

HEALTH AND OTHER SERVICES (COMPENSATION) AMENDMENT BILL 2006

THE INQUIRY

1.1 The Health and Other Services (Compensation) Amendment Bill 2006 was introduced into the House of Representatives on 2 March 2006. On 30 March 2006, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 3 of 2006), referred the provisions of the Bill to the Committee for report.

1.2 In recommending the reference of this Bill to the Committee, the Selection of Bills Committee stated that the reason for referral was to examine the potential to improve the operation of the Advanced Payment Option. The proposed Bill removes the sunset clause and extends the availability of the Advanced Payment Option.

1.3 The Committee considered the Bill at a public hearing on 28 April 2006. Details of the public hearing are referred to in Appendix 2. The Committee received four submissions relating to the Bill and these are listed at Appendix 1. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at http://www.aph.gov.au/senate_ca

THE BILL

1.4 The purpose of this Bill is to amend the *Health and Other Services (Compensation) Act 1995* (the Act) clarifying the application of certain provisions within the Act, and to remove a sunset clause on the Advanced Payment Option currently available for finalising settlements under the Act.

BACKGROUND

1.5 The Act provides for a Compensation Recovery Program, under which Commonwealth Medicare, nursing home or residential care benefits are recovered from people who receive compensation payments for injury or illness for which they have claimed these benefits. This Program is designed to prevent 'double dipping' by successful compensation claimants.

1.6 Successful claimants of compensation may have claimed Medicare and other benefits at the time their injury was sustained or their illness commenced. Once the compensation judgement or settlement is determined, the Act requires insurers and other compensation payers to advise Medicare Australia of any claims where the compensation amounts provided to more than \$5000 (inclusive of all costs). Medicare Australia then determines the amount of benefits paid out in the course of treating the injury or illness and collects the repayment of this amount.

1.7 The Advanced Payment Option (APO) allows compensation payers and insurers to pay 10 per cent of the judgement or settlement to Medicare Australia to cover the Commonwealth debt, allowing claimants immediate access to the remaining 90 per cent of their money. Currently, over 80 per cent of the 50 000 settlements

processed each year are finalised using the Advanced Payment Option. This facility will cease on 1 July 2006 if the sunset clause is not repealed.¹

ISSUES

1.8 All submissions the Committee received outlined the benefits of the Advanced Payment Option and supported the amendment repealing the sunset clause.

1.9 The Insurance Council of Australia (ICA) commented that it is unfair for injured persons to wait, sometimes for a period of months, for their damages and compensation funds while a detailed assessment of the health services repayment amount is made. The ICA supports the Bill's amendment repealing the sunset clause and stated:

The Advanced Payment Option has been a practical and cost effective mechanism of ensuring Medicare is properly reimbursed for the cost of compensated health and related services, while at the same time ensuring that the claimant's access to their damages is not delayed. The Advanced Payment Option is easy to administer by insurers and is well understood by lawyers and other representatives of injured people...The operation of the Advanced Payment Option is convenient, efficient and cost effective for claimants, insurers and the Health Insurance Commission.²

1.10 The Law Council of Australia raised concerns of the relatively high recovery cost under the scheme. In 2001, it was reported that Medicare Australia expended nearly 50 per cent of amounts recovered administering the scheme.³

1.11 Medicare Australia outlined the cost and administrative efficiencies the APO brings to the Compensation Recovery Program as well as improved processes for insurers, the injured persons and Medicare Australia. In the majority of cases (96%), the retention of the ten per cent APO amount covers the injured person's full repayment amount. Only four per cent of cases that choose the APO are required to pay Medicare Australia more than the ten per cent to cover their repayment amount.⁴

1.12 Medicare Australia confirmed that the operation of the APO has helped to reduce administrative costs. The recovery cost has decreased from approximately 50 per cent in 1998-1999 to a current recovery cost of approximately 30 per cent.⁵

1.13 The Law Council of Australia also stated that the APO amount of 'ten per cent has proved to be far more than is necessary to cover the actual amounts recoverable by

1 Explanatory Memorandum, p.2.

2 *Submission 1*, p.2 (Insurance Council of Australia).

3 *Submission 3*, p.2 (Law Council of Australia).

4 *Submission 2*, p.2 (Medicare Australia).

5 *Committee Hansard*, 28.04.06, p,1 (Medicare Australia).

the Commonwealth. Consideration should be given to lowering the advance payment to five per cent in respect of all claims.⁶

1.14 In investigating the potential for improvement to the APO, Medicare Australia considered the Pooley Review's recommendation of a sliding scale of APO percentage amounts. This sliding scale would set the APO percentage depending on the dollar amount of the damages and compensation payout. For example, compensation of \$5001 to \$10,000 would pay five percent and compensation of \$10,001 to \$50,000 would pay three percent. Medicare Australia commented:

...Any change with possibly more complex administrative arrangements may introduce unintended consequences such as added complexity in calculations, system developments to support claims assessment, lead time to implement and cost. The full extent of such change is difficult to quantify at this stage.⁷

1.15 The Department of Health and Ageing also expressed concern regarding the implementation of a sliding scale. The Department stated that a reduction in the APO percentage:

...could result in a greater number of claimants being required to provide additional funds. This would be likely to prolong the process of recovery, thereby posing greater impost on those who have already suffered from injury or hardship. Any benefits in decreasing the ten per cent advanced payment option would need to be carefully balanced against these considerations.⁸

...one of the things with the sliding scale is that you are looking at withholding a certain proportion of the settlement based on how much the actual settlement claim is worth. There is no direct correlation between the amounts of related costs to the settlement. If that were the case, then potentially you could look at that, but the amount of claim does not directly relate to the amount of costs which may be regarded as recoverable through Medicare Australia.⁹

1.16 The Law Council of Australia raised concerns over the inclusion of legal costs in the calculation of the APO amount and stated:

...where they [legal costs] are separately identified, ought to be excluded from the sum used to calculate the advance payment option. This could be clarified within the definitions or by Medicare Australia simply issuing a clarifying notice to insurers.¹⁰

1.17 With regards to the Law Council's concerns, the Department commented:

6 *Submission 3*, p.2 (Law Council of Australia).

7 *Submission 2*, p.2 (Medicare Australia).

8 *Submission 4*, p.2 (DoHA).

9 *Committee Hansard*, 28.04.06 p.4 (DoHA)

10 *Submission 3*, p.2 (Law Council of Australia).

That is something that could be quite easily clarified with the Law Council, and it comes down to whether the legal costs are actually specified in the settlement and whether they form part of that settlement. In the case that legal costs are specified as separate to the settlement, then my understanding is that they are not included in the total package of the settlement, under which, say, the advance payment option may be calculated. But I think that is something we could work on with them to clarify.¹¹

1.18 The Bill proposes a formal pathway to allow claimants to have their notice of claim reviewed by Medicare Australia. An informal system of review currently exists and claimants can proceed directly to the Administrative Appeals Tribunal. The Law Council of Australia supports the proposed two-tiered review approach but was concerned about the lack of time limits applying to Medicare Australia.¹²

1.19 The Department of Health and Ageing provided clarification on the proposed review amendment:

...the crux of the issue is that there was not a formal mechanism within the legislation for there to be an internal review before. That is not to say that that would not have been done as a matter of practice within Medicare Australia. I suppose we are now providing as part of this a legal gateway for people to seek an internal review.¹³

Conclusion

1.20 The amendments proposed in this Bill are mostly minor and technical in nature and do not constitute any significant change to the operation of the Compensation Recovery Program. The main amendment proposed relates to the Advanced Payment Option and the repealing of the sunset clause. The benefits of the Advanced Payment Option have been made clear and this amendment appears to be supported by all stakeholders. The Parliamentary Library Bills Digest concluded similarly that the Bill is likely to be uncontroversial.¹⁴

Recommendation

1.21 The Committee reports to the Senate that it has considered the Health and Other Services (Compensation) Amendment Bill 2006 and recommends that the Bill be passed without amendment.

Senator Gary Humphries
Chairman

11 *Committee Hansard*, 28.04.06, p.4 (DoHA).

12 *Submission 3*, p.3-4 (Law Council of Australia).

13 *Committee Hansard*, 28.04.06, p.4 (DoHA).

14 *Parliamentary Library Bills Digest*, No.111 2005-06, 29 March 2006, p.4.

May 2006