

SUBMISSION BY THE DEPARTMENT OF HEALTH AND AGEING TO THE COMMUNITY AFFAIRS, LEGISLATION COMMITTEE ON THE HEALTH AND OTHER SERVICES (COMPENSATION) AMENDMENT BILL 2006

The Community Affairs Legislation Committee invited submissions on the Health and Other Services (Compensation) Amendment Bill 2006. The Committee indicated a particular interest in the Advanced Payment Option and the potential to improve the operation of this function.

Background;

The *Health and Other Services (Compensation) Act 1996* (the HOSC Act) allows for the recovery of Commonwealth funds (generally in the form of Medicare, nursing home and residential care payments) paid to claimants when they receive a judgment or settlement resulting from a compensation claim. Compensation payments are often made to cover medical or residential care expenses directly related to an injury for which the claimant has sought compensation. Once the claim is settled, the claimant has a responsibility under the HOSC Act to repay the Commonwealth any money paid on his or her behalf prior to the judgment or settlement for any medical or residential expenses.

The Health and Other Services (Compensation) Act 1996, commenced on 1 January 1996 and later in August 1996 the original advanced payment option was introduced to address a large backlog of claims.

The advanced payment option permits the bulk (90 per cent) of a compensation payment to be made to the recipient, while withholding a small proportion (the remaining 10 per cent) against which to reconcile Medicare payments.

Previous review of compensation recovery arrangements

A formal review of the Compensation Recovery System was undertaken by Mr George Pooley in 2000 and recommended streamlining of its provisions to improve the efficient operation of the HOSC Act. The key recommendations of the Pooley Review were:

- the exemption from the HOSC Act of all judgements or settlements equal to or under the value of \$5,000, as it was financially impractical to recover such medical and residential care subsidies;
- the provision of more reasonable time frames for claimants to provide information;
- the provision to enable Regulations to be made to exclude from the scope of the HOSC Act certain types of compensation judgments or settlements which did not involve the payment of Commonwealth subsidies;
- a provision to allow claimants to seek a review of decisions made by Medicare Australia; and
- the ability for the Minister by disallowable instrument, to vary the percentage amount of the judgment or settlement which may be paid to Medicare Australia under the advanced payment option.

The Government implemented the recommendations of the Pooley Review in the *Health and Other Services (Compensation) Legislation Amendment Act 2001*. This legislation effectively reduced the number of notifications required under the HOSC Act resulting in a reduction of administrative costs to the government, insurers, legal firms and compensation recipients. Simplified claiming and administration processes allowed the speedier release of final

compensation settlements or judgments, and reduced the worry and red tape for recipients and their families.

The Pooley Review also recommended a sliding scale for the amount of compensation payment retained as an advanced payment. Based on experience of the program to that time, the Government determined that the 10 per cent value was the most appropriate percentage of compensation to retain, while still releasing the bulk of the compensation to claimants. While the 10 per cent value of the advanced payment option was retained, the ability to implement a sliding scale was included in the 2001 legislation under sub section 33B(2) to provide the flexibility to go down this path should the need arise.

The Advanced Payment Option

The value of an advanced payment option of 10 percent has resulted in few requests by Medicare Australia for additional repayment from compensation claimants to cover their Commonwealth liability. There has been a high level of acceptance of the 10 per cent advanced payment process by insurers, lawyers and compensation recipients as evidenced by the lack of complaints or requests for reviews. Medicare Australia has advised that the vast majority of matters are finalised well within the required time (28 days) as specified in the HOSC Act.

For the 2005 calendar year, of the 60,420 judgments or settlements reported under the HOSC Act, approximately 96 per cent did not require further recovery. Claimants received an average refund from Medicare Australia of \$490.00 per settled claim from Medicare Australia under the advanced payment option. The number of claims requiring a refund has dropped from 46,748 in 2000 to 27,538 in 2005. The number of claims requiring further recovery has remained relatively stable and resulted in 1562 further recoveries in 2005. Under the current arrangements only four per cent of claimants are approached for additional recoveries above the 10 per cent retained.

Taking this data into account, it would not seem appropriate to impose a greater retention figure than the current 10 per cent. Conversely, decreasing that figure 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 10 per cent advanced payment option would need to be carefully balanced against these considerations.

Proposed amendments in the *Health and Other Services (Compensation) Amendment Bill 2006*

The Health and Other Services (Compensation) Amendment Bill 2006 (the bill) arose from the need to repeal the sunset clause, section 33AA of the HOSC Act, which will otherwise have effect from 1 July 2006. Failure to repeal section 33AA of the HOSC Act will result in compensation claimants no longer having access to the advanced payment option and therefore, not having 90 per cent of their compensation payment released at the time of judgment or settlement.

The Bill repeals paragraph 33AA, which removes the sunset provision. In effect, this will allow the continuation of the advanced payment option in respect of compensation settlements made after 1 July 2006 and continue to enable claimants to access the majority of their compensation at the time of settlement.