Australian Government

Professional Services Review

Medicolegal dinner: PSR

Professor Julie Quinlivan

Director, PSR

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Role of PSR - Regulator

- Protect the integrity of Medicare (MBS) and Pharmaceutical Benefits (PBS) programs
- Protect patients and the community from the risks associated with inappropriate practice.
- Protect the Commonwealth from having to meet the cost of services provided as a result of inappropriate practice.

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How PSR Operates

Chief Executive of Medicare (or delegate) makes a decision to refer a practitioner or an employer to Director of PSR.

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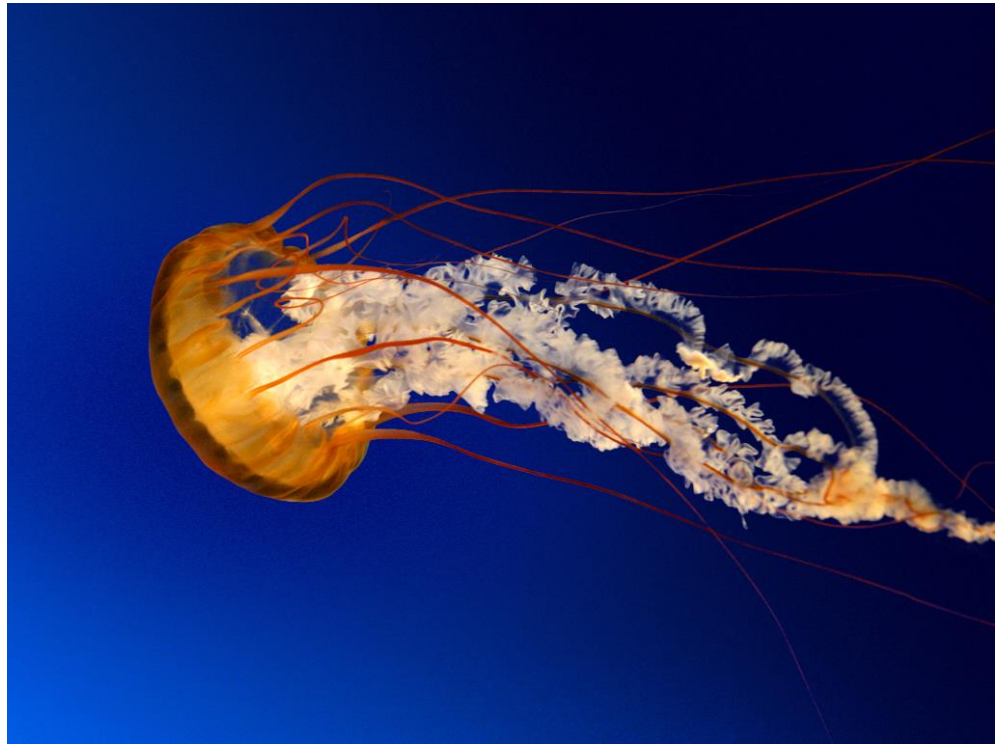
Inappropriate Practice

Conduct in connection with rendering or initiating an MBS or PBS service that would be **unacceptable** to the **general body** of practitioners in the profession or specialty.



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Corporates and employers

- An employer or corporate may be found to have engaged in "inappropriate practice" by ***knowingly, recklessly or negligently*** ***causing or permitting*** a practitioner or practitioners who they **employ or otherwise engage** to have undertaken "inappropriate practice."

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How PSR Operates

- Director stage.
  - Dismiss the review;
  - s92 Agreement; or
  - Refer to a PSR Committee.
- Committee stage.
- Determining Authority.
  - s92 Agreement
  - Committee reports.

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Inappropriate Practice

Conduct in connection with…

- Was the service ***clinically necessary*** for patient management?
- Was there adequate and appropriate ***clinical input***?
  - History, Examination, Investigation, Treatment, Preventative health advice.
  - Consent, Clinical procedures documented, Aftercare.
  - Quality assurance if high volume work.
- Was the clinical record ***adequate and contemporaneous***?
- Has the MBS ***item descriptor*** been met?

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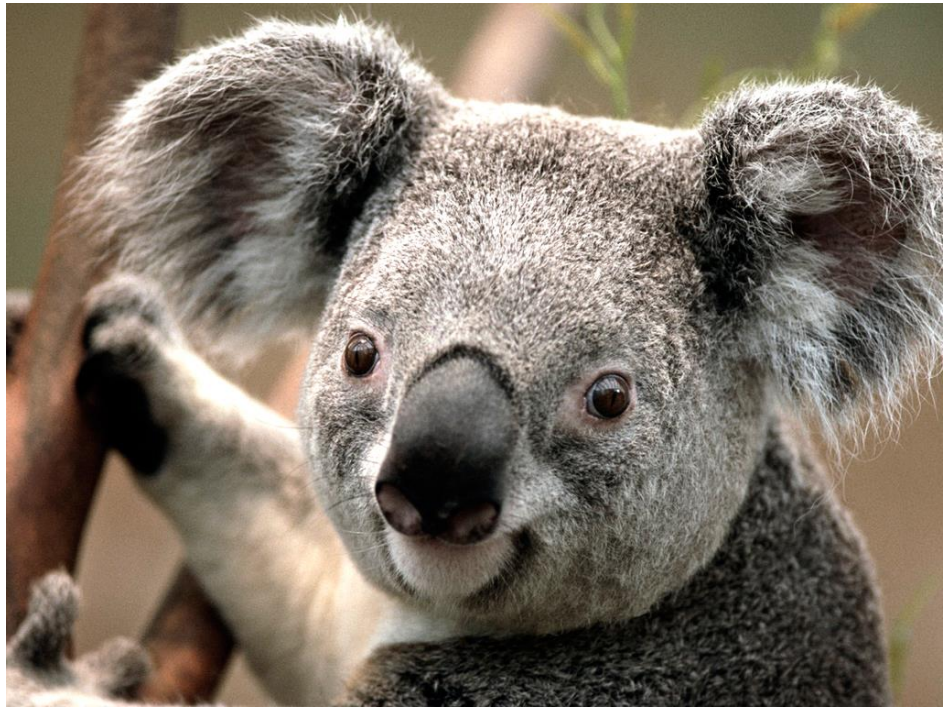
Clinically necessary

Every service billed to the MBS must be clinically indicated for the management of the patient.



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Clinical records

Peers expect:

- Contemporaneous records must be kept;
- Medical Board Good Practice Guide should be implemented;
- Need sufficient information to support the billed item.

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Clinical Input – the basics

- History
- Examination
- Management
- Preventative health
- Consent
- Operative record
- Histopathology (if indicated)
- Post operative care and results

For any billed consultation

For any billed procedure

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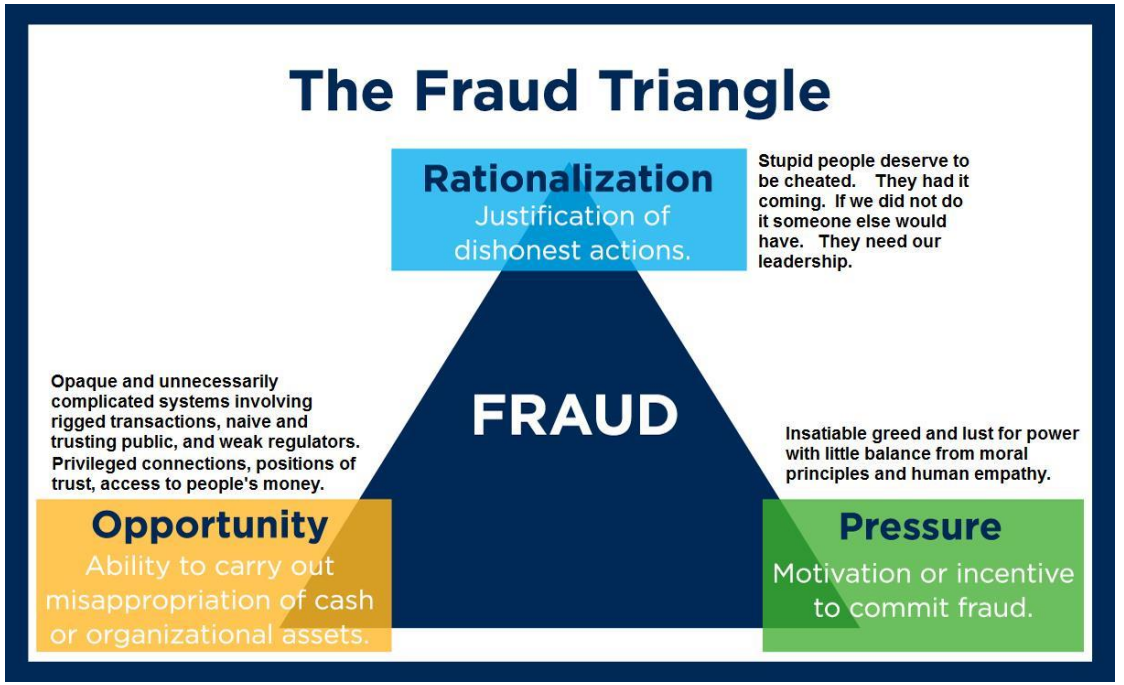
Clinical record –adequate and contemporaneous

- Non contemporaneous records
- Second set of notes
- Tick box history and examination
- Large volumes of identical pasted text across multiple records.

Death by a thousand clicks



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Clinical input - Consent

Failure to obtain or record adequate **informed consent** can result in a finding of inappropriate practice.

- if a procedure is not simple and straightforward, consent should be recorded in detail.

"This is a common procedure. So to keep things interesting, I'm going to attempt it blindfolded."

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Clinical Input – Quality assurance

A *robust quality assurance program* should be in place if a large number of services are being billed and there is scope for human error in interpretation and conclusion of an investigation.

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Clinical Input – Quality assurance

Gisborne cervical smear inquiry

In 2000 an inquiry into cervical screening in the Gisborne area was held after it was discovered that a local laboratory had failed to pick up hundreds of abnormal smears. Dr Michael Botrill, who ‘read’ the smears and owned the laboratory, is shown here giving evidence at the inquiry. His laboratory found 0.53 high grade abnormalities compared with a national average of 1%. Once Dr Botrill retired, the rate of high grade abnormalities found jumped to 1.71%. In his evidence, Dr Botrill accepted that he had misread smears.

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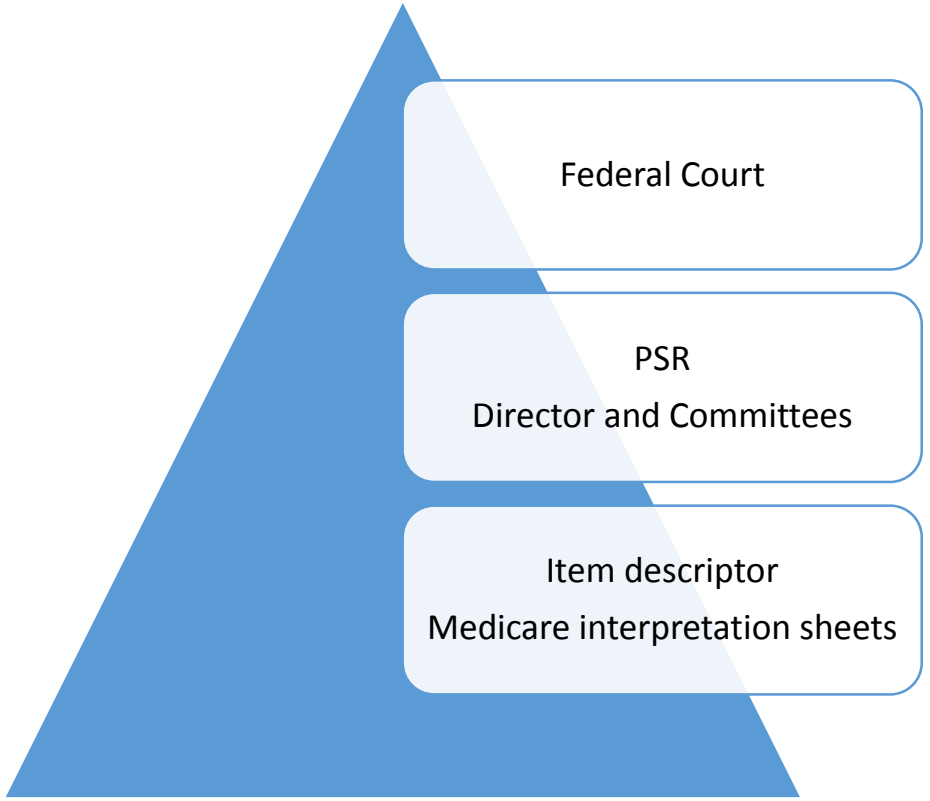
Item descriptor

- A key aspect of the PSR review is a determination as to whether the practitioner complied with the item descriptor.
- Peer review guides interpretation
- Federal Court can also guide interpretation.



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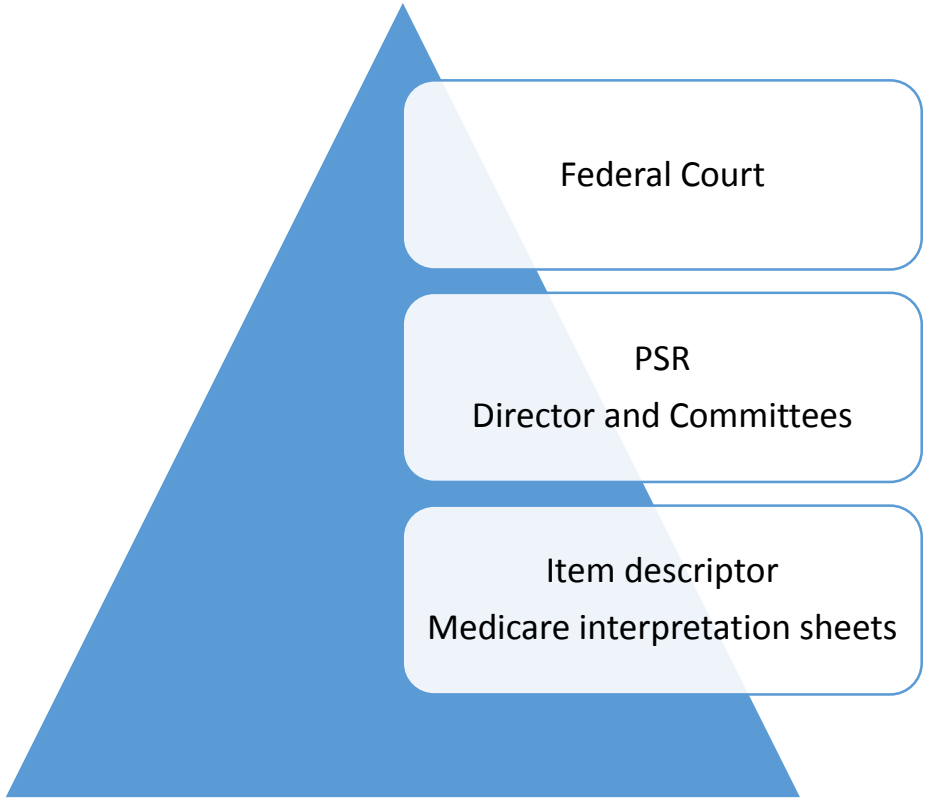
Federal Court

- Committee 936 determined:
  - Onus on practitioner to demonstrate exceptional circumstances if 80/20 breach; and
  - “requires urgent treatment” interpretation of the word “requires”.
- Federal Court upheld PSR Committee interpretation.
  - *Nithianantha v Commonwealth of Australia & PSR Committee No. 936 [2018] FCA 2063*



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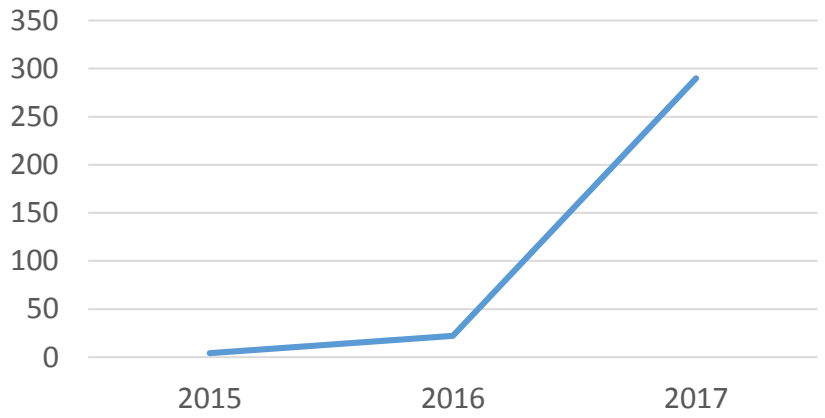
Antibiotics

- Third Annual Surveillance Report on Antibiotic Resistance has found a **rise in resistance**.
- More than **26 million prescriptions** for antibiotics were issued in 2017.
- Good news is that antibiotic prescribing by medical practitioners is falling.
- However, the onus is on prescribers to assess patients carefully before prescribing an antibiotic.

Year	Deaths from multi-resistant bacteria
2015	4
2016	17
2017	290



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Prescribing

- Victoria's real-time prescribing monitoring system revealed 15,000 people were red flagged for visiting multiple doctors and pharmacies.
- An additional 13,000 people were red-flagged as taking excessive doses or risky combinations of medications.
- Number of deaths due to prescription medication now exceeds the road toll.
- The onus is on prescribers to assess patients carefully before prescribing schedule 4 and 8 medications.

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Summary

- Government relies on the healthcare professions to self regulate for appropriate and inappropriate practice.
- Under the PSR scheme peers determine whether billing and prescribing are appropriate.