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The Committee Secretary
Senate Community Affairs Legislation Committee
Parliament House
Canberra ACT 2600

Dear Mr Humphery

Health and Other Services (Compensation) Amendment Bill 2006

I refer to your letter of 31 March 2006 advising that the Senate Community Affairs Legislation Committee is examining the Health and Other Services (Compensation) Amendment Bill 2006.

As indicated by the Minister during the second reading speech in the House of Representatives, the key provision in this Bill repeals a sunset clause contained in section 33AA of the *Health and Other Services (Compensation) Act*, which would prevent the operation of the so called "Advance Payment Option" after 1 July 2006.

When people have the misfortune to sustain injury, they are often treated in the nearest trauma hospital, and also go on to receive subsequent medical and related treatment. The Health Insurance Commission can fund some of this treatment.

Subsequently, many people are able to obtain damages or compensation for the injuries and losses they have sustained, and the damages or compensation can include amounts referable to the medical and hospital treatment funded by the HIC.

In order to prevent "double dipping", the *Health and Other Services (Compensation) Act* established a process whereby insurers would have to seek a certificate from the Health Insurance Commission regarding the cost of publicly funded medical and related services that would be refundable from any award of damages or compensation. Insurers were prevented from paying any compensation monies to the claimant until the Health Insurance Commission refund had been completed.

The process of applying for certificates, followed by the detailed assessment of which health services provided to the injured person related to the compensable injury, would often take some months to complete. It is unfair to injured people to ask them to wait for their damages or compensation funds during this period of time.

Insurers did have the opportunity to seek a certificate from the Health Insurance Commission prior to the settlement of the claim. Once again, this process took some months to complete, and while the certificate was valid for six months, there was often no certainty that the claim would be resolved during that period of time. This would lead to further certificates being

requested, a process which placed an unnecessary and costly administrative burden on the Health Insurance Commission.

One difficulty inherent in personal injury compensation is that while formal claims processes operate, all compensation systems promote the negotiated settlement of claims wherever possible, and this in fact occurs in practice. The great majority of compensation claims are settled by negotiation between the parties, without the need for formal court or tribunal determination.


Negotiations occur continually, as information regarding injuries and losses is provided and assessed. Offers of settlement are invariably made, followed by counter offers and further negotiations. The process is informal, but effective in resolving most claims. Importantly, the point in time at which the settlement occurs can often be difficult to predict in advance, thereby making it difficult to ensure a valid certificate of monies owing to the Health Insurance Commission is available at the time the claim settles between the parties.

Given the difficulties I have described, arrangements were made for the introduction of the "Advanced Payment Option". Under this arrangement, as soon as a personal injury claim is finalised, the insurer can pay 10 per cent of the damages or compensation amount to the Health Insurance Commission, with the balance being paid immediately to the claimant. The Commission completes its investigation of the amount properly payable in respect of health and related services arising out of the compensated injury, the amount is adjusted, and any refund is made to the claimant. In the meantime, the claimant has the benefit and use of the balance of the award of damages or compensation.

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.

Insurers fully support the repeal of the sunset clause set out in section 33AA of the Act. The operation of the Advanced Payment Option is convenient, efficient and cost effective for claimants, insurers and the Health Insurance Commission.

Yours sincerely



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