

CHAPTER 8

THE LEGISLATIVE AND ADMINISTRATIVE FRAMEWORK

*'At the moment it is a fairly tortuous route for the legislation to be changed.'*¹

The legislative framework

8.1 Legislation establishing the concession cards regime developed over an extended period of time and provisions were written into existing legislation as the need arose. Currently the legislative arrangements for Commonwealth concessions reside with three portfolios - Social Security, Veterans' Affairs and Health and Family Services.

8.2 The Pensioner Concession Card is provided for in the *National Health Act 1953*. The Act sets out 'concessional beneficiary' status, for the purposes of the Pharmaceutical Benefits Scheme administered by the Health Insurance Commission. PCC cards issued by the Department of Veterans' Affairs are covered by the *Veterans' Entitlements Act 1986*. Other concessions available to PCC holders, such as postal discounts and free hearing aids, are included in the *Postal and Telecommunications Commissions (Transitional Provisions) Act 1975* and the *Hearing Services Act 1991*.

8.3 Qualifications for entitlement to a Health Care Card under the Disadvantaged Persons Scheme are set out in the *Health Insurance Act 1973*. Provisions in the *Health Insurance Act 1973* and the *Social Security Act 1991* provide entitlement for some income support recipients who return to work and have their payments cancelled.

8.4 The qualifications for the Commonwealth Seniors Health Card are set out in the *Social Security Act 1991*.

8.5 The establishment of the Commonwealth Services Delivery Agency (Centrelink) in July 1997 does not affect the legislative framework for concessions. The *Commonwealth Services Delivery Agency (Consequential Amendments) Act 1997* enables the Secretary of the Department of Social Security to delegate powers to the Chief Executive Officer and staff of Centrelink. This measure allows Centrelink to administer concessions according to existing legislation.

1 Commonwealth Department of Health and Family Services, Transcript of Evidence, pg FCA 64.

8.6 In addition to the Commonwealth legislation outlined above, State, Territory and local governments have enacted legislation to enable Commonwealth cardholders to claim health, household, educational, transport and recreational concessions.

The administrative framework

8.7 There are five Commonwealth government agencies involved with concession cards. They are:

- the Department of Social Security (DSS) - responsible for policy regarding concession cards;
- Centrelink (the Commonwealth Services Delivery Agency) - responsible for determining eligibility for concession cards and issuing Commonwealth concession cards;
- the Department of Veterans' Affairs (DVA) - responsible for determining eligibility of veterans and their spouses for the Pensioner Concession Card and Commonwealth Seniors Health Card, and issuing those cards;
- the Department of Health and Family Services (DH&FS) - responsible for policy regarding the PBS, Medicare, Disability Services, Hearing Services and Aboriginal and Torres Strait Islander health services; and
- the Health Insurance Commission (HIC) - responsible for administering the PBS and Medicare.

8.8 Clearly this is a complex administrative arrangement. Officials from all the above agencies, except Centrelink which was not operational until after the Inquiry's public hearings were complete, told the Committee that they consider the current arrangements too cumbersome.

8.9 DH&FS told the Committee it wished to be divested of any responsibility for concession cards. DH&FS favours this approach because of its lack of involvement in concession card policy at a practical level. An official told the Committee:

It [concession card administration] is fairly unusual in that we run the program but we have no knowledge really of the changes that are occurring in our legislation

*because the eligibility criteria have been decided elsewhere.*²

8.10 DSS indicated its support for simplifying concession legislation and administration. DSS told the Committee that because entitlement and issue of cards is handled by the Social Security and Veterans' Affairs portfolios, despite the enabling legislation residing with the Health and Family Services portfolio, anomalies occur between what happens in practice and the governing legislation. For example, the *National Health Act 1953* continues to provide concessions for DSS payments which no longer exist (such as the Invalid Pension, Sheltered Employment Allowance and Widow's Pension).³ Similarly, DEETYA staff may overlook the need to amend the Health Acts when they change Austudy and CDEP entitlements. DSS recommended that all concession entitlement provisions be moved from the Health and Family Services portfolio to the Social Security and Veterans' Affairs portfolios.

8.11 Clearly DH&FS does not play a significant practical role in concession policy or delivery, despite being the portfolio in which most concession legislation resides. DH&FS's main function in the concession card system is to provide hearing services to Pensioner Concession Card holders, through the Australian Government Health Service (AGHS). DH&FS's role in this area will substantially decrease following corporatisation of the AGHS. Although DH&FS has policy responsibility for the PBS, its evidence to the Committee clearly indicates a lack of involvement with delivery of the service. The only real involvement is in the determination of the PBS co-payment levels and Safety Net limits.

8.12 The Department of Veterans' Affairs (DVA) acknowledged the complexity of the current system, but was concerned that any simplification of legislative and administrative arrangements would decrease its role in concession card issue and administration. DVA customers, who are veterans and their spouses, currently receive a holistic service from DVA, including pension assessment and administration, the issuing of concession cards and provision of health care services. A DVA official told the Committee:

2 Transcript of Evidence, pg FCA 64.

3 Letter from Department of Social Security, 22 July 1997.

*The only real issue for us...would be the special recognition of veterans in the community; there may well be reaction along the lines, 'We are not considered special any more.'*⁴

8.13 However, DVA does not become involved with eligibility or entitlement policy, or actually deliver any of the concessions. The Department acts as an agent for DSS in providing concession cards to a particular section of the community.

8.14 The Committee recognises the special status that veterans have in the Australian community, and believes this special recognition must continue. This should not be an impediment to achieving a rationalised concession card system. While DVA should be involved with service provision to its veteran customers, other aspects of concession card administration will be better serviced by a single portfolio.

8.15 The current legislative and administrative arrangements for concession cards are too complex, cause confusion in policy formulation and discussion at the bureaucratic level is delayed because of the number of agencies involved. Most legislative and administrative responsibility should be transferred to the Social Security portfolio.

8.16 The recommendations of this report, if implemented, will require substantial legislative change. This opportunity should be used to create a legislative and administrative system which is as simple and transparent as possible.

8.17 The Committee recommends that officials from the Department of Social Security, the Department of Veterans' Affairs, the Department of Health and Family Services, Centrelink and the Health Insurance Commission form a working party to investigate current legislative complexities within the concession card system.

- **Any reform of the concession card legislative framework should include relocating the bulk of concession entitlement provisions from the Health and Family Services portfolio to the Social Security portfolio.**
- **The Department of Social Security must hold responsibility for all concession card policy. However, major decisions must be taken in consultation with the Department of Veterans' Affairs,**

4 Transcript of Evidence, pg FCA 38.

the Australian Government Hearing Service, the Health Insurance Commission and Centrelink.

- **In recognition of the special status of veterans, the Department of Veterans' Affairs should retain responsibility for determining eligibility and allocating concession cards and repatriation health cards to veterans and their partners.**
- **The concession card and health repatriation cards issued by the Department of Veterans' Affairs should incorporate a distinctive feature to indicate veteran status, and this should continue on a permanent basis.**
- **Centrelink should be responsible for production of all concession cards, and for delivery of cards to all beneficiaries except those of the Department of Veterans' Affairs.**

Fraud Control

8.18 The Commonwealth has in place a number of fraud control mechanisms to avoid misuse of concession cards. Most fraud occurs when people continue to use concession cards when eligibility has ceased, or abuse the PBS system to obtain cheap prescription drugs.

Eligibility checks

8.19 The main fraud control is by correct identification of card eligibility. The Pensioner Concession Card is issued on the basis of qualification for income support payments. The income support qualifications include a requirement to validate identity and income through accepted documentation. The Health Care Card and Commonwealth Seniors Health Card have similar verification requirements.

Pharmaceutical Benefits Scheme fraud

8.20 The Department of Social Security transmits daily data on all concession card recipients to the Health Insurance Commission (HIC), which administers the PBS. This enables the HIC to data match the most current information with their record of valid card holders who are eligible for PBS concessions. The HIC estimates that fraud and abuse of the PBS is at a level of less than 2 per cent of all PBS prescriptions.⁵

5 Transcript of Evidence, pg FCA 52.

8.21 Pharmacists cannot check electronically if a concession card presented to them is still valid. The HIC advised the Committee that pharmacy software contains a check to affirm that the construction of the concession card number (ie the sequencing) is valid. This guards against acceptance of fake cards. However, in some instances, pharmacists provide prescriptions at the concessional rate, unaware that the card holder is no longer entitled to use the card (eg, because their income has substantially increased). The HIC will then reject the pharmacist's claim for reimbursement of the concession, because the HIC has access to daily data which indicates that the concession claim was not valid. In this circumstance, the pharmacist must meet the extra cost.

8.22 The Committee expresses its concern that pharmacists, as small business operators, must sometimes bear the cost of fraud against the Commonwealth. This problem could be largely solved through implementation of an online, electronic claims system (PharmaNet) as discussed in Chapter 5.

Doctor shopping

8.23 Abuse of the PBS system by visiting many doctors and misreporting illness or using other peoples' Medicare cards to obtain multiple prescriptions ('doctor shopping') may also occur. The HIC stressed, and the Committee acknowledges, that doctor shoppers are not, by definition, concession card holders. As all Australian citizens have access to the PBS, the HIC is unable to identify what percentage of doctor shoppers are concession card holders. Because doctor shoppers obtain a large amount of prescriptions, they may become eligible for the PBS Safety Net. Reaching the Safety Net means that the Government subsidises most of the cost of the drugs, resulting in a substantial loss to taxpayers.

8.24 The HIC outlined a program costing \$5.25 million, funded in the 1996-97 Budget, aimed at reducing doctor shopping over three years. The main aims of the program are to improve the health and welfare of patients who abuse the system by doctor shopping, and to reduce fraud of the PBS. The project is expected to achieve a saving of \$11.5 million.⁶

Export of PBS drugs

8.25 The Committee raised with the Health Insurance Commission anecdotal evidence suggesting that PBS drugs may be diverted out of Australia, either

6 Transcript of Evidence, pg FCA 526.

through the postal system or as luggage on international flights, for sale in foreign markets.⁷ The HIC acknowledged that some PBS drugs are exported from Australia but said this is difficult to intercept. The HIC, in conjunction with the Australian Customs Service (ACS) and the Australian Federal Police (AFP), recently conducted inspections of postal services and international air flights to determine the level of PBS exports. The operation did not indicate that significant export of prescription drugs was occurring.

8.26 The *National Health Act 1953* provides that PBS drugs should not be used for means other than intended. Clearly, PBS drugs are not issued with the intent of sale on foreign or black markets. However, the HIC told the Committee that the problem lies in intercepting the drugs at the time they leave the country and determining who obtained them. If illegal drug exports are not detected when leaving Australia, or the person who obtained the drugs cannot be traced, it is very difficult to prosecute under the *National Health Act 1953*.

8.27 The Committee recommends that the Health Insurance Commission, the Australian Customs Service and the Australian Federal Police further strengthen their fraud control programs, and recommends training for relevant officers about the export of Pharmaceutical Benefits Scheme drugs in contravention of the *National Health Act 1953*.

Community Service Obligations

8.28 Governments generally provide concessions and other services ‘in the public interest’ through Community Service Obligations (CSOs). There is no national definition or framework for CSOs, as the Commonwealth and each State/Territory have developed their own CSO policies. Most States/Territories have adopted (with variations from State to State) the definition provided by the Steering Committee on National Performance Monitoring of Government Trading Enterprises. The Steering Committee comprises representatives from all Australian governments and is chaired by the Chairman of the Industry Commission. The Steering Committee’s CSO definition reads:

A Community Service Obligation arises when a government specifically requires a public enterprise to carry out activities relating to outputs or inputs which it would not elect to do on a commercial basis, and which the government does not require other businesses in the

7 Transcript of Evidence, pg FCA 54.

*public or private sectors to generally undertake, or which it would only do commercially at higher prices.*⁸

8.29 The above definition explains why concessions are usually considered CSOs. Concessions are facilitated by a government direction, in order to achieve a specific social policy. They are usually provided at a loss to the service provider, which is then reimbursed or funded by the government. The Standing Committee's definition clearly precludes private sector organisations and utilities from delivering CSOs, as the definition applies only to the public sector.

CSOs and privatisation

8.30 The National Competition Policy (NCP), ratified by all Australian governments in April 1995, provides guidelines for the continuation of CSOs when government utilities and services are privatised. The Competition Principles Agreement, one of the three intergovernmental agreements which underpin the NCP, includes the following direction (under Section 4 (3) (f)):

(3) Before a Party introduces competition to a market traditionally supplied by a public monopoly, and before a Party privatises a public monopoly, it will undertake a review into:

(f) the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations.⁹

8.31 This clause requires that before privatisation of public utilities such as electricity and water, the government must examine CSOs such as concessions and decide if and how the CSO will be funded following privatisation.

8.32 Several groups, including the Council on the Ageing Australia (COTA (A)) and the Brotherhood of St Laurence, emphasised the importance of CSOs on services targeted for privatisation. While privatisation removes governments' responsibility for administration and service delivery, the Committee was told that governments should still meet their responsibility to help low income Australians meet essential costs through provision of concessions. COTA (A) told the Committee that older people were concerned about continued

8 Industry Commission, *Community Service Obligations: Policies and Practices of Australian Governments*, February 1997.

9 Cited in National Competition Council, *Compendium of National Competition Policy Agreements*, January 1997.

affordability of essential services following corporatisation and privatisation of public utilities. A representative told the Inquiry:

Originally, some concessions had been passed through utilities but these are now being whittled away. That is of great concern to older people...the Commonwealth needs to take some leadership in setting standards. If utilities are to be commercialised or corporatised, the community service obligations should be written into legislation.¹⁰

State policies on CSOs

8.33 The Queensland Government told the Committee it was investigating concessions in the light of privatisation and reform of public utilities. In addition, the Committee is aware of a NSW Government investigation of concessions and how they should be delivered in the context of private sector utilities. A NSW Government official informed the Committee that (at the time of writing) the investigation was not yet complete.

8.34 The Victorian Government is pursuing a more radical privatisation program than other Australian States. In 1995 the Victorian Government established a Ministerial Committee review of utility concessions, to determine their suitability for privatised energy and water industries and to draft a new State concessions framework.¹¹ Although the review was due to report by December 1996, Victorian Government officials informed the Committee the review was not complete (at the time of writing).

8.35 As outlined in Chapter 6, the Victorian Government's submission to the Inquiry indicated that some concessions may be redirected after services have been privatised, in light of falling prices and a need for concessions to be directed into areas such as health, housing and education. The possibility that the Victorian Government may review and cease some Community Service Obligations on existing core concessions such as electricity and water charges is of concern to the Committee. However, in another part of the Government's submission, and at a public hearing, the Victorian Government stated its commitment to concessions regardless of whether the service provider was in the public or private sphere. A Victorian Government representative told the Committee:

10 Transcript of Evidence, pg FCA 327.

11 Submission no. 42, pg FCA 289.

*There is an ongoing commitment to concessions, even though certain utilities are provided in the private sector.*¹²

8.36 The Committee urges the Victorian Government to clarify its position on continuation of CSOs when services are privatised. The establishment of a clear policy regarding CSOs and current and future concession provision is of vital importance.

Sale of AN Railway

8.37 AN Rail provides discounted train travel for Pensioner Concession Card holders and some veterans (see Chapter 2). The *Australian National Railways Commission Sale Act 1997* was recently passed by the Parliament,¹³ and the sale of AN Rail passenger services to the Great Southern Railway (GSR) consortium was announced on 28 August 1997.¹⁴

8.38 The Department of Transport and Regional Development (DT&RD) informed the Committee that before the sale of AN Rail, the Commonwealth provided AN with \$5.2 million per year in compensation for concessional fares sold to PCC holders and veterans. Concessional travellers comprised between 30 to 40 per cent of AN's passenger revenue.¹⁵

8.39 The Government's list of CSOs, held by the Department of Finance, does not list AN Rail concessions as a CSO.¹⁶ This means that the Government had no obligation under the National Competition Policy agreement (outlined in paragraph 8.30) to ensure continuation of AN Rail concessions following privatisation, as they were not officially defined as CSOs. However, the sale of AN Rail passenger services to GSR included an arrangement for continuation of travel concessions for those who currently receive them. The Department of Finance advised the Committee that these concessions will be provided through joint financing by the Commonwealth Government and GSR. The sale agreement with GSR included a provision that GSR give a 25% discount to pensioner customers. The Commonwealth is expected to top up this discount to ensure current Pensioner Concession Card concessions of 50% are met. The Department of Finance informed the Committee:

12 Transcript of Evidence, pg FCA 353.

13 Senate Journals, 25 August 1997, no. 116, pg 2309.

14 Joint press release, the Minister for Finance (the Hon John Fahey MP) and the Minister for Transport and Regional Development (the Hon John Sharp MP), 28 August 1997.

15 Letter from Department of Transport and Regional Development, 7 July 1997.

16 Industry Commission, *op.cit.*

The Commonwealth has an ongoing commitment to ensure there will be concessional fares for those who were entitled to Commonwealth funded concessions on AN services.¹⁷

8.40 The Committee commends the Commonwealth Government for its arrangement to ensure concessions are provided on AN Rail passenger services. The Committee believes that the Government's actions on this matter should be seen by the States/Territories as an example of how governments can ensure delivery of core concessions following privatisation of services. It is important to ensure the AN Rail passenger concessions will continue over time, as the rail service has an important role in enabling pensioners and veterans to travel to visit friends and relatives in other States/Territories.

8.41 The Committee recommends that current concessions available to Pensioner Concession Card holders and veterans travelling on AN Rail passenger services continue to be partially met by the Commonwealth government. The Government should draft a contract with Great Southern Railways for the ongoing provision of concessionary rail travel.

John Forrest, MP
Chairman

28 October 1997

¹⁷ Letter from Department of Finance, 16 September 1997.