <b>524,103</b>   | 537,084          |

The above statement should be read in conjunction with the accompanying notes.

## PROFESSIONAL SERVICES REVIEW

### Statement of Cash Flows

for the year ended 30 June 2004

|  |       | <b>2004</b> | 2003 |
|--|-------|-------------|------|
|  | Notes | \$          | \$   |

## OPERATING ACTIVITIES

**Cash received**

|                            |                  |                  |
|----------------------------|------------------|------------------|
| Goods and services         | 2,664            | 2,685            |
| Appropriations             | 7,616,000        | 7,504,000        |
| Interest                   | 0                | 18,133           |
| Net GST received from ATO  | 296,118          | 281,849          |
| <b>Total cash received</b> | <b>7,914,782</b> | <b>7,806,667</b> |

**Cash used**

|  |                     |                  |
|--|---------------------|------------------|
| Employees  | 2,368,036           | 1,829,775        |
| Suppliers  | 3,428,019           | 3,155,471        |
| Net GST paid   | 314,502             | 383,255          |
| <b>Total cash used</b>                               | <b>6,110,556</b>    | <b>5,368,501</b> |
| <b>Net cash from/ (used by) operating activities</b> | <b>11 1,804,226</b> | <b>2,438,166</b> |

**INVESTING ACTIVITIES****Cash received**

|  |          |              |
|--|----------|--------------|
| Proceeds from sales of property, plant and equipment | 0        | 2,022        |
| <b>Total cash received</b>                           | <b>0</b> | <b>2,022</b> |

**Cash used**

|   |                  |                 |
|---|------------------|-----------------|
| Purchase of property, plant and equipment           | 38,064           | 93,850          |
| Purchase of intangibles                             | 121,317          | 0               |
| <b>Total cash used</b>                              | <b>159,381</b>   | <b>93,850</b>   |
| <b>Net cash from (used by) investing activities</b> | <b>(159,381)</b> | <b>(91,828)</b> |

**FINANCING ACTIVITIES****Cash received**

|                            |          |          |
|----------------------------|----------|----------|
| <b>Total cash received</b> | <b>0</b> | <b>0</b> |
|----------------------------|----------|----------|

**Cash used**

|                         |          |                |
|-------------------------|----------|----------------|
| Capital use charge paid | N/A      | 486,000        |
| <b>Total cash used</b>  | <b>0</b> | <b>486,000</b> |

|   |                     |                  |
|---|---------------------|------------------|
| <b>Net cash from (used by) financing activities</b> | <b>0</b>            | <b>(486,000)</b> |
| <b>Net increase / (decrease) in cash held</b>       | <b>1,644,846</b>    | 1,860,338        |
| Cash at beginning of the reporting period           | <b>4,145,985</b>    | 2,285,647        |
| <b>Cash at the end of the reporting period</b>      | 6A <b>5,790,831</b> | 4,145,985        |

The above statement should be read in conjunction with the accompanying notes.

## PROFESSIONAL SERVICES REVIEW

### SCHEDULE OF CONTINGENCIES

as at 30 June 2004

|  | 2004     | 2003     |
|--|----------|----------|
|  | \$       | \$       |
| <b>CONTINGENT LIABILITIES</b>            |          |          |
| Other guarantees                         |          |          |
| Guarantees to Public Trading Enterprises | 0        | 0        |
| Indemnities                              | 0        | 0        |
| Claims for damages/costs                 | 0        | 0        |
| <b>Total contingent losses</b>           | <b>0</b> | <b>0</b> |
| <b>CONTINGENT GAINS</b>                  |          |          |
| Claims for damages/costs                 | 0        | 0        |
| <b>Net contingencies</b>                 | <b>0</b> | <b>0</b> |

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in Note 12: Contingent Liabilities and Assets

The above schedule should be read in conjunction with the accompanying notes.

|                                     |  |  |  |  |
|-------------------------------------|--|--|--|--|
| <b>PROFESSIONAL SERVICES REVIEW</b> |  |  |  |  |
|-------------------------------------|--|--|--|--|

| <b>SCHEDULE OF COMMITMENTS</b>  |  |               |        |
|---|--|---------------|--------|
| as at 30 June 2004  |  |               |        |
|   |  |               |        |
|   |  | <b>2004</b>   | 2003   |
|   |  | \$            | \$     |
| <b>BY TYPE</b>  |  |               |        |
| <b>Capital commitments</b>  |  | <b>0</b>      | 0      |
| OTHER COMMITMENTS   |  |               |        |
| Operating leases <sup>1</sup>   |  | <b>47,029</b> | 43,217 |
| <b>Total other commitments</b>  |  | <b>47,029</b> | 43,217 |
| COMMITMENTS RECEIVABLE  |  | <b>1,698</b>  | 0      |
| <b>Net commitments</b>  |  | <b>45,330</b> | 43,217 |
| <b>BY MATURITY</b>  |  |               |        |
| <b>All net commitments</b>  |  |               |        |
| One year or less  |  | <b>45,330</b> | 43,217 |
| <b>Net commitments</b>  |  | <b>45,330</b> | 43,217 |
| <b>Operating Lease Commitments</b>  |  |               |        |
| One year or less  |  | <b>47,029</b> | 43,217 |
| <b>Net commitments</b>  |  | <b>47,029</b> | 43,217 |
| <b>NB: Commitments are GST inclusive where relevant.</b>  |  |               |        |
| 1. Operating leases included are effectively non-cancellable and comprise leases for office accommodation and computer equipment. |  |               |        |
|   |  |               |        |
| <b>Nature of Lease</b>  | <b>General description of leasing arrangement</b>  |               |        |
| Lease for office accommodation  | - lease payments were subject to annual increase in accordance with upwards movements in the Consumer Price Index;   |               |        |
|   | - the office accommodation lease for 16 Bentham Street will be not be renewed upon its expiry on 31 August 2004. The new 5 year office accommodation lease at Brindabella Park has a commencement date of 1 August 2004. |               |        |

|  |  |
|--|--|
| Agreements for the provision of motor                                      | - no contingent rental exists;   |
| vehicles to senior executive officers                                      | - there are no renewal or purchase options available to the Professional Services Review   |
| A lease in relation to computer equipment held <b>as at 30 June 2004</b> . | - the lessor provides all computer equipment and software designated as necessary in the supply contract for three (3) years. The initial equipment has, on average, a useful life of three years from the commencement of the contract; |
|  | - (condition of lease) the Agency may vary its originally designated requirement, subject to giving 3 months notice, at no penalty.  |

The above schedule should be read in conjunction with the accompanying notes.

|   |  |
|---|--|
| PROFESSIONAL SERVICES REVIEW                          |  |
| NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS |  |
| for the year ended 30 June 2004                       |  |
| Note  | Description  |
| 1   | Summary of Significant Accounting Policies   |
| 2   | Adoption of AASB Equivalents to International Financial Reporting Standards from 2005-06 |
| 3   | Events Occurring after Reporting Date  |
| 4   | Operating Revenues   |
| 5   | Operating Expenses   |
| 6   | Financial Assets   |
| 7   | Non-financial Assets   |
| 8   | Provisions   |
| 9   | Payables   |
| 10  | Equity   |
| 11  | Cash Flow Reconciliation   |
| 12  | Contingent Liabilities and Assets  |
| 13  | Executive Remuneration   |

|    |   |  |  |  |
|----|---|--|--|--|
| 14 | Remuneration of Auditors  |  |  |  |
| 15 | Average Staffing Levels   |  |  |  |
| 16 | Financial Instruments   |  |  |  |
| 17 | Appropriations  |  |  |  |
| 18 | Special Accounts  |  |  |  |
| 19 | Specific Payment Disclosures  |  |  |  |
| 20 | Reporting of Outcomes   |  |  |  |
|    |   |  |  |  |
|    | Note 1 - Summary of Significant Accounting Policies   |  |  |  |
|    | 1.1 Objectives of Professional Services Review  |  |  |  |
|    | The objective of Professional Services Review is to examine health practitioners' conduct to ascertain whether or not they have practiced inappropriately in relation to services which attract Medicare rebates or have prescribed inappropriately under the Pharmaceutical Benefits Schedule.   |  |  |  |
|    | The continued existence of the Agency in its present form and with its present programs is dependent on Government policy and on continuing appropriations by Parliament for the Agency's administration and programs.  |  |  |  |
|    | 1.2 Basis of Accounting   |  |  |  |
|    | The financial statements are required by section 49 of the Financial Management and Accountability Act 1997 and are a general purpose financial report.   |  |  |  |
|    | The statements have been prepared in accordance with:   |  |  |  |
|    | - Finance Minister's Orders (being the Financial Management and Accountability (Financial Statements for reporting periods ending on or after 30 June 2004);  |  |  |  |
|    | - Australian Accounting Standards and Accounting Interpretations issued by Australian Accounting Standards Boards;  |  |  |  |
|    | - the Consensus Views of the Urgent Issues Group.   |  |  |  |
|    | The statements have been prepared having regard to the Explanatory Notes to Schedule 1, and Finance Briefs issued by the Department of Finance and Administration.  |  |  |  |
|    | The Statements of Financial Performance and Financial Position have been prepared on an accrual basis and are in accordance with the historical cost convention, except for certain assets which, as noted, are at valuation. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. |  |  |  |
|    | Assets and liabilities are recognised in the Statement of Financial Position when and only when it is probable the future economic benefits will flow and the amounts of the  |  |  |  |

|   |  |  |  |
|---|--|--|--|
| assets or liabilities can be reliably measured. Assets and liabilities arising under agreements equally proportionately unperformed are, however, not recognised unless required by an Accounting Standard.   |  |  |  |
| Liabilities and assets which are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies (other than remote contingencies, which are reported at Note 12).   |  |  |  |
| Revenues and expenses are recognised in the Statement of Financial Performance when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.   |  |  |  |
| 1.3 Changes in Accounting Policy  |  |  |  |
| The accounting policies used in the preparation of these financial statements are consistent with those used in 2002-03.  |  |  |  |
| Property plant and equipment assets are being revalued progressively as explained in Note 1.11. Revaluations up to 30 June 2002 were done on a deprival basis; since that date, revaluations have been done on a fair value basis. Revaluation increments and decrements in each year of transition to fair value that would otherwise be accounted for as revenue or expenses are taken directly to accumulated results in accordance with transitional provisions of AASB 1041 Revaluation of Non-current Assets. |  |  |  |
| In 2002-03, the Finance Minister's Orders introduced an impairment test for non-current assets which were carried at cost and not subject to AAS10 Recoverable Amount of Non-current Assets.  |  |  |  |
| In 2003-04, the impairment test provision of the FMOs have been extended to cover non-current assets carried at deprival values. In 2003-04 infrastructure, plant and equipment was written down by \$81,619 under this policy.   |  |  |  |
| 1.4 Revenue   |  |  |  |
| (a) Revenues from Government  |  |  |  |
| Amounts appropriated for Departmental outputs appropriations for the year (less any current year savings and reductions) are recognised as revenue, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.   |  |  |  |
| Savings are amounts offered up in Portfolio Additional Estimates Statements. Reductions are amounts by which appropriations have been legally reduced by the Finance Minister under Appropriation Act No3 of 2003-04.   |  |  |  |
| Appropriations receivable are recognised at their nominal amounts.  |  |  |  |
| (b) Resources Received Free of Charge   |  |  |  |
| Services received free of charge are recognised as revenue when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.  |  |  |  |

|   |  |  |
|---|--|--|
| Contributions of assets at no cost of acquisition or for nominal consideration are recognised at their fair value when the asset qualifies for recognition, unless received from another government agency as a consequence of a restructuring of administrative arrangements (refer to Note 1.5).      |  |  |
| (c) Other Revenue   |  |  |
| Revenue from the sale of goods is recognised upon the delivery of goods to customers.   |  |  |
| Revenue from the rendering of a service is recognised by reference to the stage of completion of contracts or other agreements to provide services. The stage of completion is determined according to the proportion that costs incurred to date bear to the estimated total costs of the transaction. |  |  |
| Interest revenue is recognised on a time proportionate basis taking into account the effective yield on the relevant asset.   |  |  |
| Revenue from disposal of non-current assets is recognised when control of the asset has passed to the buyer.  |  |  |
| 1.5 Transactions by the Government as Owner   |  |  |
| Amounts appropriated which are designated as 'equity injections' for a year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised directly in Contributed Equity in that year.  |  |  |
| Restructuring of Administrative Arrangements  |  |  |
| Net assets received under a restructuring to another Commonwealth agency or authority under restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.  |  |  |
| 1.6 Employee Entitlements   |  |  |
| Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.  |  |  |
| Liabilities for wages and salaries (including non-monetary benefits), annual leave, sick leave are measured at their nominal amounts. Other employee benefits expected to be settled within 12 months of the reporting period are also measured at their nominal amounts.                               |  |  |
| The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.   |  |  |
| All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.  |  |  |
| (a) Leave   |  |  |
| The liability for employee entitlements includes provision for annual leave and long service leave. No provision has been made for personal leave as all personal leave is  |  |  |

|   |  |
|---|--|
| non-vesting and the average personal leave taken in future years by employees of the Agency is estimated to be less than the annual entitlement for personal leave.   |  |
| The liability for annual leave reflects the value of total annual leave entitlements of all employees at 30 June 2004 and is recognised at the nominal value.   |  |
| The liability for long service leave has been determined by reference to the work of an actuary as at 30 June 2004. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.  |  |
| (b) Superannuation  |  |
| Staff of Professional Services Review are members of the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. The liability of their superannuation benefits is recognised in the financial statements of the Commonwealth and is settled by the Commonwealth in due course.   |  |
| Professional Services Review makes employer contributions to the Commonwealth at rates determined by an actuary sufficient to meet the cost to the Commonwealth of the superannuation entitlements of the Agency's employees.   |  |
| The liability for superannuation recognised as at 30 June represent outstanding contributions for the final fortnight of the year.  |  |
| 1.7 Leases  |  |
| A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. In operating leases, the lessor effectively retains substantially all such risks and benefits.  |  |
| Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at the present value of minimum lease payments at the beginning of the lease term and a liability recognised at the same time and for the same amount. The discount rate used is the interest rate implicit in the leases. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense. |  |
| Operating lease payments are expensed on a basis which is representative of the pattern of benefits derived from the leased assets. The net present value of future net outlays in respect of surplus space under non-cancellable lease agreements is expensed in the period in which the space becomes surplus.  |  |
| Lease incentives taking the form of 'free' leasehold improvements, rent holidays, and cash incentives are recognised as liabilities. These liabilities are reduced by allocating lease payments between rental expense and reduction of the liability.  |  |
| 1.8 Cash  |  |
| Cash means notes and coins held, and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.  |  |

|   |                              |                              |  |
|---|------------------------------|------------------------------|--|
| 1.9 Other Financial Instruments   |                              |                              |  |
| Accounting policies for financial instruments are stated at Note 16.  |                              |                              |  |
| 1.10 Acquisition of Assets  |                              |                              |  |
| Assets are recorded at cost of acquisition, except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken.   |                              |                              |  |
| Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring administrative arrangements. In the latter case, assets are initially recognised as contribution by the owners at the amounts at which they were recognised in the transferor Agency's accounts immediately prior to the restructuring. |                              |                              |  |
| 1.11 Property (land and buildings), infrastructure, plant and equipment   |                              |                              |  |
| Asset recognition threshold   |                              |                              |  |
| Purchases of property, plant and equipment are recognised initially at cost in the Statement of Financial Position, except for purchases costing less than \$2,000 which are expensed in the year of acquisition (other than when they form part of a group of similar items which are significant in total). The recognition threshold for internally developed software is \$10,000 and for purchased software \$2,000.                           |                              |                              |  |
| Revaluations  |                              |                              |  |
| Land, buildings, plant and equipment are carried at valuation. Revaluations undertaken up to 30 June 2002 were done on a deprival basis: revaluations since that date are at fair value. The change in accounting policy is required by Australian Accounting Standard AASB 1041 Revaluation of Non-current Assets.   |                              |                              |  |
| Fair and deprival values for each class of asset are determined as shown below:   |                              |                              |  |
|   |                              |                              |  |
| Asset Class   | Fair Value Measured at:      | Deprival Value Measured at:  |  |
| Leasehold Improvements  | Depreciated replacement cost | Depreciated replacement cost |  |
| Plant and equipment   | Market selling price         | Depreciated replacement cost |  |
| Under both deprival and fair value, assets which are surplus to requirements are measured at their net realisable value. At 30 June 2004, Professional Services Review reported 30 items of \$81,619 in this situation (30 June 2003: none).  |                              |                              |  |
| Frequency   |                              |                              |  |

|  |              |  |              |
|--|--------------|--|--------------|
| Plant and equipment are revalued progressively in successive three-year cycles. All current cycles commenced on 1 July 2001.   |              |  |              |
| The Finance Minister's Orders require that all property, plant and equipment assets be measured at up-to-date fair values from 30 June 2005 onwards. The current year is therefore the last year in which Professional Services Review will undertake progressive revaluations.  |              |  |              |
| Conduct  |              |  |              |
| All valuations are conducted by an independent qualified valuer.   |              |  |              |
| Depreciation and Amortisation  |              |  |              |
| Depreciable property, plant and equipment assets are written-off to their estimated residual value over their estimated useful lives to the Agency using, in all cases, the straight line method of depreciation. Leasehold improvements are amortised on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease. |              |  |              |
| Depreciation rates (useful lives) and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate. Residual values are re-estimated for a change in prices only when assets are revalued.   |              |  |              |
| Depreciation rates applying to each class of depreciable asset are based on the following useful lives:  |              |  |              |
|  | 2004         |  | 2003         |
| Leasehold improvements   | Lease term   |  | Lease term   |
| Plant and equipment  | 4 to 9 years |  | 3 to 7 years |
| The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 5C.  |              |  |              |
| 1.12 Impairment of Non-Current Assets  |              |  |              |
| Non-current assets carried at cost on acquisition except as stated below at the reporting date and have been subject to impairment testing (refer Note 7).   |              |  |              |
| 1.13 Intangibles   |              |  |              |
| Professional Services Review's intangibles is purchased software which is carried at cost.   |              |  |              |
| Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of Professional Services Review's software is 5 years (2002-03: 5 years).  |              |  |              |
| 1.14 Inventories   |              |  |              |
| No inventories were held by Professional Services Review during 2003-04.   |              |  |              |

|   |  |  |  |
|---|--|--|--|
| 1.15 Taxation / Competitive Neutrality  |  |  |  |
| The Agency is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).  |  |  |  |
| Revenues, expenses and assets are recognised net of GST:  |  |  |  |
| - except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and   |  |  |  |
| - except for receivables and payables.  |  |  |  |
| Competitive Neutrality  |  |  |  |
| Professional Services Review did not provide services on a for-profit basis in 2003-04.   |  |  |  |
| 1.16 Foreign Currency   |  |  |  |
| No foreign currency was held by Professional Services Review during 2003-04.  |  |  |  |
| 1.17 Insurance  |  |  |  |
| Professional Services Review has insured for risks through the Government's insurable risk managed fund called Comcover.  |  |  |  |
| Workers' compensation is insured through the Government's Comcare Australia.  |  |  |  |
| 1.18 Reporting of Administered Activities   |  |  |  |
| Professional Services Review did not undertake any administered activities during 2003-04 financial year.   |  |  |  |
|   |  |  |  |
| Note 2 - Adoption of AASB Equivalents to International Financial Reporting Standards from 2005-06   |  |  |  |
| The Australian Accounting Standards Board has issued replacement Australian Accounting Standards to apply from 2005-06. The new standards are the AASB Equivalents to International Financial Reporting Standards (IFRS) which are issued by the International Accounting Standards Board. The new standards cannot be adopted early. The standards being replaced are to be withdrawn with effect from 2005-06, but continue to apply in the meantime. |  |  |  |
| The purpose of issuing AASB Equivalents to IFRSs is to enable Australian entities reporting under the Corporations Act 2001 to be able to more readily access overseas capital markets by preparing their financial reports according to accounting standards more widely used overseas.  |  |  |  |
| For-profit entities complying fully with the AASB Equivalents will be able to make an explicit and unreserved statement of compliance with IFRSs as well as with the AASB Equivalents. It is expected that the Finance Minister will continue to require compliance with the Accounting Standards issued by the AASB, including the AASB Equivalents to IFRSs, in his Orders for the Preparation of Agency financial statements                         |  |  |  |

|   |  |  |
|---|--|--|
| for 2005-06 and beyond.   |  |  |
| The AASB Equivalents contain certain additional provisions which will apply to not-for-profit entities, including Australian Government agencies. Some of these provisions are in conflict with the IFRSs and therefore Professional Services Review will only be able to assert compliance with the AASB Equivalents to the IFRSs. |  |  |
| Existing AASB standards that have no IFRS equivalent will continue to apply, including in particular AAS 29 Financial Reporting by Government Departments.  |  |  |
| Accounting Standard AASB 1047 Disclosing the impact of Adopting Australian Equivalents to IFRSs requires that the financial statements for 2003-04 disclose:  |  |  |
| · An explanation of how the transition to the AASB Equivalents is being managed, and  |  |  |
| · A narrative explanation of the key differences in accounting policies arising from the transition.  |  |  |
| The purpose of this Note is to make these disclosures.  |  |  |
| Management of the transition to AASB Equivalents to IFRSs   |  |  |
| Professional Services Review has taken the following steps for the preparation towards the implementation of AASB Equivalents:  |  |  |
| ◇ The Agency's Corporate Services Manager is tasked with overseeing the transition to and implementation of the AASB Equivalents to IFRSs. The Finance Manager is formally responsible for the project and reports regularly to the Corporate Services Manager.   |  |  |
| ◇ The plan requires the following key steps to be undertaken and sets deadlines for their achievement:  |  |  |
| ● Identification of all major accounting policy differences between current AASB standards and the AASB Equivalents to IFRSs progressively to 30 June 2004.   |  |  |
| ● Identification of systems changes necessary to be able to report under the AASB Equivalents, including those necessary to enable capture of data under both sets of rules for 2004-05, and the testing and implementation of those changes.   |  |  |
| ● Preparation of a transitional Statement of Financial Position as at 1 July 2004, under AASB Equivalents, within nine months of 30 June 2004.  |  |  |
| ● Preparation of a AASB Equivalent Statement of Financial Position at the same time as the 30 June 2005 statements are prepared.  |  |  |
| ● Meeting reporting deadlines set by Finance for 2005-06 Statement of Financial Position under AASB Equivalent Standards.   |  |  |
| ◇ The plan also addresses the risks to successful achievement of the above objectives and includes strategies to keep implementation on track to meet deadlines.  |  |  |

|   |  |
|---|--|
| <p>◇ To date, all major accounting and disclosure differences and system changes have been identified and the system changes have been tested successfully. The changes are expected to be implemented by 31 March 2005.</p>  |  |
| <p>◇ Consultants have been engaged where necessary to assist with each of the above steps.</p>  |  |
| <p>Major changes in accounting policy</p>   |  |
| <p>Changes in accounting policies under AASB Equivalents are applied retrospectively i.e. as if the new policy had always applied. This rule means that a balance sheet prepared under the AASB Equivalents must be made as at 1 July 2004, except as permitted in particular circumstances by AASB 1 First-time Adoption of Australian Equivalents to International Financial Reporting Standards. This will enable the 2005-06 financial statements to report comparatives under the AASB Equivalents also.</p>   |  |
| <p>Changes to major accounting policies are discussed in the following paragraphs.</p>  |  |
| <p>Property plant and equipment</p>   |  |
| <p>It is expected that the Finance Minister's Orders will require property plant and equipment assets carried at valuation in 2003-04 to be measured at up-to-date fair value from 2005-06. This differs from the accounting policies currently in place for these assets which, up to and including 2003-04, have been revalued progressively over a 3-year cycle and which currently include assets at cost (for purchases since the commencement of a cycle) and at deprival value (which will differ from their fair value to the extent that they have been measured at depreciated replacement cost when a relevant market selling price is available).</p> |  |
| <p>However, it is important to note that the Finance Minister requires these assets to be measured at up-to-date fair values as at 30 June 2005. Further, the transitional provisions in AASB 1 will mean that the values at which assets are carried as at 30 June 2004 under existing standards will stand in the transitional balance sheet as at 1 July 2004.</p>   |  |
| <p>Borrowing costs related to qualifying assets are currently capitalised. It is understood that the FMOs for 2005-06 will elect to expense all borrowing costs under the new AASB Equivalent standard. Accordingly, borrowing costs capitalised as at 1 July 2004 will be derecognised.</p>  |  |
| <p>Intangible Assets</p>  |  |
| <p>Professional Services Review currently recognises internally-developed software assets on the cost basis. The carrying amounts include amounts that were originally measured at deprival valuation and subsequently deemed to be cost under transitional provisions available on the introduction of AAS 38 Revaluation of Non-current Assets in 2000-01 and AASB 1041 Revaluation of Non-current Assets in 2001-02.</p>   |  |
| <p>The AASB Equivalent on Intangibles does not permit intangibles to be measured at valuation unless there is an active market for the intangible. Professional Services Review's internally-developed software is specific to the needs of the Agency and is</p>   |  |

|  |  |           |           |
|--|--|-----------|-----------|
| not traded. Accordingly, Professional Services Review will derecognise the valuation component of the carrying amount of these assets on adoption of the AASB Equivalent.  |  |           |           |
| Impairment of Non-Current Assets   |  |           |           |
| Professional Services Review's policy on impairment of non-current assets is at Note 1.12.   |  |           |           |
| Under the new AASB Equivalent Standard, these assets will be subject to assessment for impairment and, if there are indications of impairment, measurement of any impairment. (Impairment measurement must also be done, irrespective of any indications of impairment, for intangible assets not yet available for use).                    |  |           |           |
| The impairment test is that the carrying amount of an asset must not exceed the greater of (a) its fair value less costs to sell, and (b) its value in use.  |  |           |           |
| 'Value in use' is the net present value of net cash inflows for for-profit assets of the Agency and depreciated replacement cost for other assets which would be replaced if Professional Services Review were deprived of them.   |  |           |           |
| The most significant changes are that, for the Agency's for-profit assets, the recoverable amount is only generally to be measured where there is an indication of impairment and that assets carried at up-to-date fair value, whether for-profit or not, may nevertheless be required to be written down if costs to sell are significant. |  |           |           |
| Employee Benefits  |  |           |           |
| The provision for long service leave is measured at the present value of estimated future cash outflows using market yields as at the reporting date on national government bonds.   |  |           |           |
| Under the new AASB Equivalent standard, the same discount rate will be used unless there is a deep market in high quality corporate bonds, in which case the market yield on such bonds must be used.  |  |           |           |
|  |  |           |           |
| Note 3 - Events Occurring after Reporting Date   |  |           |           |
| There are no events occurring after balance date that effect the 2004 financial statements.  |  |           |           |
|  |  |           |           |
|  |  | 2004      | 2003      |
| Note 4 - Operating Revenues  |  | \$        | \$        |
| Note 4A - Revenues from Government   |  |           |           |
| Appropriations for outputs   |  | 7,598,000 | 7,522,000 |
| Resources received free of charge  |  | 6,200     | 6,200     |

|  |           |  |           |
|--|-----------|--|-----------|
| Total Revenues from Government   | 7,604,200 |  | 7,528,200 |
|  |           |  |           |
| Resources received free of charge  |           |  |           |
| Related Entities:  |           |  |           |
| - Australian National Audit Office - audit services for the financial statements   | 6,200     |  | 6,200     |
|  | 6,200     |  | 6,200     |
|  |           |  |           |
| External Entities:   | 0         |  | 0         |
| Total Resources Received Free of Charge  | 6,200     |  | 6,200     |
|  |           |  |           |
| Note 4B - Sales of Goods and Services  |           |  |           |
| Goods  | 2,531     |  | 1,079     |
| Total Sales of Goods and Services  | 2,531     |  | 1,079     |
|  |           |  |           |
| Provision of goods to:   |           |  |           |
| External entities  | 2,531     |  | 1,079     |
| Total Sales of Goods   | 2,531     |  | 1,079     |
|  |           |  |           |
| Cost of sales of goods   | 5,062     |  | 2,158     |
|  |           |  |           |
| Note 4C - Other Revenues   |           |  |           |
| Other  | 0         |  | 1,606     |
|  |           |  |           |
| Note 4D - Prior Period Prepayment Adjustment   |           |  |           |
| During 2003-04 it was identified that in previous financial years the Agency has understated Prepaid Expenses. In 2000-01 the Agency expensed an amount of \$420,000 that represented a prepayment to the Department of Health and Ageing for SAP maintenance for 6 years, to be expensed at \$70,000 per year.                              |           |  |           |
| The result of this error has had an impact on each of the subsequent years accounts. In 2000-01 there was an overstatement of expenses and understatement of prepaid expenses to the extent of \$350,000. Subsequent years expenses have been understated by \$70,000 per year, with a corresponding understatement of prepaid expenses. The |           |  |           |

|   |           |  |           |
|---|-----------|--|-----------|
| balance of the prepaid expense to be recognised at 30 June 2004 is \$210,000.<br>2004 |           |  |           |
|   |           |  |           |
| Note 5 - Operating Expenses   |           |  |           |
| Note 5A - Employees Expenses  |           |  |           |
| Wages and Salary  | 1,651,735 |  | 1,275,606 |
| Superannuation  | 337,072   |  | 286,304   |
| Leave and other entitlements  | 295,469   |  | 292,805   |
| Separation and Redundancy   | 0         |  | 108,455   |
| Other employee expenses   | 80,721    |  | 68,880    |
| Total employee benefits expense   | 2,364,995 |  | 2,032,050 |
| Worker compensation premiums  | 17,645    |  | 10,950    |
| Total Employees Expenses  | 2,382,640 |  | 2,043,000 |
|   |           |  |           |
| Note 5B - Suppliers Expenses  |           |  |           |
| Goods from related entities   | 10,223    |  | 0         |
| Goods from external entities  | 90,133    |  | 85,733    |
| Services from related entities  | 1,251,014 |  | 479,831   |
| Services from external entities   | 2,778,909 |  | 2,591,683 |
| Operating lease rentals   | 236,577   |  | 195,408   |
| Total Suppliers Expenses  | 4,366,855 |  | 3,352,655 |
|   |           |  |           |
| Note 5C - Depreciation and Amortisation   |           |  |           |
| Depreciation:   |           |  |           |
| Other infrastructure, plant and equipment   | 76,541    |  | 59,808    |
| Buildings and Leasehold Improvements  | 32,503    |  | 3,663     |
| Total Depreciation  | 109,044   |  | 63,471    |
|   |           |  |           |
| Amortisation:   |           |  |           |
| Intangibles - Computer Software   | 71,594    |  | 50,119    |
| Total Amortisation  | 71,594    |  | 50,119    |

|  |           |  |           |
|--|-----------|--|-----------|
|  |           |  |           |
| The aggregate amount of depreciation or amortisation expensed during the reporting period of each class of depreciable asset are as follows: |           |  |           |
| Leasehold improvements   | 32,503    |  | 3,663     |
| Plant and Equipment  | 76,541    |  | 59,808    |
| Internally developed software - in use   | 71,594    |  | 50,119    |
| Total Depreciation and Amortisation  | 180,638   |  | 113,590   |
| No depreciation or amortisation was allocated to the carrying amounts of other assets.   |           |  |           |
|  |           |  |           |
| Note 5D - Write-Down of Assets   |           |  |           |
| Non-financial assets   |           |  |           |
| Leasehold improvements - revaluation decrement   | 59,606    |  | 0         |
| Infrastructure, plant & equipment - revaluation decrement  | 22,013    |  | 0         |
| Total Write Down of Assets   | 81,619    |  | 0         |
|  |           |  |           |
| Note 5E - Net Losses from Sales of Assets  |           |  |           |
| Infrastructure, plant & equipment:   |           |  |           |
| Proceeds from sale   | 0         |  | 2,022     |
| Net book value at sale   | 0         |  | 3,383     |
| Net loss   | 0         |  | (1,361)   |
|  |           |  |           |
| Total net Loss from Sale of Assets   | 0         |  | 1,361     |
| Less: plant and equipment written-off on disposal  | 0         |  | 0         |
| Total Net Losses from Disposal of Property, Plant and Equipment  | 0         |  | 1,361     |
|  |           |  |           |
| Note 6 - Financial Assets  |           |  |           |
| Note 6A - Cash   |           |  |           |
| Departmental (other than special accounts)   | 5,709,212 |  | 4,145,985 |
| Total Cash   | 5,709,212 |  | 4,145,985 |
| Under banking arrangements in place up to 1 July 2003, monies in the Agency's bank   |           |  |           |

|   |           |  |           |
|---|-----------|--|-----------|
| accounts were swept into the Official Public Account nightly and earned interest by Commonwealth's Treasury on the daily balance at rates based on money market call rates. Since 1 July 2003, no interest is earned on the Agency's bank balances. |           |  |           |
| All cash recognised is a current asset.   |           |  |           |
|   |           |  |           |
| Note 6B - Receivables   |           |  |           |
| Goods and services  | 8,492     |  | 0         |
| GST receivable from Australian Taxation Office  | 151,791   |  | 133,541   |
| Appropriations receivable   | 0         |  | 18,000    |
| Total Receivables (net)   | 160,283   |  | 151,541   |
|   |           |  |           |
| Receivables is represented by:  |           |  |           |
| Current   | 160,283   |  | 151,541   |
| Total Receivables (net)   | 160,283   |  | 151,541   |
|   |           |  |           |
| Credit terms are net 30 days (2003: 30 days).   |           |  |           |
|   |           |  |           |
| Receivables (gross) are aged as follows:  |           |  |           |
| Not Overdue   | 160,283   |  | 151,541   |
|   |           |  |           |
| Note 7 - Non-financial Assets   |           |  |           |
| Note 7A - Land and Buildings  |           |  |           |
| Leasehold Improvements:   |           |  |           |
| Leasehold improvements at 2003-04 (fair value)  | 1,364     |  |           |
| Less: Accumulated depreciation  | (1,364)   |  |           |
|   | 0         |  |           |
| Leasehold improvements at 2002-03 (fair value)  | 18,093    |  | 29,755    |
| Less: Accumulated amortisation  | (5,207)   |  | (2,232)   |
|   | 12,886    |  | 27,523    |
| Leasehold improvements at 2001-02 valuation (deprival)  | 220,056   |  | 268,000   |
| Less: Accumulated amortisation  | (220,056) |  | (191,892) |

|   |           |  |           |
|---|-----------|--|-----------|
|   | (0)       |  | 76,108    |
| Total Land and Buildings  | 12,886    |  | 103,631   |
| Total Land and Buildings (non-current)  | 12,886    |  | 103,631   |
|   |           |  |           |
| Note 7B - Infrastructure, Plant & Equipment   |           |  |           |
| Infrastructure, Plant & Equipment:  |           |  |           |
| Infrastructure, Plant & Equipment - at cost   | 189,452   |  |           |
| Less: Accumulated amortisation  | (17,730)  |  |           |
|   | 171,722   |  |           |
| Infrastructure, Plant & Equipment at 2002-03 valuation (fair value)   | 36,495    |  | 36,495    |
| Less: Accumulated amortisation  | (6,883)   |  | (825)     |
|   | 29,612    |  | 35,670    |
| Infrastructure, Plant & Equipment at 2001-02 valuation (deprival)   | 245,473   |  | 267,486   |
| Less: Accumulated amortisation  | (207,657) |  | (154,904) |
|   | 37,816    |  | 112,582   |
| Total Infrastructure, Plant & Equipment   | 239,150   |  | 148,252   |
|   |           |  |           |
| All revaluations are independent and are conducted in accordance with the revaluation policy stated in Note 1. In 2001-02, the revaluations were conducted by an independent valuer, Australian Valuation Office. |           |  |           |
|   |           |  |           |
| Note 7C - Analysis of Property, Plant and Equipment   |           |  |           |
|   |           |  |           |
| Note 7D - Intangibles   |           |  |           |
| Purchased software at cost  | 471,394   |  | 350,077   |
| Less: Accumulated amortisation  | (176,206) |  | (104,612) |
|   | 295,188   |  | 245,465   |
| Total Intangibles   | 295,188   |  | 245,465   |
|   |           |  |           |
| Table A - Reconciliation of the opening and closing   |           |  |           |

|   |           |  |           |
|---|-----------|--|-----------|
| balances of intangibles (computer software)               |           |  |           |
| As at 1 July 2003   | \$        |  |           |
| Gross book value  | 350,077   |  |           |
| Accumulated depreciation / amortisation                   | (104,612) |  |           |
| Net Book Value  | 245,465   |  |           |
|   |           |  |           |
| Acquisitions  | 121,317   |  |           |
| Depreciation / amortisation expense                       | (71,594)  |  |           |
| Recoverable Amount write-downs                            | 0         |  |           |
|   |           |  |           |
| As at 30 June 2004  |           |  |           |
| Gross book value  | 471,394   |  |           |
| Accumulated depreciation / amortisation                   | (176,206) |  |           |
| Net Book Value  | 295,188   |  |           |
|   |           |  |           |
| Note 7E - Other Non-financial Assets                      |           |  |           |
| Prepayments   | 441,629   |  | 1,348,916 |
| Prior period Prepayment adjustment - refer Note 4D above  | 210,000   |  | 0         |
| Total Other Non-financial Assets                          | 651,629   |  | 1,348,916 |
|   |           |  |           |
| Note 8 - Provisions                                       |           |  |           |
| Note 8A - Employee Provisions                             |           |  |           |
| Salaries and wages  | 43,049    |  | 47,359    |
| Leave   | 666,953   |  | 650,583   |
| Superannuation  | 73,535    |  | 60,170    |
| Aggregate Employee Entitlement Liability                  | 783,537   |  | 758,112   |
| Workers' compensation                                     | 0         |  | 2,330     |
| Aggregate Employee Benefit Liability and Related On-costs | 783,537   |  | 760,442   |
|   |           |  |           |
| Current   | 230,141   |  | 223,357   |

|   |           |  |           |
|---|-----------|--|-----------|
| Non-Current   | 553,396   |  | 537,084   |
|   |           |  |           |
| Note 9 - Payables   |           |  |           |
| Note 9A - Suppliers Payable   |           |  |           |
| Trade creditors   | 429,878   |  | 335,085   |
| Operating lease creditors   | 1,690     |  | 0         |
| Total Supplier Payables   | 431,568   |  | 335,085   |
|   |           |  |           |
| Supplier payables are represented by:   |           |  |           |
| Current   | 431,568   |  | 335,085   |
| Total Supplier Payables   | 431,568   |  | 335,085   |
|   |           |  |           |
| Note 10 - Equity  |           |  |           |
| Note 10A - Analysis of Equity   |           |  |           |
|   |           |  |           |
| Note 11 - Cash Flow Reconciliation  |           |  |           |
| Reconciliation of cash per Statement of Financial Position to Statement of Cash Flows           |           |  |           |
| Cash at year end per Statement of Cash Flows  | 5,790,831 |  | 4,145,985 |
| Statement of Financial Position items comprising above cash: 'Financial Asset - Cash' (Note 6A) | 5,709,212 |  | 4,145,985 |
|   |           |  |           |
| Reconciliation of net cost of services to net cash provided by operating activities:            |           |  |           |
| Net Surplus (Deficit)   | 804,979   |  | 2,020,279 |
| Depreciation / amortisation   | 180,638   |  | 113,590   |
| Net write down of non-financial assets  | 81,619    |  | 0         |
| Gain on disposal of assets  | 0         |  | 1,361     |
| (Increase) / decrease in net receivables  | (8,742)   |  | (100,878) |
| (Increase) / decrease in prepayments  | 697,287   |  | 153,654   |
| Increase / (decrease) in employee provisions  | 23,095    |  | 213,225   |
| Increase / (decrease) in supplier payables  | 25,350    |  | 36,935    |

|   |           |  |           |
|---|-----------|--|-----------|
| Net cash form / (used by) operating activities  | 1,804,226 |  | 2,438,166 |
|   |           |  |           |
| Note 12 - Contingent Liabilities and Assets   |           |  |           |
| Quantifiable Contingencies  |           |  |           |
| As at 30 June 2004, Professional Services Review has no quantifiable contingencies.   |           |  |           |
| Unqualifiable Contingencies   |           |  |           |
| As at 30 June 2004, Professional Services Review has been awarded costs in a number of legal cases in respect to its successful investigations into inappropriate practice. The amounts owing are yet to be quantified by the Courts. |           |  |           |
|   |           |  |           |
| Note 13 - Executive Remuneration  | 2004      |  | 2003      |
| The number of Executives who received or were due to receive total remuneration of \$100,000 or more:   | Number    |  | Number    |
| \$150,001 to \$160,000  | 0         |  | 1         |
| \$160,001 to \$170,000  | 1         |  | 0         |
| \$230,001 to \$240,000  | 1         |  | 0         |
| \$240,001 to \$250,000  | 0         |  | 1         |
| Total   | 2         |  | 2         |
|   |           |  |           |
|   | \$        |  | \$        |
| The aggregate amount of total remuneration of executives shown above.   | 403,834   |  | 400,651   |
|   |           |  |           |
| The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above.   | 0         |  | 0         |
|   |           |  |           |
| Note 14 - Remuneration of Auditors  |           |  |           |
| Financial Statement audit services are provided free of charge to the Agency by the Australian National Audit Office.   |           |  |           |
| The fair value of the audit services provided was:  | 6,200     |  | 6,200     |
| No other services were provided by the Auditor-General to Professional Services Review during the financial year.   |           |  |           |

|   |            |  |            |
|---|------------|--|------------|
|   |            |  |            |
| Note 15 - Average Staffing Levels   |            |  |            |
| The average staffing levels for Professional Services Review during the year were:  | 29         |  | 27         |
|   |            |  |            |
| Note 16 - Financial Instruments   |            |  |            |
|   |            |  |            |
| Note 16D - Credit Risk Exposures  |            |  |            |
| The Agency's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Statement of Financial Performance. |            |  |            |
| The Agency has no significant exposures to any concentrations of credit risk.   |            |  |            |
| All figures for credit risk referred to do not take into account the value of any collateral or other security.   |            |  |            |
|   |            |  |            |
| Note 17 - Appropriations  |            |  |            |
|   |            |  |            |
| Note 17A - Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund (Appropriations) from Acts 1 and 3  |            |  |            |
| Year ended 30 June 2004   |            |  |            |
| Balance carried from previous year  | 4,236,968  |  | 2,285,647  |
| Appropriation Act (No. 1) 2003-2004 - basic appropriation   | 7,531,000  |  | 7,540,000  |
| Appropriation Act (No. 3) 2003-2004 - basic appropriation   | 67,000     |  | (18,000)   |
| Departmental Adjustments by the Finance Minister  | 0          |  | 0          |
| Advance to the Finance Minister   | 0          |  | 0          |
| Refunds credited (FMAA s30)   | 378,984    |  | 354,832    |
| Appropriations to take account of recoverable GST (FMAA s30A)   | 0          |  | 0          |
| Annotations to 'net appropriations' (FMAA s31)  | 2,664      |  | 22,840     |
| Adjustment of appropriations on change of entity function (FMAA s32)  | 0          |  | 0          |
| Appropriation lapsed or reduced   | 0          |  | 0          |
| Total Appropriations available for payments   | 12,216,616 |  | 10,185,319 |

|   |             |  |             |
|---|-------------|--|-------------|
| Payments made (GST inclusive)   | (6,392,499) |  | (5,948,351) |
| Appropriations credited to Special Accounts   | 0           |  | 0           |
| Balance carried to next year  | 5,824,117   |  | 4,236,968   |
|   |             |  |             |
| Represented by:   |             |  |             |
| Cash at bank and on hand  | 5,709,212   |  | 4,145,985   |
| Add: Appropriations not drawn from the Official Public Account  | 0           |  | 18,000      |
| Add: Receivables - Goods and Services - GST received from customers   | 151,791     |  | 101,406     |
| Add: Return of contributed equity   | 0           |  | 0           |
| Less: Other payables - Net GST payable at the ATO   | 0           |  | 0           |
| Less: Payable - Suppliers - GST portion   | (36,886)    |  | (28,423)    |
| Total   | 5,824,117   |  | 4,236,968   |
|   |             |  |             |
| Reconciliation for Appropriations Acts (Nos. 1 and 3)   |             |  |             |
| Paid to the entity from the Official Public Account   | 7,598,000   |  | 7,540,000   |
| Add: Finance Minister reduction of Appropriations in current year   | 0           |  | 0           |
| Not drawn from the Official Public Account  | 0           |  | 18,000      |
| Total Appropriation Acts  | 7,598,000   |  | 7,558,000   |
|   |             |  |             |
| Note 18 - Special Accounts  |             |  |             |
| The purpose of the Special Account is for the expenditure of monies temporarily held on trust or otherwise for the benefit of a person other than the Commonwealth. Any money held is thus special public money under Section 16 of the Financial Management and Accountability Act 1997.   |             |  |             |
| Professional Services Review has an Other Trust Monies Special Account. This account was established under Section 20 of the Financial Management and Accountability Act 1997. For the year ended 30 June 2004 (and for year ended 30 June 2003) the account had nil balances and there were no transactions debited or credited to them. |             |  |             |
| The purpose of the Other Trust Monies Special Account is for the expenditure in connection with services performed on behalf of other Governments and bodies that   |             |  |             |

|   |  |  |  |
|---|--|--|--|
| are not Agencies under the Financial Management and Accountability Act 1997.  |  |  |  |
|   |  |  |  |
| Note 19 - Specific Payment Disclosures  |  |  |  |
| Professional Services Review did not make 'Act of Grace', ex-gratia or any other payments that should be disclosed under this Note, or waiver amounts owing during 2003-04. |  |  |  |
|   |  |  |  |
| Note 20 - Reporting of Outcomes   |  |  |  |
| Professional Services Review operates under only one outcome:   |  |  |  |
| Access through Medicare to cost-effective medical services, medicines and acute health care for all Australians.  |  |  |  |

| Note 7C - Analysis of Property, Plant and Equipment   |      |           |                                    |                 |                        |   |           |
|---|------|-----------|------------------------------------|-----------------|------------------------|---|-----------|
| TABLE A - Reconciliation of the opening and closing balances of property, plant and equipment |      |           |                                    |                 |                        |   | 2004      |
| Item  | Land | Buildings | Buildings - Leasehold Improvements | Total Buildings | Total Land & buildings | Total Infrastructure, Plant & Equipment | Total     |
|   | \$   | \$        | \$                                 | \$              | \$                     | \$                                      | \$        |
| As at 1 July 2003   |      |           |                                    |                 |                        |   |           |
| Gross book value  |      |           | 297,755                            | 297,755         | 297,755                | 303,981                                 | 601,736   |
| Accumulated Depreciation/Amortisation at 1 July 2003  |      |           | (194,124)                          | (194,124)       | (194,124)              | (155,729)                               | (349,853) |
| Net Book Value  |      |           | 103,631                            | 103,631         | 103,631                | 148,252                                 | 251,883   |
| Additions   |      |           |                                    |                 |                        |   |           |
| - by purchase   |      |           | 1,364                              | 1,364           | 1,364                  | 189,452                                 | 190,816   |
| - from acquisition of operations  |      |           | 0                                  | 0               | 0                      | 0                                       | 0         |
|   |      |           | 1,364                              | 1,364           | 1,364                  | 189,452                                 | 190,816   |
| Net revaluation increment/(decrement)   |      |           |                                    | 0               | 0                      |   | 0         |
| Depreciation / amortisation expense   |      |           | (32,503)                           | (32,503)        | (32,503)               | (76,541)                                | (109,044) |
| Revaluations: write-ups/(write-downs)   |      |           | (59,606)                           | (59,606)        | (59,606)               | (22,013)                                | (81,619)  |
|   |      |           | (92,109)                           | (92,109)        | (92,109)               | (98,554)                                | (190,663) |

|   |      |           |                                    |                 |                        |   |           |
|---|------|-----------|------------------------------------|-----------------|------------------------|---|-----------|
| Disposals                               |      |           |                                    |                 |                        |   |           |
| - from disposal of operations           |      |           | 0                                  | 0               | 0                      | 0                                       | 0         |
| - other disposals                       |      |           | 0                                  | 0               | 0                      | 0                                       | 0         |
|   |      |           | 0                                  | 0               | 0                      | 0                                       | 0         |
| As at 30 June 2004                      |      |           |                                    |                 |                        |   |           |
| Gross book value                        | 0    | 0         | 239,513                            | 239,513         | 239,513                | 471,420                                 | 710,933   |
| Accumulated depreciation / amortisation | 0    | 0         | (226,627)                          | (226,627)       | (226,627)              | (232,270)                               | (458,897) |
| Net Book Value                          | 0    | 0         | 12,886                             | 12,886          | 12,886                 | 239,150                                 | 252,036   |
|   |      | s/be      | 12,886                             |                 | s/be                   | 239,150                                 |           |
|   |      | var       | 0                                  |                 | var                    | (0)                                     | 0         |
| TABLE B - Assets at Valuation           |      |           |                                    |                 |                        |   | 2004      |
| Item                                    | Land | Buildings | Buildings - Leasehold Improvements | Total Buildings | Total Land & buildings | Total Infrastructure, Plant & Equipment | Total     |
|   | \$   | \$        | \$                                 | \$              | \$                     | \$                                      | \$        |
| As at 30 June 2004                      |      |           |                                    |                 |                        |   |           |
| Gross value                             |      |           | 239,513                            | 239,513         | 239,513                | 471,420                                 | 710,933   |
| Accumulated Depreciation / Amortisation |      |           | (226,627)                          | (226,627)       | (226,627)              | (232,270)                               | (458,897) |
| Net book value                          | 0    | 0         | 12,886                             | 12,886          | 12,886                 | 239,150                                 | 252,036   |
| As at 30 June 2003                      |      |           |                                    |                 |                        |   |           |
| Gross value                             |      |           | 297,755                            | 297,755         | 297,755                | 303,981                                 | 601,736   |
| Accumulated Depreciation / Amortisation |      |           | (194,124)                          | (194,124)       | (194,124)              | (155,729)                               | (349,853) |
| Net book value                          | 0    | 0         | 103,631                            | 103,631         | 103,631                | 148,252                                 | 251,883   |
|   |      |           |                                    |                 |                        |   |           |
|   |      |           |                                    |                 |                        |   |           |
| TABLE C - Assets under construction     |      |           |                                    |                 |                        |   | 2004      |
| Item                                    | Land | Buildings | Buildings - Leasehold Improvements | Total Buildings | Total Land & buildings | Total Infrastructure, Plant & Equipment | Total     |
|   | \$   | \$        | \$                                 | \$              | \$                     | \$                                      | \$        |





|                                      |           |           |        |        |         |         |           |           |
|--------------------------------------|-----------|-----------|--------|--------|---------|---------|-----------|-----------|
| Returns of contributed equity        |           |           |        |        |         |         | 0         | 0         |
| Contributions by owner:              |           |           |        |        |         |         |           |           |
| Appropriations (equity injections)   |           |           |        |        |         |         | 0         | 0         |
| Restructuring                        |           |           |        |        |         |         | 0         | 0         |
| Transfers to/(from)/between reserves |           |           |        |        |         |         | 0         | 0         |
| Closing balance as at 30 June 2004   | 5,122,919 | 4,317,940 | 30,324 | 30,324 | 700,000 | 700,000 | 5,853,243 | 5,048,264 |

| Note 16A - Interest Rate Risk                |       |              |           |           |           |  |      |
|--|-------|--------------|-----------|-----------|-----------|--|------|
| Financial Instrument                         | Notes | Non-Interest |           | Total     |           | Weighted Average Effective Interest Rate |      |
|  |       | Bearing      |           |           |           |  |      |
|  |       | 2004         | 2003      | 2004      | 2003      | 2004                                     | 2003 |
|  |       | \$           | \$        | \$        | \$        | %  | %    |
| Financial Assets                             |       |              |           |           |           |  |      |
| Cash at Bank                                 | 7A    | 5,709,212    | 4,145,985 | 5,709,212 | 4,145,985 | n/a                                      | n/a  |
| Receivables for goods and services (gross) 1 | 7B    | 8,492        | 0         | 8,492     | 0         | n/a                                      | n/a  |
| Appropriation Receivable                     | 7B    | 0            | 18,000    | 0         | 18,000    | n/a                                      | n/a  |
| Total  |       | 5,717,704    | 4,163,985 | 5,717,704 | 4,163,985 |  |      |
| Total assets                                 |       |              |           | 7,068,348 | 6,143,790 |  |      |
| Financial Liabilities                        |       |              |           |           |           |  |      |
| Trade creditors                              | 11A   | 431,568      | 335,085   | 431,568   | 335,085   | n/a                                      | n/a  |
| Total  |       | 431,568      | 335,085   | 431,568   | 335,085   |  |      |
| Total Liabilities                            |       |              |           | 1,215,105 | 1,095,526 |  |      |
| Net Financial Assets                         |       | 5,286,135    | 3,828,900 | 5,286,135 | 3,828,900 |  |      |

|  |  |  |  |  |   |  |  |
|--|--|--|--|--|---|--|--|
|  |  |  |  |  |   |  |  |
| 1 Comparative for Receivable for goods and services (gross) changed because GST receivable was incorrectly included. |  |  |  |  |   |  |  |
|  |  |  |  |  |   |  |  |
| Note 16C - Terms, Conditions and Accounting Policies   |  |  |  |  |   |  |  |
| Financial Instrument   | Notes  | Accounting Policies and Methods (including recognition criteria and measurement basis)   |  |  | Nature of Underlying Instrument (including significant terms and conditions affecting the amount, timing and certainty of cash flows)     |  |  |
| Financial Assets   | Financial assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably measured.          |  |  |  |   |  |  |
| Cash   | 6A   | Deposits are recognised at their nominal amounts.  |  |  |   |  |  |
| Receivables for goods and services   | 6B   | These receivables are recognised at their nominal amounts due, less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collection of the debt is judged to be less rather than more likely. |  |  | All receivables are with entities external to the Commonwealth. Credit terms are net 30 days (2003: 30 days).                             |  |  |
|  |  |  |  |  |   |  |  |
| Financial Liabilities  | Financial liabilities are recognised when a present obligation to another party is entered into, and the amount of the liability can be reliably measured. |  |  |  |   |  |  |
| Trade Creditors  | 9A   | Creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).   |  |  | All creditors are entities that are not part of the Commonwealth legal entity. Settlement is usually made at net 30 days (2003: 30 days). |  |  |

Note 16B - Net Fair Values of Financial Assets and Liabilities

|  |       | 2004                  |                          | 2003                  |                          |
|--|-------|-----------------------|--------------------------|-----------------------|--------------------------|
|  | Notes | Total carrying amount | Aggregate net fair value | Total carrying amount | Aggregate net fair value |
| Departmental   |       | \$                    | \$                       | \$                    | \$                       |
| Financial Assets   |       |                       |                          |                       |                          |
| Cash at Bank   | 7A    | 5,709,212             | 5,709,212                | 4,145,985             | 4,145,985                |
| Receivables for goods and services (net) 2   | 7B    | 8,492                 | 8,492                    | 0                     | 0                        |
| Appropriations receivable 3  | 7B    | 0                     |                          | 18,000                | 18,000                   |
| Total Financial Assets   |       | 5,717,704             | 5,717,703                | 4,163,985             | 4,163,985                |
|  |       |                       |                          |                       |                          |
| Financial Liabilities (Recognised)   |       |                       |                          |                       |                          |
| Trade creditors  | 11A   | 431,568               | 431,568                  | 335,085               | 335,085                  |
| Total Financial Liabilities (Recognised)   |       | 431,568               | 431,568                  | 335,085               | 335,085                  |
|  |       |                       |                          |                       |                          |
|  |       |                       |                          |                       |                          |
| The net fair values of cash and non-interest-bearing monetary financial assets approximate their carrying amounts. |       |                       |                          |                       |                          |
|  |       |                       |                          |                       |                          |
| The net fair values for trade creditors are approximated by their carrying amounts.                                |       |                       |                          |                       |                          |
|  |       |                       |                          |                       |                          |
| 2 Receivable for goods and services (gross) comparative changed because GST receivable was incorrectly included.   |       |                       |                          |                       |                          |
| 3 Appropriations receivable comparative changed because it was incorrectly stated.                                 |       |                       |                          |                       |                          |

| Note 18A - Special Accounts                                 | 2004 | 2003 |
|---|------|------|
| Item  | \$   | \$   |
| NAME OF ACCOUNT - Other Trust Moneys Account (Departmental) |      |      |
| Legal Authority: Professional Services Review               |      |      |

|   |      |      |
|---|------|------|
| Appropriation: Financial Management and Accountability Act 1997; s20  |      |      |
| Purpose: For expenditure of moneys temporarily held on trust or otherwise for the benefit of a person other than the Commonwealth.  |      |      |
| This account is non-interest bearing  |      |      |
| Balance carried forward from previous year  | 0    | 0    |
| Appropriation Act (No.2) 2003-2004  | 0    | 0    |
| Costs recovered from non-government sector  | 0    | 0    |
| Other receipts - contributions  | 0    | 0    |
| GST credits (FMAA s30A)   | 0    | 0    |
| Available for payments  | 0    | 0    |
| Payments made to suppliers  | 0    | 0    |
| Balance carried to next year  | 0    | 0    |
| Represented by:   |      |      |
| Cash on call held in the OPA  | 0    | 0    |
| GST payable to the OPA  | 0    | 0    |
| Total   | 0    | 0    |
|   |      |      |
| Note 18A - Special Accounts   | 2004 | 2003 |
| Item  | \$   | \$   |
| NAME OF ACCOUNT - Services for Other Government and Non-Agency Bodies Account (Departmental)  |      |      |
| Legal Authority: Professional Services Review   |      |      |
| Appropriation: Financial Management and Accountability Act 1997; s20  |      |      |
| Purpose: For expenditure in connection with services performed on behalf of other Governments and bodies that are not FMA agencies. |      |      |
| This account is non-interest bearing  |      |      |
| Balance carried forward from previous year  | 0    | 0    |
| Appropriation Act (No.2) 2003-2004  | 0    | 0    |
| Costs recovered from non-government sector  | 0    | 0    |
| Other receipts - contributions  | 0    | 0    |
| GST credits (FMAA s30A)   | 0    | 0    |
| Available for payments  | 0    | 0    |

|                              |   |   |
|------------------------------|---|---|
| Payments made to suppliers   | 0 | 0 |
| Balance carried to next year | 0 | 0 |
| Represented by:              |   |   |
| Cash on call held in the OPA | 0 | 0 |
| GST payable to the OPA       | 0 | 0 |
| Total                        | 0 | 0 |

| Note 20A - Net Cost of Outcome Delivery  |  |           |           |           |           |
|--|--|-----------|-----------|-----------|-----------|
|  |  | Outcome 1 |           | Total     |           |
|  |  | 2004      | 2003      | 2004      | 2003      |
|  |  | \$        | \$        | \$        | \$        |
| Departmental expenses  |  | 7,011,752 | 5,512,628 | 7,011,752 | 5,512,628 |
| Total expenses   |  | 7,011,752 | 5,512,628 | 7,011,752 | 5,512,628 |
| Costs recovered from provision of goods and services to the non-government sector  |  |           |           |           |           |
| Departmental   |  | 2,531     | 1,079     | 2,531     | 1,079     |
| Total costs recovered  |  | 2,531     | 1,079     | 2,531     | 1,079     |
| Other external revenues  |  |           |           |           |           |
| Departmental   |  |           |           |           |           |
| Revenue from disposal of assets  |  | -         | 2,022     | -         | 2,022     |
| Other  |  | -         | 1,606     | -         | 1,606     |
| Total other external revenues  |  | 0         | 3,628     | 0         | 3,628     |
| Net cost/(contribution) of outcome   |  | 7,009,221 | 5,507,921 | 7,009,221 | 5,507,921 |
|  |  |           |           |           |           |
| Outcome 1 is described in Note 1.1 and Note 20.<br>Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome. Refer to Outcome 1 Resourcing Table of this Annual Report. |  |           |           |           |           |
|  |  |           |           |           |           |

| Note 20B - Major Classes of Departmental Revenues and Expenses by Output Group  |                |           |                 |           |
|---|----------------|-----------|-----------------|-----------|
| Outcome 1   | Output Group 1 |           |                 |           |
|   | Output 1.1     |           | Outcome 1 Total |           |
|   | 2004           | 2003      | 2004            | 2003      |
|   | \$             | \$        | \$              | \$        |
| Departmental Expenses   |                |           |                 |           |
| Employees   | 2,382,640      | 2,043,000 | 2,382,640       | 2,043,000 |
| Suppliers   | 4,366,855      | 3,352,655 | 4,366,855       | 3,352,655 |
| Depreciation and amortisation   | 180,638        | 113,590   | 180,638         | 113,590   |
| Other non-taxation revenue  | 81,619         | 3,383     | 81,619          | 3,383     |
| Total departmental expenses   | 7,011,752      | 5,512,628 | 7,011,752       | 5,512,628 |
| Funded by:  |                |           |                 |           |
| Revenues from Government  | 7,604,200      | 7,528,200 | 7,604,200       | 7,528,200 |
| Other non-taxation revenue  | 212,531        | 4,707     | 212,531         | 4,707     |
| Total departmental revenues   | 7,816,731      | 7,532,907 | 7,816,731       | 7,532,907 |
|   |                |           |                 |           |
| Outcome 1 is described in Note 1.1 and Note 20.<br>Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome. |                |           |                 |           |

## Appendix 2: Freedom of information statement

There were no requests for access to documents under the provisions of the *Freedom of Information Act 1982*. Four requests from the previous year were completed.

### Contact Officer

All freedom of information requests should be directed to:

#### The Executive Officer

Professional Services Review  
PO Box 7152  
Canberra Business Centre  
Fyshwick ACT 2610

### Documents

The types of documents PSR holds are:

- referrals, requests for review and related documents from the Commission pursuant to section 86 of the *Health Insurance Act 1973* regarding the conduct of a person the Commission considers may have engaged in inappropriate practice in connection

with rendering or initiating services

- reports of, and related documents regarding, reviews carried out by PSR
- lists of panel members to sit on committees
- reports of committees
- administrative files
- Memorandum of Understanding and other agreements
- finance and accounting records
- legal advices
- computer records
- consultancy reports and databases
- contracts
- minutes of various meetings
- general correspondence.

In respect of section 9 of the *Freedom of Information Act 1982*, this agency has the following document that is provided for the use of, or is used by, the agency or its officers in making decisions or recommendations, under or for the purposes of an enactment or scheme administered by the agency:

- Procedure Guide for Professional Services Review Committees.

### Appendix 3: Legislative overview

The PSR scheme was established by the *Health Legislation (Professional Services Review) Amendment Act 1993* which amended the *Health Insurance Act 1973*, and came into effect from 1 July 1994.

The Act was substantially amended in 1999 following a comprehensive review of the scheme. An adverse decision by the Federal Court in November 2001 (*Pradhan v Holmes & Others*) raised concerns that the 1999 amendments to the Act may not have the effect intended. The Full Court of the Federal Court in May 2002 handed down a decision (*Health Insurance Commission v Grey*) which substantially agreed with the way PSR characterises its role. However, further amendment to the Act was required to address the concerns of the Federal Court.

The *Health Insurance Amendment (Professional Services Review and Other Matters) Act 2002* was passed by Parliament during the year. The majority of the amendments came into effect on 1 January 2003 with the remainder on Royal Assent—18 December 2002. This new Act makes a number of amendments to the existing Act, specifically to:

- clarify the roles and responsibilities of the Commission, the Director of PSR and PSR committees
- enhance procedural fairness processes
- validate a number of referrals (that may otherwise have been found to be invalid on the basis of the *Pradhan* decision) which are currently before committees.

The Act was been developed in consultation with the Director of PSR, the Commission, the AMA and the Department of Health and Ageing.

#### The Director

Dr A J (John) Holmes was appointed Director of Professional Services Review by the then Minister for Human Services and Health (now Health and Ageing) on 21 July 1994 for a three-year period. Dr Holmes has twice been re-appointed for further periods. The position was advertised nationally in April 2003 and Dr Holmes was appointed until 31 December 2004.<sup>7</sup>

At 30 June 2004, 235 members had been appointed for a five-year period by the Minister as panel members to serve on committees. Of these, 21 were also appointed as Deputy Directors of PSR to serve as chairpersons. The Minister appointed nine new members during the year.

#### Background

The legislation was developed with the aim of providing an effective peer review mechanism to deal quickly and fairly with concerns about possible inappropriate practice.

The essential features of the review structure are:

- a Director of PSR, who is a medical practitioner, appointed ministerially and able to engage staff and consultants
- a PSR panel, comprising medical and other health related practitioners, who are appointed ministerially
- committees, comprising practitioners from the PSR panel appointed by the Director on a case-by-case basis to consider the conduct of practitioners referred by the Director for investigation
- a Determining Authority comprising a medical practitioner as Chair, a lay person and a member of the relevant profession. The Determining Authority’s role is to decide on the sanctions for practitioners found by committees to have engaged in inappropriate practice and to consider whether to ratify agreements entered into by the Director and the person under review.

### Inappropriate Practice

A practitioner engages in inappropriate practice if the practitioner’s conduct, in connection with rendering or initiating services, is such that a committee of his or her peers could reasonably conclude that:

- in the case of a medical practitioner—the conduct would be unacceptable to the general body of the members of the group (that is, general practitioner, specialist or consultant physician) in which the practitioner was practicing when he or she rendered or initiated the services, or
- in the case of a dental practitioner, optometrist, chiropractor, physiotherapist or podiatrist—the conduct would be unacceptable to the general body of the members of the profession in which the practitioner was practicing when he or she rendered or initiated the services.

A person (including a practitioner) who is an officer of a body corporate engages in inappropriate practice if the person knowingly, recklessly or negligently causes or permits, a practitioner employed by the person or body corporate to engage in conduct that constitutes inappropriate practice by the practitioner.

### Benefits of the PSR scheme

The PSR scheme gives health professionals substantial autonomy in reaching findings on inappropriate practice. At the same time, proper care has been taken to ensure the practitioner under review receives natural justice. At every major point in the review process the practitioner is given the opportunity to make submissions that could influence the review process and outcome. The scheme provides for separation of the three elements of the decision-making processes which are:

- review of a request from the Commission
- committee hearings and findings
- determination of any penalty.

# Glossary

|                       |  |
|-----------------------|--|
| Act                   | <i>Health Insurance Act 1973</i> , as amended by the <i>Health Legislation (Professional Services Review) Amendment Act 1994</i> and subsequent amendments   |
| adjudicative referral | A case prepared by the Director, instituting a referral to a PSR committee, after an investigation of the concerns contained in an investigative referral. (From 1 January 2003 the Director makes a referral to a PSR committee to investigate concerns.) |
| committee             | A Professional Services Review committee established by the Director in accordance with section 93 of the Act to examine a case of apparent ‘inappropriate practice’ referred by the Health Insurance Commission   |
| deeming               | A prescribed pattern of services under section 106KA of the Act that is deemed to be inappropriate practice  |
| Determining Authority | A three-person panel responsible for determining the sanction following an adverse PSR committee finding   |
| Determining Officer   | An officer appointed by the Minister to determine an appropriate sanction to apply where a PSR committee finds a person under review has engaged in inappropriate practice, as defined in the Act  |
| Director              | The Director of Professional Services Review is an independent statutory officer appointed by the  |

|                        |  |
|------------------------|--|
|                        | Minister—the occupant must be a medical practitioner and the AMA must agree to the appointment   |
| disqualification       | Exclusion (partial or complete) from eligibility for the practitioner’s services to attract Medicare benefits  |
| inappropriate practice | Professional conduct in relation to Medicare which a committee of peers would reasonably consider would be unacceptable to the general body of the peer group (section 82)   |
| investigative referral | A case prepared by the Health Insurance Commission and referred to the Director, containing the Commission’s concerns and the reasons it considers a practitioner or other person may have engaged in inappropriate practice in the terms of section 82 of the Act. (From 1 January 2003, the Commission asks the Director to review the provision of services by a practitioner.) |
| MBS                    | Medical Benefits Schedule  |
| Minister               | Minister for Health and Ageing   |
| panel                  | PSR Panel consisting of medical practitioners, dentists, optometrists, chiropractors, physiotherapists and podiatrists nominated by the relevant professional organisations and who have been appointed by the Minister  |
| PBS                    | Pharmaceutical Benefits Scheme   |
| PSR                    | Professional Services Review   |
| referral               | A case prepared by the Director and referred to a PSR committee for investigation, detailing the concerns and the reasons a practitioner or other person may have engaged in ‘inappropriate practice’ in the terms of section 82 of the Act  |
| request for review     | A case prepared by the Commission asking the Director to review the provision of services and containing the Commission’s concerns and the reasons it considers a practitioner or other person may have engaged in inappropriate practice in the terms of section 82 of the Act. (Applies from 1 January 2003)   |
| 80/20 rule             | A prescribed pattern of services applying to practitioners providing 80 or more professional attendances on 20 or more days in a 12-month period   |

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- <sup>1</sup> *The Report of the Review Committee of the Professional Review Scheme*, March 1999, a copy is on the PSR web site at <[www.psr.gov.au](http://www.psr.gov.au)>.
- <sup>2</sup> Health Insurance (Professional Services Review) Amendment Regulations 1999 (No. 1)—SR1999 No. 346.
- <sup>3</sup> Although this decision was one day outside the end of the reporting year, it is practical to record the outcome in this Report.
- <sup>4</sup> Although this decision was one day outside the end of the reporting year, it is practical to record the outcome in this Report.
- <sup>5</sup> The Tribunal took a different view from the advice of Parliamentary Counsel in an Explanatory Memorandum as to the transitional application of section 105A.
- <sup>6</sup> A final determination was issued in August 2004 and it is open to Dr Piesse to pursue his current application to the Federal Court.
- <sup>7</sup> The Department of Health and Ageing and the Australian Medical Association are currently undertaking recruitment action.