

The Senate

Community Affairs
Legislation Committee

Health Insurance Amendment (Pathology Requests)
Bill 2010 [Provisions]

May 2010

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ISBN 978-1-74229-290-8

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This document was produced by the Senate Community Affairs Committee Secretariat and printed by the Senate Printing Unit, Parliament House, Canberra.

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42nd Parliament

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ABBREVIATIONS

AACB	Australasian Association of Clinical Biochemists Inc
AAPP	Australian Association of Pathology Practices
AMA	Australian Medical Association
CHF	Consumers Health Forum of Australia
GP	General Medical Practitioner
HIA	<i>Health Insurance Act 1973</i>
NCOPP	National Coalition of Public Pathology
RACGP	Royal Australian College of General Practitioners
RCPA	Royal College of Pathologists of Australasia

RECOMMENDATION

Recommendation 1

1.1 The committee recommends that the bill be passed.

Health Insurance Amendment (Pathology Requests) Bill 2010

Reference

1.1 On 24 February 2010, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 2 of 2010), referred the provisions of the Health Insurance Amendment (Pathology Requests) Bill 2010 (the bill) to the Community Affairs Legislation Committee for inquiry and report by 12 May 2010.¹ The following issues were identified for consideration during the inquiry:

- the onus being placed on patients to choose the pathology practitioner;
- problems which may arise between unknown referring doctors and pathology providers and which may result in delays;
- problems which may arise as a result of the inconsistent reference ranges and measurement series used by different pathology providers; and
- possible effects upon arrangements between general medical practitioners and pathology providers relating to emergency and out-of-hours contacts.²

Conduct of the inquiry

1.2 The committee called for submissions to be received by 9 April 2010. Nine submissions were received and are listed at Appendix 1. These can also be viewed on the committee's webpage, available at:

http://www.aph.gov.au/Senate/committee/clac_ctte/health_ins_pathology_requests/submissions.htm

1.3 A public hearing was held in Canberra on 30 April 2010. The Hansard transcript from the hearing has been tabled for the information of the Senate and can also be accessed via the committee's website at:

http://www.aph.gov.au/Senate/committee/clac_ctte/completed_inquiries/index.htm

1.4 The committee is grateful to all those who contributed to the inquiry through written submissions and oral evidence.

1.5 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard relate to the proof Hansard. Please note that page numbers may vary between the proof and the official Hansard transcript.

1 *Journals of the Senate*, No. 111, 24 February 2010, p. 3198.

2 Selection of Bills Committee, Report No. 2, *Senate Hansard*, 24 February 2010, pp 1048–1050.

Background to the bill

1.6 In the 2009-10 Budget, the government proposed changes to the pathology provider referral system. The changes are intended to provide patients with more choice regarding providers of pathology services, leading to improved quality of service and increased price competition among providers as well as more convenience for patients.³ These changes were based upon an interdepartmental review of pathology services and funding which received over 30 submissions from peak professional bodies and other stakeholders.⁴

1.7 Currently, for a Medicare benefit to be payable, the *Health Insurance Act 1973* (the HIA) requires that a referring doctor designate a particular pathology provider on the pathology request form. This requirement limits the patient's choice of pathology providers. Many doctors use 'branded' request forms which specify a particular provider and often indicate the provider's company logo and address.⁵

1.8 This is different from the way in which patients can choose general medical practitioners (GPs) or providers of other medical services such as diagnostic imaging. The government believes that patients should be free to choose their pathology providers just as they are free to choose providers of other medical services.⁶

Provisions of the bill

1.9 The effect of the bill is that patients will be able to present requests for Medicare-eligible pathology services to any approved pathology providers. The proposed amendments to the HIA remove the requirement for a referring doctor to designate a particular pathology provider on the request form. The provisions of the bill amend the wording of the HIA to specify that the provider of a pathology service should be in receipt of a referral for that service in order for the service to be eligible for a Medicare benefit. This replaces the current wording specifying that a provider of pathology services should be in receipt of a referral which designates that particular provider.

3 The Hon. Nicola Roxon MP, Minister for Health and Ageing, 'Second Reading Speech', *House of Representatives Hansard*, 10 February 2010, pp 922–923; The Hon. Nicola Roxon MP, Minister for Health and Ageing, and The Hon. Lindsay Tanner MP, Minister for Finance and Deregulation, 'Increasing Competition in Pathology and Diagnostic Imaging', Press Release 26/2009, 12 May 2009.

4 Department of Health and Ageing, 'Removal of Restrictions on Pathology Request Forms', *Discussion Paper*, January 2010, p. 2, available at [http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/\\$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf), accessed 3 March 2010.

5 Amanda Biggs, *Bills Digest No. 123*, Parliamentary Library, 1 March 2010, p. 2.

6 The Hon. Nicola Roxon MP, Minister for Health and Ageing, 'Second Reading Speech', *House of Representatives Hansard*, 10 February 2010, pp 922–923.

1.10 The new arrangements are to take effect from 1 July 2010.

Changes to regulations

1.11 The government will also amend the current regulations, before 1 July 2011, to require the inclusion of a clear and prominent statement on pathology request forms informing patients of their right to present request forms at pathology providers of their choice. The requirement for inclusion of such a statement on pathology request forms has been delayed by 12 months to allow for consultation with relevant stakeholders such as pathology providers and medical practitioners as well as patients about the exact form this statement should take. Following the changes to regulations, pathology providers may continue to provide medical practitioners with branded request forms but such forms must indicate that patients can choose any pathology provider.⁷

Purpose of the bill

1.12 The Minister for Health and Ageing has stated that the government supports a patient's right to choose pathology providers. She further explained the government's position by stating that:

[w]e believe informed patient choice is a key element of quality health care. This amendment will ensure that patients have a right to choose their pathology provider and are made aware of that fact, leading to increased competition and better service among providers.⁸

1.13 In addition, the government's amendments are aimed at increasing convenience for patients.⁹

Issues

1.14 A number of issues have been raised by stakeholders regarding the government's proposed amendments, both prior to and during the committee's inquiry. These include:

- the introduction of the legislation prior to completion of a consultation process;
- the risks associated with patients choosing pathology providers;
- measures designed to increase competition in the pathology sector;
- the differences between pathology and diagnostic imaging services; and

7 The Hon. Nicola Roxon MP, Minister for Health and Ageing, 'Second Reading Speech', *House of Representatives Hansard*, 10 February 2010, pp 922–923.

8 The Hon. Nicola Roxon MP, Minister for Health and Ageing, 'Second Reading Speech', *House of Representatives Hansard*, 10 February 2010, pp 922–923.

9 The Hon. Nicola Roxon MP, Minister for Health and Ageing, 'Second Reading Speech', *House of Representatives Hansard*, 10 February 2010, pp 922–923.

- contact between pathology providers and referring doctors after business hours.

Consultation process

1.15 The Department of Health and Ageing released a discussion paper in January 2010, seeking feedback from relevant stakeholders including patients, pathology providers and GPs regarding the proposed changes to pathology request forms. The department explained at the time that the purpose of the discussion paper was to 'ensure that the implementation and management of this measure is sensitive to the interests' of such stakeholders.¹⁰

1.16 In response to the discussion paper, the Royal College of Pathologists of Australasia (RCPA) complained that the legislation was being introduced too hastily and before the deadline for responses to the discussion paper had been reached.¹¹ The president of the college, Associate Professor Paul McKenzie, cautioned against presenting the legislation prior to appropriate consultation as this risked alienating stakeholders whose support was central to the successful implementation of the proposed changes.¹²

1.17 Concerns regarding the timing of the consultation process were also raised by the Australian Association of Pathology Practices (AAPP).¹³ The association warned the government against introducing the legislative changes without 'an understanding of the risks of this change for the patient'.¹⁴

1.18 However, representatives from the Department of Health and Ageing clarified that the consultation process related only to the implementation of the proposed changes. Mr Richard Bartlett of the department told the committee that:

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- 10 Department of Health and Ageing, 'Removal of Restrictions on Pathology Request Forms', *Discussion Paper*, January 2010, p. 3, available at [http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/\\$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf), accessed 3 March 2010.
- 11 Royal College of Pathologists of Australasia, *Submission 3*, p. 3; see also Associate Professor Paul McKenzie, Royal College of Pathologists of Australasia, Correspondence with Department of Health and Ageing, 22 February 2010, available at http://www.rcpa.edu.au/static/File/Asset%20library/public%20documents/Media%20Releases/2010/Removal_Restrictions_Pathology_Request.PDF, accessed 4 March 2010.
- 12 Associate Professor Paul McKenzie, Royal College of Pathologists of Australasia, Correspondence with Department of Health and Ageing, 22 February 2010, available at http://www.rcpa.edu.au/static/File/Asset%20library/public%20documents/Media%20Releases/2010/Removal_Restrictions_Pathology_Request.PDF, accessed 4 March 2010.
- 13 Australian Association of Pathology Practices, *Submission 5*, pp 6–7.
- 14 Australian Association of Pathology Practices, 'Removal of Restrictions on Pathology Request Forms Discussion Paper – Australian Association of Pathology Practices Response', 20 February 2010, pp 1 and 4–5, available at <http://www.aapp.asn.au/c3/PAPERS+POLICIES.aspx>, accessed 5 March 2010.

[c]ertainly talking to people, there was an awareness of when the bill went into parliament. There was also an awareness that a decision had been made as part of the budget and legislation needed to be introduced by [a] particular time if it was to take effect in the time frame given. The consultation was about issues of implementation and subsequent issues regarding the forms and the format of the forms. People were having a discussion in that context. It was not about whether we revisited the decision...

The discussion paper followed up consultation and attempted to look at ways in which issues that had been raised could be addressed. The consultation period went beyond the submission of the legislation because in a sense it is a flow-on from that rather than part of that.¹⁵

Patient choice

1.19 The Department of Health and Ageing noted in its submission to this inquiry that, according to the National Health and Hospitals Reform Commission, 'the health system should be empowering consumers to make fully informed decisions'. Further, the department stated that:

[t]here are no compelling reasons for restricting patient choice and the *Health Insurance Amendment (Pathology Requests) Bill 2010* (the Bill) removes this unwarranted legislative impediment.¹⁶

1.20 Consumers Health Forum of Australia (CHF) welcomed the government's proposed amendments because they would deliver more choice for patients, enabling them to take a more effective role in their own health care.¹⁷ Patients' opinions regarding pathology services were surveyed nationwide by CHF. A representative of CHF told the committee that:

[t]hroughout that process it became very clear to us that consumers want the choice of the pathology provider that they choose to use. They believed that that was a very good thing in terms of being able to source the most cost effective provider...¹⁸

1.21 Patients have indicated to CHF that they value choice but also want to receive sound advice and information from their doctors during consultations. CHF

15 Mr Richard Bartlett, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, pp 18 and 21.

16 Department of Health and Ageing, *Submission 5*, pp 2–3.

17 Consumers Health Forum of Australia, *Submission 9*, pp 1–2; see also Mark Metherell, 'Pathology Change "Increases Risks"', *The Age*, 11 February 2010, available at <http://www.theage.com.au/national/pathology-change-increases-risks-20100210-nsgx.html>, accessed 3 March 2010.

18 Ms Carol Bennett, Consumers Health Forum of Australia, *Committee Hansard – Health Practitioner Regulation (Consequential Amendments) Bill 2010*, 30 April 2010, pp 6–7.

summarised consumers' opinions gathered through the forum's nationwide consultations by noting that:

[t]hroughout CHF's consultations, consumers have argued that they want increased, high quality communication and advice on their rights and responsibilities around pathology testing. Most consumers [who were] consulted identified that they were unaware that they would have any choice about which pathology provider they attended under new legislation. Choice is something consumers value...[but] appropriate and thorough communication between the requesting practitioner and the consumer at the time of the consultation is imperative. CHF considers it important that the requesting practitioner should have a comprehensive discussion with the consumer about their right to attend a pathology provider of their choosing. This is also an opportunity to discuss the benefits of the consumer informing the practitioner of their choice of provider. Informed consent is an important part of quality healthcare.¹⁹

1.22 The RCPA, in response to the announcement of measures in the May 2009 Budget relating to pathology services, pointed out that patient choice should not come at the expense of quality health outcomes. The college commented that:

...the loss of the referrers' (i.e. usually GP's) right to select the pathologist they wish to refer to [is a major concern to the college]. Pathology is a medical specialty like any other area of medicine and requesting doctors should have the professional right to determine who they refer their patients to, if quality is not to be compromised.²⁰

1.23 The AAPP noted that the core issue was 'how to give the patient choice without impacting patient safety'.²¹ While agreeing that patients should have the right to choose their pathology providers, the RCPA pointed out that this right is already available to patients during consultations with their medical practitioners. The president of the RCPA, Associate Professor Paul McKenzie, argued that this consultative approach was the safest and most effective method of choosing a pathology provider as it ensured that patients understood the medical and other

19 Consumers Health Forum of Australia, 'Submission to the Diagnostic Services Branch on the Removal of Restrictions on Pathology Request Forms Discussion Paper', February 2010, pp 1 and 3, available at: <http://www.chf.org.au/pathology-2009-keydocs.php>, accessed 5 March 2010.

20 Royal College of Pathologists of Australasia, 'Budget Cuts a Health Risk', Press Release, 13 May 2009, available at: http://www.rcpa.edu.au/static/File/Asset%20library/public%20documents/Media%20Releases/2009/Budget_Cuts_Health_Risk.pdf, accessed 4 March 2010.

21 Australian Association of Pathology Practices, 'Removal of Restrictions on Pathology Request Forms Discussion Paper – Australian Association of Pathology Practices Response', 20 February 2010, p. 6, available at <http://www.aapp.asn.au/c3/PAPERS+POLICIES.aspx>, accessed 5 March 2010.

reasons for choosing particular providers and doctors were aware of their patients' preferences.²²

1.24 In response to questions from the committee regarding whether patients were aware that they could discuss the selection of pathology providers with their doctors now, CHF commented that:

...it certainly was not something that our members were aware of—and our members are quite informed. They are people that use the health system. They use pathology services frequently and they did not raise that with us as something that they were aware of. Certainly, when this legislation was announced we made them aware of that and they welcomed that, embraced that and said that they would value having that option for choice.

...We were surprised. We thought that we would not necessarily get a lot of interest in these consultations but we were swamped with interest. That is because people are having these sorts of experiences and feel that there does need to be some improvement to the way things operate.

...it is up to consumers to have the conversation with their doctor and we would like to think that that is a two-way communication process, that the reasons for them being referred to a particular provider are clear to them and given to them, and that reasons for them similarly choosing to go to a different provider would be explained to the doctor. This legislation creates more of an option for consumers to have the conversation, which is a good thing.²³

1.25 The Department of Health and Ageing pointed out that the proposed changes do not remove the requirement for pathology requests to be made by suitably qualified medical practitioners.²⁴ The department also commented that:

...part of what this bill does is reflect an acknowledgement that the key decision maker about a patient's treatment is the patient. It gives them some capacity to exercise choice, and we hope [that] will be informed choice.²⁵

Clinical reasons for nominating pathology providers

1.26 The AMA and the Royal Australian College of General Practitioners (RACGP) informed the committee that doctors may, at times, feel it necessary to

22 Royal College of Pathologists of Australasia, *Submission 3*, p. 1; Associate Professor Paul McKenzie, Royal College of Pathologists of Australasia, Correspondence with Department of Health and Ageing, 22 February 2010, available at [http://www.rcpa.edu.au//static/File/Asset%20library/public%20documents/Media%20Releases/2010/Removal Restrictions Pathology Request.PDF](http://www.rcpa.edu.au//static/File/Asset%20library/public%20documents/Media%20Releases/2010/Removal%20Restrictions%20Pathology%20Request.PDF), accessed 4 March 2010.

23 Ms Carol Bennett, Consumers Health Forum of Australia, *Committee Hansard – Health Practitioner Regulation (Consequential Amendments) Bill 2010*, 30 April 2010, pp 8 and 9.

24 Department of Health and Ageing, *Submission 6*, p. 2.

25 Mr David Learmonth, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, p. 19.

nominate particular pathology providers. In the majority of cases, it would be acceptable for patients to present pathology request forms to providers of their choice. However, in a small number of cases, doctors may need to specify particular pathology providers for clinical reasons. Both these organisations suggested that doctors should therefore have the option of specifying that a pathology request must be presented only to the nominated provider.²⁶ A representative of the AMA who appeared before the committee, Dr Paul Jones, stated that:

...there are a few situations where I specifically say to [patients], 'I'd like you to go to pathologist X.'

... These are not frequent occurrences but we believe we need to have the option of doing that with those particular patients [who we feel need to attend specific pathology providers]. For the vast majority of cases I think that most doctors will say to the patient, 'It doesn't matter where you have the test done.' But there are some specific circumstances where we think it is important.²⁷

1.27 CHF informed the committee that patients are generally willing to accept their referring doctors' reasons for nominating particular pathology providers. Miss Anna Wise of CHF reported to the committee that:

[i]f there is a legitimate reason why the doctor wants them to go to a particular pathology provider, they will take it on board and make that decision accordingly. Some machines are calibrated differently from one lab to another, which can affect the results. Consumers are very open to recognising the impact that that can have.²⁸

Acceptance of responsibility

1.28 The president of the RCPA questioned who would ultimately be responsible, if the legislation were to be introduced, in situations where patients attended different pathology providers against medical advice.²⁹ In relation to this question, the AAPP clearly stated that the responsibility should rest with the patient. The association declared that:

[w]hen patients change the advice of the referring doctor and make judgements about the suitability of a particular pathology practice to perform their test, then they must assume responsibility for the consequences that flow from the choice.³⁰

26 Australian Medical Association, *Submission 2*, p. 2; Royal Australian College of General Practitioners, *Submission 8*, p. 2.

27 Dr Paul Jones, Australian Medical Association, *Committee Hansard*, 30 April 2010, p. 2.

28 Miss Anna Wise, Consumers Health Forum of Australia, *Committee Hansard*, 30 April 2010, p. 9.

29 Royal College of Pathologists of Australasia, *Submission 3*, p. 3.

30 Australian Association of Pathology Practices, *Submission 5*, p. 3.

1.29 To address this problem, the AAPP and RCPA recommended that patients be required to document acceptance of responsibility in such situations on the request forms, similar to the way that patients sign themselves out when leaving hospital against medical advice. Furthermore, they recommended that warnings be included on the request forms informing patients of the risks associated with changing providers against medical advice.³¹

1.30 However, the committee was informed by a representative from the Department of Health and Ageing that patients' signatures on pathology request forms would not necessarily alter the burden of legal responsibility. Mr Chris Reid of the department explained that, in this situation, the law of negligence was based upon the 'reasonableness' of doctors' actions in following up pathology results. Mr Reid stated that:

I would have thought, from a legal perspective that whether they had signed the form or not, would make no difference. If there is a problem and the matter gets to court it will become apparent how the facts have unravelled. If the fact of the matter is that the patient has taken the referral somewhere else and not told the doctor about it and the doctor has been unable to follow up on it, then it is difficult to see how a court could find that the doctor was liable. There is no cast-iron rule that says that doctors are legally obliged to follow up. The whole law of negligence revolves around the principle of reasonableness. They have to take reasonable steps. If the patient has somehow made it impossible to follow up on the referral then it is, in my view, quite unlikely that the doctor would be sheeted home with liability as a result of that.³²

Onus of choice upon patient

1.31 Some organisations have expressed concern about a patient's ability to choose the most suitable pathology provider for that patient's particular circumstances. The AMA pointed out that there may be 'good clinical reasons' for choosing a particular laboratory for certain tests or the decision may be based upon the expertise held by a particular pathologist.³³ Patients would not be ideally placed to make such judgements. Similarly, the AAPP commented that:

[p]atient choice is a desirable goal but, in practice, assumes the patient has the knowledge and expertise to understand the complex process of pathology testing and the key elements that are necessary for a provider to be able to ensure a quality outcome for the patient.

Diagnosis of disease is a complex process requiring professional medical expertise from a team of medical specialists to understand the symptoms and test results that are essential to an accurate diagnosis. The medical team

31 Royal College of Pathologists of Australasia, *Submission 3*, p. 3; Australian Association of Pathology Practices, *Submission 5*, p. 9.

32 Mr Chris Reid, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, p. 20.

33 Australian Medical Association, *Submission 2*, p. 1.

comprised of GPs, pathologists, radiologists and specialists work together in a way that is not visible to the patient. Because this interaction between treating doctors is not visible to patients, we believe they are not equipped to make an informed decision in the selection of pathology provider. Importantly, price and location are not the only determinants of the best pathologist for a patient.³⁴

1.32 The RCPA cautioned that patients should not be exercising such choice without access to professional advice and 'potentially without realising that such advice could be beneficial to them'.³⁵

1.33 CHF found that, while choice of pathology providers was valued by patients, they also wanted sound advice from their referring doctors. This highlighted the need for effective communication during consultations to establish the patient's preferences but also to inform the patient of the medical or other reasons for the doctor's recommendations. CHF stated that:

[c]onsumers reported they would be more likely to follow advice from their practitioner about what pathology provider to attend *if the reason for their practitioners' preference were effectively communicated to them*.³⁶

1.34 The Department of Health and Ageing emphasised to the committee that the proposed changes did not indicate that the onus of choice rested with the patient but, rather, that 'the onus remains on the treating doctor to advise patients of the most appropriate choice'. A doctor should prepare a pathology request form following discussion of pathology services with the patient. The department also informed the committee that it is expected that most patients will follow the recommendations of their doctors regarding providers of pathology services.³⁷

Pathology collection

1.35 More than half of all pathology collection procedures are conducted by pathology service providers at their collection centres. Pathology samples can also be taken at a GP's surgery and later collected for analysis by a pathology provider with which the GP has an agreement. Less commonly, pathology specimens may be collected at hospitals by providers nominated by the hospitals.³⁸

34 Australian Association of Pathology Practices, *Submission 5*, pp 1–2.

35 Royal College of Pathologists of Australasia, *Submission 3*, p. 1.

36 Consumers Health Forum of Australia, *Submission 9*, p. 2.

37 Department of Health and Ageing, *Submission 5*, pp 2–3.

38 Department of Health and Ageing, 'Removal of Restrictions on Pathology Request Forms', *Discussion Paper*, January 2010, p. 6, available at [http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/\\$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf), accessed 3 March 2010.

1.36 The Department of Health and Ageing indicated in its 2010 discussion paper that a patient's choice of pathology provider could be restricted when a sample is collected in a doctor's surgery and later forwarded to the surgery's usual pathology provider. However, the department argued that, by accepting the request form citing a particular pathology provider, the patient is therefore accepting the surgery's existing arrangements for pathology services and accepting the particular provider normally used by the surgery. Similarly, it was claimed in the discussion paper that:

[b]y choosing the services of a particular hospital, it could be argued that the patient has made a choice to accept the arrangements in place in that hospital for the provision of pathology services.³⁹

1.37 The president of the RCPA pointed to inconsistencies in this argument, noting that if such an assumption could be applied to the collection of samples in hospitals or in GP surgeries, the same assumption could be applied when a patient chooses a particular GP or surgery. By choosing that GP, the patient could also be said to be accepting the GP's usual pathology provider. Such an assumption would negate the need for the current legislative changes allowing patients to choose pathology providers as they can exercise such a choice by choosing a GP.⁴⁰

1.38 Collection of pathology samples from operating theatres also raised difficult questions regarding patient choice. The present system allows for identification of errors because the form indicates to which laboratory the sample should be taken. It would be more difficult to identify errors as well as to determine the patient's choice of provider if this was not specified on the form.⁴¹

Informing patients

1.39 In order to address these difficulties, the RCPA has suggested that the legislation be based upon the requirement that doctors inform patients of their right to exercise choice in the provision of pathology services.⁴² The AAPP also recommended that a referring doctor discuss with the patient at the time that the pathology request form is generated not only the patient's right to choose a pathology provider but also the doctor's reasons for recommending a specific pathology provider.⁴³

39 Department of Health and Ageing, 'Removal of Restrictions on Pathology Request Forms', *Discussion Paper*, January 2010, p. 6, available at [http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/\\$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf), accessed 3 March 2010.

40 Associate Professor Paul McKenzie, Royal College of Pathologists of Australasia, Correspondence with Department of Health and Ageing, 22 February 2010, available at http://www.rcpa.edu.au//static/File/Asset%20library/public%20documents/Media%20Releases/2010/Removal_Restrictions_Pathology_Request.PDF, accessed 4 March 2010.

41 Royal College of Pathologists of Australasia, *Submission 3*, p. 2.

42 Royal College of Pathologists of Australasia, *Submission 3*, p. 3.

43 Australian Association of Pathology Practices, *Submission 5*, pp 9–10.

1.40 Representatives from the Department of Health and Ageing informed the committee that they expect that doctors and patients to discuss during consultations the reasons for choosing particular pathology providers. Mr David Learmonth stated that:

I think what we are talking about is the kind of discussion that might reasonably go on when there is a treatment, accessing that treatment or some other aspect of what the clinician is proposing that deserves full and proper discussion and a clear informed choice on behalf of the patient.⁴⁴

1.41 Similarly, Dr Megan Keaney of the department declared that:

[i]n that particular circumstance [where a doctor recommends a particular pathology provider for clinical reasons], those matters would be part of the discussion between the doctor and the patient. A patient would be guided by their doctor's advice as to the need to have some consistency in that situation, and for that reason a particular pathology provider would be the preferred provider. As I said, I think this measure is about informed choice, and that is only addressed if the discussion addresses all the issues that are relevant to the patient's decision making. So, in the ordinary course of events, we have an expectation that in that circumstance a patient would be guided by their general practitioner or specialist and would in fact follow that advice about the preferred provider.⁴⁵

1.42 In response to the suggestion that doctors do not currently discuss with patients the need to attend particular pathology providers, Dr Brian Richards of the department explained from his own experience that:

I would say to my patients, 'Although I normally send my pathology to pathology laboratory X, I would like you to go and get your toenail scraping at pathology company Y because there is a particular pathologist there.' I would name him and say 'I suggest you go there for this reason.' This was years ago. I would give that patient that advice so that they understood the reason that I was referring them to a particular laboratory. I do not think that is a new practice. It is simply respecting the autonomy of the patient and part of the normal patient-doctor relationship. For the majority of patients and pathology samples such a conversation would not be necessary because, in the majority of cases, it would not matter where they went. Where it does matter, I think it is good practice for the referring doctor to explain. I do not see that that is a great imposition on a medical practitioner.⁴⁶

44 Mr David Learmonth, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, p. 19.

45 Dr Megan Keaney, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, p. 19.

46 Dr Brian Richards, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, p. 23.

1.43 Similarly, Mr Richard Bartlett pointed out that discussions between doctor and patient regarding the benefits of particular pathology providers would seem to be occurring already, as evidenced by the fact that the majority of GPs used several different pathology providers. Mr Bartlett stated that:

...if somebody needs a particular sort of test, there will be a discussion that will get you to the point of saying, 'You need a pathology test.' At the moment, it is filling out a form, but equally there can be a discussion about, 'This is the pathologist that is nearer and this is the pathologist that bulk-bills or does not bulk-bill.' Again, these are discussions that in some cases happen now.

...The GP generally does have that knowledge. Certainly, we are seeing at the moment that 60 per cent of GPs are referring to two or more pathology companies for similar tests, so clearly there is a choice happening now. One assumes that there is a degree of collaboration between the doctor and the patient in terms of making that choice. Rather than the GP saying, 'I'll send this person to this one; I'll send that person to that one,' we have to assume that these conversations are happening now. Similarly, if you are telling someone to go and get pathology, you need to convince them that they need the pathology. They do have a very clear choice at the moment between either getting it or not getting it, and there are clearly cases where people do not. Again, if you want them to use a particular pathologist, it is a logical step in that conversation, and, again, I think it is happening now.⁴⁷

Established relationships and standardised reporting

1.44 Working relationships established between GPs (or other referring doctors) and providers of pathology services are important in the provision of quality pathology services and in ensuring quality patient care.⁴⁸ An example of this was included in the Department of Health and Ageing's discussion paper where it was noted that urgent pathology results can be expedited through established communication channels or procedures.⁴⁹ The RACGP informed the committee that some pathology providers and referring doctors have agreed that 'certain bands of significantly abnormal results' will be telephoned through to the doctor, in addition to the usual reporting methods, ensuring that the doctor's attention is drawn to results which may require an urgent response.⁵⁰

47 Mr Richard Bartlett, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, p. 28.

48 Australian Medical Association, *Submission 2*, p. 1; Royal Australian College of General Practitioners, *Submission 8*, p. 2.

49 Department of Health and Ageing, 'Removal of Restrictions on Pathology Request Forms', *Discussion Paper*, January 2010, p. 4, available at [http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/\\$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf), accessed 3 March 2010.

50 Royal Australian College of General Practitioners, *Submission 8*, p. 2.

1.45 The AAPP presented a number of case studies to the committee illustrating the need for established relationships between referring doctors and pathology providers.⁵¹ The AAPP explained that these relationships lead to the development of familiar protocols regarding reporting, collection, logistics and computer systems. Standardisation of reporting methods and format allows consistency in measurement methods, cumulative reporting (indicating changes over time) and reference ranges and intervals. Familiarity allows interpretative comments to be tailored to the individual needs of doctors and easily accessible communication methods to be established (for example, compatible computer systems). In addition, these protocols allow the development of checks and audits to ensure that tests are not mislaid or misdirected, that collection is not delayed and that results are forwarded in a timely fashion and received by the referring doctor. These agreed procedures ensure that pathology samples are received and processed 'within strict tolerance specifications' and that doctors receive accurate and meaningful pathology results.⁵²

1.46 CHF acknowledged possible difficulties such as delayed results due to patients attending pathology providers with whom referring doctors were unfamiliar. However, the forum also cautioned that test results may also be delayed under the current system 'regardless of the relationship between the pathology provider and referrer'.⁵³

Traceability of results

1.47 The Department of Health and Ageing noted the legislative requirement that doctors include their names and contact details upon requests for pathology services.⁵⁴ This allows pathology providers to contact referring doctors with ease. However, the reverse situation is not necessarily straightforward.

1.48 Established relationships between medical practitioners and pathology providers allow doctors to more easily identify the pathology provider or specific laboratory at which particular tests are carried out.⁵⁵ When doctors are aware of the pathology provider, they can more easily trace the progress of particular tests, better understand test results (based on an understanding of the particular analytical methods used by that provider) and contact the pathology provider directly when necessary in order to query findings and anomalies.

51 Australian Association of Pathology Practices, *Submission 5*, pp 2, 4–6.

52 Australian Association of Pathology Practices, *Submission 5*, pp 2–3; Australian Association of Pathology Practices, 'Removal of Restrictions on Pathology Request Forms Discussion Paper – Australian Association of Pathology Practices Response', 20 February 2010, p. 2, available at <http://www.aapp.asn.au/c3/PAPERS+POLICIES.aspx>, accessed 5 March 2010.

53 Consumers Health Forum of Australia, *Submission 9*, p. 2.

54 Department of Health and Ageing, *Submission 5*, p. 3.

55 Royal Australian College of General Practitioners, *Submission 8*, p. 2.

1.49 The RCPA and AAPP pointed to this issue when identifying the differences between diagnostic imaging and pathology services. Typically, a patient is able to physically hand imaging test results such as ultrasound films to a GP or other medical practitioner. In these circumstances, it is a relatively easy process to identify which imaging provider was responsible for the testing. This is not necessarily the case with pathology test results which are forwarded to the requesting doctor, not handed to the patient.⁵⁶

1.50 In response to these difficulties, the AMA and the National Coalition of Public Pathology (NCOPP) suggested that, when a patient presents a request for service from a doctor with whom the pathology provider has not previously dealt, the pathology provider should inform the doctor that the request has been received. The doctor and pathology provider should, at this time, establish procedures for reporting test results. If necessary, the various testing methods used by the pathology provider should also be discussed.⁵⁷ Establishing such procedures would ensure that the referring doctor is able to trace test results and the pathology provider is able to forward test results in a timely manner. In addition, the doctor would be aware of the ways in which the results were established and the provider would be able to tailor reporting of the results to the doctor's needs or expectations.

1.51 According to the Department of Health and Ageing, patients were likely to inform their doctors during consultations of any changes in pathology providers which were contrary to the doctors' advice.⁵⁸ This claim was based upon the scenario where patients selected the pathology providers following the initial consultations with their referring doctors.⁵⁹ In response to questions from the committee, Dr Brian Richards of the department commented that:

...the issue that you raise is, I think, mainly in relation to when a referring practitioner wants to chase up the results... prior to them arriving in due course. The practitioner is usually chasing up the results because the patient has re-presented and is sicker or has rung up to inquire about the results. In those circumstances, if the practitioner rings up the pathology company to whom the referral was originally made and the pathology company says, 'We don't know about that,' the practitioner would presumably ring the patient. Or, if the patient was chasing up their results, they would say, 'I went to such and such; can you ring them?' So I think that simple communication between the referring practitioner and the patient would

56 Royal College of Pathologists of Australasia, *Submission 3*, p. 2; Australian Association of Pathology Practices, *Submission 5*, pp 7–8.

57 Australian Medical Association, *Submission 2*, p. 3; National Coalition of Public Pathology, *Submission 4*, p. 3.

58 Department of Health and Ageing, *Submission 5*, p. 3.

59 Dr Megan Keaney, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, p. 19.

address those concerns. Most patients would not be unaware of the pathology laboratory they attended.⁶⁰

1.52 Dr Richards went on to explain that the ability of doctors to trace pathology results was also related to an increasingly common scenario, the patient who requires pathology tests while travelling. Dr Richards stated that:

[t]he other relevant factor is the patient who is travelling. A lot of the grey nomads travelling around are on warfarin and they go from place to place. Their referring practitioner is not in a position to know the name of every pathology practitioner in every town they might call into or even when they might be there. One of the advantages of this bill is that a patient with a referral to a pathology laboratory can take it to any pathology laboratory on their travels. So it is not only for patients who are in the one place. Increasingly, patients are on the move, and this allows the patient the choice. Clearly, then, if they are chasing up the results, they will ring up their GP and say, 'I'm in Broome today and I went to this pathology; I need my INR result.'⁶¹

Inconsistencies in reference ranges and serial measurement

1.53 The committee was informed by a number of witnesses including the AAPP and the AMA that directly comparable methods of analysis are required in the case of serial tests and also in the comparison of serial samples in chronic illnesses.⁶² Difficulties may also arise from inconsistencies in equipment used by various pathology providers.⁶³ The Australasian Association of Clinical Biochemists (AACB) explained that inconsistencies in reference ranges across pathology providers can pose particular problems in some computer-based practice management systems where 'only selected parts of the electronic result' are reproduced. In these cases, the doctor may be unaware of the particular testing methods and units of measurement that were used to produce the pathology results as reported. The AACB recommended that serial measurements are carried out by the same pathology provider in order to address this difficulty.⁶⁴

60 Dr Brian Richards, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, p. 19.

61 Dr Brian Richards, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, p. 20.

62 Australian Association of Pathology Practices, *Submission 5*, p. 2; Australian Medical Association, *Submission 2*, p. 2.

63 Department of Health and Ageing, 'Removal of Restrictions on Pathology Request Forms', *Discussion Paper*, January 2010, p. 4, available at [http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/\\$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf), accessed 3 March 2010.

64 Australasian Association of Clinical Biochemists, *Submission 1*, pp 1–2.

1.54 Continuity of results comparison can be threatened when patients choose pathology providers other than those recommended by their doctors or when patients do not inform their doctors of changes in providers. The case studies presented by the AAPP illustrate the difficulties that may arise from the different methods used by different pathology providers to analyse specimens and establish results. Case study 2, for example, introduced the scenario where a patient was tested twice a year by a specific pathology provider. When the patient chose a different provider, the test results were different because the new laboratory 'used a different method with a different normal range'. The GP was concerned by the higher reading, not realising that the patient had gone to a different pathology provider. The GP informed the patient of the possibility of cancer and referred the patient to a specialist medical practitioner. The specialist carried out further tests which eventually established that there had been no change in the patient's condition.⁶⁵

1.55 In addition, the RACGP noted that, even where several laboratories use the same reference ranges, differences may still be found in the ways in which each of these laboratories prepares cumulative reports and highlights changes in patients' conditions over time. If a different laboratory carries out the testing (with a different method of reporting cumulative results), significant changes in a patient's condition may not be easily or effectively identified.⁶⁶

1.56 The Department of Health and Ageing, however, informed the committee that pathology providers are required by current accreditation standards to include in pathology reports 'any extra information that may be relevant for a doctor to interpret results'.⁶⁷ This would indicate that, along with the test results, pathology providers should report to doctors the measurement series, reference ranges and testing methods that were used to establish the results. This process would enable doctors to accurately read test results.

1.57 Where a doctor refers a patient to a particular pathology provider for clinical reasons (such as for consistency of reference ranges in cumulative testing), a discussion between the doctor and the patient at the time the request form is completed would allow the doctor the opportunity to explain the need to attend the same pathology provider over time. Dr Brian Richards of the Department of Health and Ageing commented that:

...the bill, as I understand it, seeks to give patients a choice in pathology provider. The implication is that that should be an informed choice...Where it does not matter clinically and it is a matter of price and convenience then the patient can make that choice on those grounds. Where it does matter

65 Australian Association of Pathology Practices, *Submission 5*, p. 5.

66 Royal Australian College of General Practitioners, *Submission 8*, p. 4.

67 Department of Health and Ageing, *Submission 6*, p. 3.

clinically then the patient should be advised by their referring practitioner in relation to that.⁶⁸

Consequences of changing providers

1.58 A number of other negative outcomes can result from patients choosing pathology providers other than those recommended by their doctors. Resources and time can be wasted when, for example, a test request which is received by a particular provider is for a test that is not performed by that provider. In this case, either the patient has to go to another provider or the specimen has to be forwarded to another laboratory.⁶⁹

1.59 The AAPP identified more serious consequences where patients' health outcomes were put at risk. These included the need for further (and possibly unnecessary) testing or treatment, delayed or incorrect diagnosis and treatment and possible deterioration in a patient's condition due to delays, misdiagnoses or inappropriate medical treatment. A failure in the processing of pathology tests and reporting of pathology results also creates the potential for legal action on the grounds of medical indemnity or negligence.⁷⁰

1.60 The AAPP cautioned that patient choice should not come at the expense of patient safety.⁷¹ When introducing the current legislation, the Minister for Health and Ageing addressed these concerns by noting that referring doctors will retain the right to recommend particular pathology providers where such recommendations are thought to be in the best interests of patients. The relationship between doctor and patient is an important one, and the minister encouraged referring doctors to discuss the choice of pathology provider in detail with their patients along with all other aspects of treatment. The minister also pointed to the need for patients to discuss their preferences with their medical practitioners. This would allow patients to understand the reasons for choosing specific pathology providers, the risks associated with changing providers and the need to keep their referring doctors informed of any changes.⁷²

1.61 Representatives from the Department of Health and Ageing pointed out that, where confusion exists regarding which pathology provider the patient attended, the

68 Dr Brian Richards, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, p. 24.

69 Department of Health and Ageing, 'Removal of Restrictions on Pathology Request Forms', *Discussion Paper*, January 2010, p. 4, available at [http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/\\$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf), accessed 3 March 2010.

70 Australian Association of Pathology Practices, *Submission 5*, pp 2–6.

71 Australian Association of Pathology Practices, *Submission 5*, p. 1.

72 The Hon. Nicola Roxon MP, Minister for Health and Ageing, 'Second Reading Speech', *House of Representatives Hansard*, 10 February 2010, pp 922–923.

doctor has the option of confirming with the patient. Although patients may not inform their GPs of changes in pathology providers, most patients know which pathology providers they attended and can advise doctors of these details. Furthermore, patients can advise whether they attended any pathology providers or simply failed to have the pathology requests carried out. The department's Dr Megan Keaney told the committee that:

...the patient may well change their mind afterwards. If they do not choose to tell the doctor about that change of mind, we still think that there are mechanisms in place to ensure that the information returns from the pathologist back to the general practitioner or specialist.

I cannot see clinically what the difference is between going to a pathologist you do not know and a pathologist you do know. The person who has the information as to whether they did or did not go and the reasons is the patient themselves. It would then seem to me that the appropriate contact would be between...the doctor, and the patient.⁷³

Committee view

1.62 The committee agrees that patient choice should not be at the cost of patient safety. It believes that both patient choice and patient safety can be delivered through effective communication between doctor and patient at the time that the pathology request is completed. This will ensure that the patient is aware of the range of reasons that have led the doctor to recommend a particular pathology provider. It will also allow the doctor the opportunity to inform the patient of the risks of changing pathology providers and the need to inform the doctor if such changes occur. Furthermore, it will allow the patient the opportunity to state preferences for particular providers and the factors influencing such preferences.

Competition in the sector

1.63 In 2008, the AAPP summarised the growing role of pathology in preventative health care and the early identification and management of chronic conditions when noting that pathology testing is the sole basis for more than 70% of diagnoses of serious conditions such as diabetes and high cholesterol. Furthermore, the association pointed out that the private pathology sector is responsible for the majority of pathology tests carried out in Australia, whether requested by GPs, hospitals or medical specialists. The association concluded that 'private pathology practices perform the great majority of pathology testing for primary care in Australia'.⁷⁴ It is

73 Dr Megan Keaney, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, pp 19 and 29.

74 Australian Association of Pathology Practices, 'Submission to the National Health and Hospitals Reform Commission', June 2008, pp 2–3, available at [http://www.nhhrc.org.au/internet/nhhrc/publishing.nsf/Content/437/\\$FILE/437%20-%20SUBMISSION%20-%20Australian%20Association%20of%20Pathology%20Practices.pdf](http://www.nhhrc.org.au/internet/nhhrc/publishing.nsf/Content/437/$FILE/437%20-%20SUBMISSION%20-%20Australian%20Association%20of%20Pathology%20Practices.pdf), accessed 12 March 2010.

therefore in the interests of the wide range of patients and medical practitioners who make extensive use of these services to encourage competition in this sector.

1.64 In evidence to the committee, the RCPA suggested that the bill could be a 'disincentive to invest in strategies' to improve quality in the pathology sector.⁷⁵ The committee noted that the focus of the bill is patient choice and questioned the RCPA as to the link between patient choice and negative consequences for the pathology sector in the legislation. The President of the RCPA responded that:

[i]t comes a little bit from the comment in the minister's speech, and I believe also in the department's submission relating to bulk billing, that this was conceived as a way of enforcing bulk-billing arrangements. To an extent, we view this as something that might have been more appropriately dealt with during the pathology funding review, which is underway at the moment. So it is something which has been raised by them. We are concerned that the drivers for competition in pathology should be quality and service based, because we feel that that promotes excellence within the profession rather than having the opposite effect, which can occur if the primary concern is cost rather than quality.⁷⁶

1.65 When pressed by the committee to explain how the provisions of the current bill would adversely affect the sector, the President of the RCPA stated that 'it is not in the legislation; it is from the conversation around the legislation'.⁷⁷

Drivers of choice

1.66 According to the RCPA, the current drivers of patient choice in the sector are quality of service and testing and the reliability of results.⁷⁸ Medical expertise is an extremely important consideration which should not be forgotten in the push for competition. The college complained that 'primary competition on price and convenience devalues the [specialised] role of the pathologist'.⁷⁹

75 Royal College of Pathologists of Australasia, *Submission 3*, p. 4; Associate Professor Paul McKenzie, Royal College of Pathologists of Australasia, *Committee Hansard*, 30 April 2010, p. 12.

76 Associate Professor Paul McKenzie, Royal College of Pathologists of Australasia, *Committee Hansard*, 30 April 2010, p. 12.

77 Associate Professor Paul McKenzie, Royal College of Pathologists of Australasia, *Committee Hansard*, 30 April 2010, p. 16.

78 Royal College of Pathologists of Australasia, *Submission 3*, pp 3–4.

79 Associate Professor Paul McKenzie, Royal College of Pathologists of Australasia, Correspondence with Department of Health and Ageing, 22 February 2010, available at http://www.rcpa.edu.au/static/File/Asset%20library/public%20documents/Media%20Releases/2010/Removal_Restrictions_Pathology_Request.PDF, accessed 4 March 2010.

1.67 Similarly, the AAPP found that 'price is not the only nor is it the most important determinant of the best pathology provider for a patient'.⁸⁰ The association pointed to the importance of the working relationships developed between referring doctors and pathology providers over time, leading to standardised reporting and procedures.⁸¹

1.68 A representative of the AMA reported to the committee that patients often choose pathology providers on the basis of the expertise of the person collecting the pathology sample. This is judged by 'how big a bruise' the patient has following collection of, for example, a blood sample.⁸²

1.69 The committee was informed by the NCOPP that competition in the pathology sector has historically been based upon service rather than price. However, the NCOPP warned of possible 'unintended consequences' in the event that pathology providers begin marketing services to patients rather than referring doctors. The coalition cautioned that giving patients choice is 'meaningless unless it is informed patient choice'; in order to make informed choices, patients require information from their doctors regarding the benefits of various pathology providers. Without this information, patients can change pathology providers, remaining unaware of the risks of doing so. Patients may even decide not to proceed with pathology testing at all but fail to inform their doctors of this.⁸³

1.70 The NCOPP also pointed out that patients' choices of pathology providers will be influenced by a range of factors which may differ over time and according to individual circumstances. These factors include the advice or preference of the referring doctor as well as the patient's socio-economic status, health condition and place of residence. Furthermore, each patient does not have the same range of available options when choosing a pathology provider; patients may be limited, for example, by the number of providers in their local areas or by the range of providers that conduct a particular type of test.⁸⁴

1.71 In its discussion paper, the Department of Health and Ageing identified convenience and cost as two important factors in a patient's choice of pathology providers. In addition, familiarity of provider or setting may be important for frequent users. However, frequent users who had a preference for one provider may consider

80 Australian Association of Pathology Practices, 'Removal of Restrictions on Pathology Request Forms Discussion Paper – Australian Association of Pathology Practices Response', 20 February 2010, p. 2, available at <http://www.aapp.asn.au/c3/PAPERS+POLICIES.aspx>, accessed 5 March 2010.

81 Australian Association of Pathology Practices, *Submission 5*, p. 2.

82 Dr Paul Jones, Australian Medical Association, *Committee Hansard*, 30 April 2010, p. 3.

83 National Coalition of Public Pathology, *Submission 4*, pp 2–3.

84 National Coalition of Public Pathology, *Submission 4*, p. 2.

going to other providers if there was a significant change in the original provider's billing practices. The department argued that:

...[even] regular users may be persuaded to change providers if significant changes in billing practices occur. While pathology has historically had a high rate of bulk billing and many patients are unaccustomed to having out of pocket costs, should the billing practices of their regular provider change, it could provide a catalyst to seek another provider.⁸⁵

1.72 In support of the department's argument, CHF found that cost was a major driver in the choice of pathology provider. The forum concluded that:

[p]roviders that offer bulk billing or testing at a lower cost are considerably more popular among consumers than providers who charge high out of pocket costs...Increased choice of provider will enable consumers to find a collection centre that suits their needs and preferences.⁸⁶

1.73 CHF identified other factors which may influence the choice of pathology provider to a lesser extent. These comprised convenience (location, availability of parking etc.) expertise and courteousness of staff, waiting times, familiarity of provider, the (medical testing) equipment used by different pathology providers as well as the interoperability of the doctor's and pathology provider's computer systems (for electronic transfer of requests and results).⁸⁷ Ms Carol Bennett of CHF stated that:

[i]n terms of convenience for consumers, some of them talked about being referred to providers who were a long way from where they lived. Transport for some consumers, particularly consumers with chronic conditions or who are ill, is quite a challenge, so that is an important consideration, as is disability access for premises. Those sorts of things—convenience to consumers as opposed to providers—were considered important.⁸⁸

1.74 CHF also pointed out that valuable feedback for pathology providers could be gathered by doctors during consultations regarding the reasons that patients chose particular pathology providers. CHF explained that:

[e]ffective and collaborative relationships between requesters and providers could be assisted by communication between them about why consumers

85 Department of Health and Ageing, 'Removal of Restrictions on Pathology Request Forms', *Discussion Paper*, January 2010, p. 5, available at [http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/\\$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/9CFD18C4089721F1CA2576A80081F055/$File/Disc%20Ppr%20-%20Path%20Req%20Forms.pdf), accessed 3 March 2010.

86 Consumers Health Forum of Australia, *Submission 9*, pp 1 and 3.

87 Consumers Health Forum of Australia, *Submission 9*, pp 1–2; Consumers Health Forum of Australia, 'Submission to the Diagnostic Services Branch on the Removal of Restrictions on Pathology Request Forms Discussion Paper', February 2010, pp 2 and 3, available at: <http://www.chf.org.au/pathology-2009-keydocs.php>, accessed 5 March 2010.

88 Ms Carol Bennett, Consumers Health Forum of Australia, *Committee Hansard – Health Practitioner Regulation (Consequential Amendments) Bill 2010*, 30 April 2010, p. 7.

choose to use or not to use the provider. This could in turn encourage providers to change their practices to attract consumers, for example by offering bulk billing.⁸⁹

1.75 The Department of Health and Ageing concluded its submission to the committee with the observation that:

[a]llowing patients to exercise their right to choose will encourage pathology providers to compete on the basis of price, service and convenience for patients, ensuring that all Australians have access to affordable, high quality pathology services. These [proposed] changes will put downward pressure on out of pocket costs to patients and pressure providers to maintain a high rate of bulk billing.⁹⁰

Committee view

1.76 The committee concludes that competition based upon price and convenience is an important goal but one which must not be achieved at the expense of a decrease in the quality of testing and service provided by pathologists. Effective communication between doctor and patient at the time that a pathology request is generated will ensure that both parties are fully aware of the (doctor's and patient's) reasons for choosing a particular pathology provider, the patient's right to choose pathology providers and the risks of acting against medical advice in choosing a different provider.

Imaging and pathology services

1.77 The Minister for Health and Ageing noted that the provisions of this bill will align the referral practices for pathology services with those that currently apply to other diagnostic services such as imaging. At present, a patient who is referred for medical imaging services may present the request form to any provider of diagnostic imaging services.⁹¹

Risk of errors

1.78 The committee was informed by the AAPP that a patient typically has fewer imaging tests per 'encounter' (i.e. appointment with the imaging provider) but the number of tests was typically higher per visit to a pathology provider. This meant that the risk of errors was also higher for pathology services.⁹²

89 Consumers Health Forum of Australia, 'Submission to the Diagnostic Services Branch on the Removal of Restrictions on Pathology Request Forms Discussion Paper', February 2010, p. 3, available at: <http://www.chf.org.au/pathology-2009-keydocs.php>, accessed 5 March 2010.

90 Department of Health and Ageing, *Submission 6*, p. 4.

91 The Hon. Nicola Roxon MP, Minister for Health and Ageing, 'Second Reading Speech', *House of Representatives Hansard*, 10 February 2010, pp 922–923.

92 Australian Association of Pathology Practices, *Submission 5*, pp 7–8.

1.79 As previously discussed, errors can be limited through well-developed relationships between referring doctors and pathology providers, using familiar reporting standards and procedures. However, the most important factor in limiting the potential for errors is the need for information – on the part of the doctor, who is kept informed of the patient's preferences and any changes in pathology provider; and on the part of the patient, who is informed of the right to choose pathology providers but also of the reasons for using a particular provider and the risks associated with changing pathology providers.

Different specialties, similar funding

1.80 The RCPA argued that diagnostic imaging and pathology services are fundamentally different medical specialties and cited two examples of these differences – the form of the results and the use of this type of testing to manage chronic conditions. Firstly, a patient can usually pass imaging results to the referring doctor or other medical specialists in the form of, for example, an x-ray or an ultrasound film.⁹³ As pointed out by the AAPP, this is not possible with pathology results which are forwarded directly to the requesting doctor.⁹⁴ This difference can lead to difficulties in tracing the pathology provider who carried out the testing.

1.81 In addition, diagnostic imaging is not commonly used in the ongoing management of chronic conditions (or long-term use of medications) whereas this is a common reason for the use of pathology tests. In such cumulative testing, it is important that testing procedures and measurement methods as well as reference ranges and intervals remain consistent.⁹⁵

1.82 The RCPA concluded that, although funding of these two specialties has historically been similar, they are used by medical practitioners for very different purposes. There is, therefore, no valid need to align the ways in which doctors refer patients for imaging and pathology services.⁹⁶

1.83 However, it was identified by CHF that consumers have serious concerns regarding pathology and diagnostic imaging services in terms of quality, accessibility and affordability. CHF concluded that offering consumers the right to choose pathology (and imaging) providers 'has the potential to reduce many of these concerns'.⁹⁷ Addressing these concerns does provide a valid argument for aligning the referral procedures for pathology and diagnostic imaging services.

93 Royal College of Pathologists of Australasia, *Submission 3*, p. 2.

94 Australian Association of Pathology Practices, *Submission 5*, p. 8.

95 Royal College of Pathologists of Australasia, *Submission 3*, p. 2.

96 Royal College of Pathologists of Australasia, *Submission 3*, p. 2.

97 Consumers Health Forum of Australia, *Submission 9*, p. 3.

Committee view

1.84 The committee agrees that allowing patients the right to choose pathology providers can reduce concerns relating to the accessibility and affordability of pathology services. In addition, the committee believes that quality can be ensured if patients, doctors and providers are well informed. Effective communication between doctor and patient at the time that the pathology request is completed will allow negotiation in the choice of provider. This will ensure doctor and patient are aware of the reasons for choosing a particular provider and the risks associated with changing providers and will minimise those instances where patients change their minds after the consultations. When patients do change their minds, they must accept responsibility for acting against medical advice and should be informed of the need to make their doctors aware of the changes.

Emergency and out-of-hours contact

1.85 The RACGP and AMA pointed out that the benefits provided by established relationships between doctors and pathology providers are even more important in emergency situations.⁹⁸ In urgent medical situations, doctors need to be familiar with the reporting format (to read results quickly but accurately) and be aware of which pathology providers have received which pathology requests (for ease of tracing results when necessary). When sending urgent pathology requests, it is helpful for doctors to have knowledge of the kinds of tests that can be carried out at specific laboratories and awareness of the expertise of particular pathology providers. The AMA also warned that the current communication channels between doctors and pathology providers will need to be expanded in response to the government's proposed changes, especially in emergency situations.⁹⁹

1.86 A pathology provider is more likely to be aware of a referring doctor's emergency contact details when the doctor and pathology provider have an established relationship and agreed procedures. The RCPA informed the committee that it is common practice that GPs do not provide out-of-hours contact details and the inability on the part of pathologists to report results that were of serious concern or, in extreme cases, life threatening would be 'exacerbated in after hours situations'.¹⁰⁰ Similarly, the AAPP commented that urgent test results may not be forwarded after hours when the pathology provider holds no emergency contact details for the referring doctor.¹⁰¹

1.87 To resolve this difficulty, organisations such as the NCOPP recommended that agreed procedures be established between a referring doctor and pathology provider (where a previous working relationship does not exist) when a patient

98 Australian Medical Association, *Submission 2*, pp 2–4; Royal Australian College of General Practitioners, *Submission 8*, p. 4.

99 Australian Medical Association, *Submission 2*, pp 2–4.

100 Royal College of Pathologists of Australasia, *Submission 3*, p. 3.

101 Australian Association of Pathology Practices, *Submission 5*, p. 4.

presents the request for service to the pathology provider. These procedures should include notification by the pathology provider that a request from that referring doctor has been received and identification of the channels for reporting results as well as information such as the doctor's emergency contact details.¹⁰²

1.88 Dr Brian Richards, a representative of the Department of Health and Ageing, disagreed with the claim that the inability of pathology providers to report urgent pathology results would be exacerbated after business hours. In response to a question from the committee regarding the extra administrative burden which may be placed upon pathology providers attempting to contact doctors after business hours, Dr Richards commented that:

[t]hat is no different from the current situation where an urgent request comes in. If the evidence is that most pathologists do not have the after-hours contact of most of their doctors then that would be no different whether or not the patient went to the [usual] provider.

In 17 years I spent in general practice I do not think I ever received an out-of-hours phone call from a pathology provider.¹⁰³

Conclusion

1.89 The committee believes that the issues which have been raised by GPs, pathologists and other stakeholders can largely be addressed by effective discussions between referring doctors and patients regarding pathology providers and services. Difficulties such as reporting urgent results to doctors after hours already exist and will not be significantly altered by the proposed legislative changes. Importantly, the primary focus of this bill is more choice for patients. The committee acknowledges that patients should be given the opportunity to play a central role in their own healthcare. Accordingly, the committee recommends that the bill be passed.

Recommendation 1

1.90 The committee recommends that the bill be passed.

Senator Claire Moore
Chair

May 2010

102 National Coalition of Public Pathology, *Submission 4*, pp 3–4.

103 Dr Brian Richards, Department of Health and Ageing, *Committee Hansard*, 30 April 2010, p. 21.

Health Insurance Amendment (Pathology Requests)

Bill 2010 [Provisions]

Minority Report by Coalition Senators

The Coalition Senators note the implementation concerns with this Bill. Whilst there is general support for patient choice, this needs to be balanced with the practicalities of providing high quality medical care, patient safety and the legal responsibilities of practitioners providing care.

Timeliness is of particular importance in relation to pathology services. There are a number of implementation concerns to ensure the accurate and timely dissemination of pathology results which still need to be addressed by the Government.

Evidence and submissions to the Committee demonstrate that there is variance in the range of services offered by pathology practices. Differences in laboratory technologies, the expertise of pathologists and laboratory teams, and the range of tests provided mean that there are circumstances where the needs of some patients are best met by certain pathology practices.

The degree of urgency by which results are required also greatly varies. Therefore, it may be appropriate in times of clinical need for referring practitioners to specify a provider for which they have clear and established lines of communication for results.

Many complex and chronic conditions require continual monitoring over extended periods of time. On the basis of evidence supplied to the Committee, there are instances where disease progression, remission and recurrence are most suitably monitored through consistent measurement series and reference range.

The Coalition Senators believe there are circumstances due to clinical urgency, a specific medical condition, or a requirement for consistent measurement series over time where the referring doctor should have an option to specify a pathology provider to remove ambiguity and improve patient safety.

Recommendation

The legislation be amended to allow referring doctors to specify a pathology provider in circumstances where there is a justifiable clinical need.

Senator Judith Adams
Senator for Western Australia
May 2010

APPENDIX 1

Submissions received by the Committee

- 1** Australasian Association of Clinical Biochemists Inc
- 2** Australian Medical Association
- 3** The Royal College of Pathologists of Australasia
- 4** National Coalition of Public Pathology
- 5** Australian Association of Pathology Practices
- 6** Department of Health and Ageing
- 7** CONFIDENTIAL
- 8** Royal Australian College of General Practitioners
- 9** Consumers Health Forum of Australia

APPENDIX 2

Public Hearings

Friday, 30 April 2010
Parliament House, Canberra

Committee Members in attendance

Senator Claire Moore (Chair)
Senator Rachel Siewert (Deputy Chair)
Senator Judith Adams
Senator Sue Boyce
Senator Carol Brown
Senator Mark Furner

Witnesses

Australian Medical Association

Dr Paul Jones, Australian Capital Territory Representative on Federal Council
Mr Francis Sullivan, Secretary-General, Australian Medical Association

Royal College of Pathologists of Australasia

Dr Debra Graves, Chief Executive Officer
Associate Professor Paul McKenzie, President

Department of Health and Ageing

Mr Richard Michael Bartlett, Acting First Assistant Secretary,
Medical Benefits Division
Ms Georgina Gatica Acting Director, Policy Implementation Section,
Diagnostic Services Branch,
Dr Megan Keaney, Medical Adviser, Medical Benefits Division
Mr David Andrew Learmonth, Deputy Secretary
Mr Chris Reid, General Counsel
Dr Brian Richards, Senior Medical Adviser
Ms Jackie Stuart-Smith, Acting Assistant Secretary, Diagnostic Services Branch,
Medical Benefits Division