

CHAPTER 4:

COMPROMISE POSITIONS

Introduction

4.1 Two similar, middle ground positions were put to the committee. The implementation of any such solutions will be subsequent to the Senate's consideration of the disallowance motion.

Discretion not to hear certain complaints

4.2 ACA submitted that 'the regulation could give the Tribunal a discretion to not hear a case involving medical evidence if the Tribunal believes the case could not be properly dealt with. This would allow the Tribunal to conciliate disability complaints and resolve the ones within its ability.'⁷⁰

Power to deal with complaints to the investigation and conciliation stage

4.3 The other compromise position was put by the Attorney-General's Department. The mechanism of dispute resolution by the Tribunal involves three phases: investigation, conciliation and determination.⁷¹ The proposal is that the Tribunal have a role in the investigation and conciliation of matters involving medical evidence. However, it was also submitted by the Attorney General's Department that it is unclear as to whether regulation 4 excludes the Tribunal from investigating and attempting to conciliate complaints involving medical evidence.⁷²

⁷⁰ SISREG Sub No 1 (Supplementary)

⁷¹ *Superannuation (Resolution of Complaints) Act 1993*

⁷² SISREG Sub No 14

4.4 Ms Ford submitted that experience with other dispute resolution mechanisms has demonstrated that quite a high proportion of complaints can be dealt with by way of conciliation which involves the disputing parties getting together to resolve a problem. She stated that the middle ground approach could allow for a significant number of medical complaints to be dealt with.⁷³ This would be at least consistent with the LICB decision to extend the industry complaints mechanism to enable its panel to look at medical disputes up to the investigation and conciliation phase.⁷⁴

4.5 The response of ACA to this compromise proposal was that it would help in the resolution of some complaints, but that the Tribunal could do much better and should attempt to resolve all complaints that it decided it had the competence to deal with.⁷⁵

⁷³ SISREG Sub No 14, Ford, Evidence, pp 78-79

⁷⁴ Ford, Evidence, p 81

⁷⁵ Evidence, p 32