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COMMUNITY AFFAIRS LEGISLATION COMMITTEE

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SENATE
COMMUNITY AFFAIRS LEGISLATION COMMITTEE
Friday, 28 April 2006

Members: Senator Humphries (*Chair*), Senator Moore (*Deputy Chair*), Senators Adams, Barnett, Nettle and Polley

Participating members: Senators Abetz, Allison, Bartlett, Mark Bishop, Boswell, Bob Brown, Carol Brown, George Campbell, Carr, Chapman, Colbeck, Coonan, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Forshaw, Heffernan, Hogg, Hurley, Joyce, Lightfoot, Ludwig, Lundy, McEwen, McGauran, McLucas, Milne, Nash, O'Brien, Parry, Patterson, Payne, Robert Ray, Siewert, Stephens, Stott Despoja, Watson, Webber and Wong

Senators in attendance: Senators Allison, Adams, Humphries, McLucas, Moore, Nettle and Webber

Terms of reference for the inquiry:

Health and Other Services (Compensation) Amendment Bill 2006

WITNESSES

GODWIN, Ms Philippa, Deputy Chief Executive Officer, Medicare Australia..... 1
**ROBERTSON, Ms Samantha, Assistant Secretary, Medicare Benefits Branch,
Department of Health and Ageing..... 1**
**WHITING, Ms Leonie, Manager, Associate Government Programs Branch, Medicare
Australia 1**

Committee met at 1.12 pm

ROBERTSON, Ms Samantha, Assistant Secretary, Medicare Benefits Branch, Department of Health and Ageing

GODWIN, Ms Philippa, Deputy Chief Executive Officer, Medicare Australia

WHITING, Ms Leonie, Manager, Associate Government Programs Branch, Medicare Australia

CHAIR (Senator Humphries)—Welcome. We are now proceeding to the Senate Community Affairs Legislation Committee inquiry into the Health and Other Services (Compensation) Amendment Bill 2006. Thank you for your patience in waiting for the committee to catch up with its program and for your appearance here today. You are reminded that the giving of evidence to the committee is protected by parliamentary privilege. As officers of the department—and I assume that covers Medicare—you will not be required to answer questions on advice you may have given in the formulation of policy or to express a personal opinion on matters of policy.

We have a submission from Medicare Australia and one from the Department of Health and Ageing. Thank you very much for those. Do you want to make an opening presentation on the bill before we ask you questions?

Ms Godwin—No.

CHAIR—We also have a submission from the Law Council of Australia in which they make a few suggestions on improving the advance payment option process. Are there any comments that you would like to make to the committee in response to the recommendations or comments made by the Law Council, which I assume you have seen?

Ms Robertson—Yes. A lot of the comments made by the Law Council of Australia relate to matters of an administrative nature and are issues that my colleagues from Medicare Australia could comment on more fully. In regard to the advance payment option, I would note that the Insurance Council of Australia has also provided a submission and that it supports the principles behind the advance payment option in that it provides compensation recipients with an opportunity to access the bulk of their settlement at the time it is made and with an opportunity to resolve any moneys which may be owing to Medicare Australia at a later date.

I note that they have posited the view that the 10 per cent as it currently stands could be reduced. As we referred to in our submission, the benefits of that would have to be carefully balanced against the administrative process that would then need to be undertaken by Medicare Australia if they were to then go out and seek additional moneys to be repaid to Medicare Australia over and above any percentage amount that is withheld.

CHAIR—I assume that consideration is going to be given to those suggestions at some point.

Ms Robertson—Obviously, it would be a matter for government as to whether or not that is considered. I think my colleagues from Medicare Australia can certainly provide you with information on the numbers of people where additional payment over and above the 10 per

cent is sought and some information around what could potentially occur if it were to be reduced.

CHAIR—Rather than going to that now, I will suggest that someone could give consideration to it. But you say it is a matter for the government.

Ms Robertson—Yes.

CHAIR—Okay, I understand that.

Senator McLUCAS—There are two issues with this bill: the costs of administration and the advance payment option issue. Going first to the costs of administration, I understand or believe that one of the motivations for the legislation was the cost of administering the act in the form that it exists at the moment. Could you give us an understanding of the costs and the costs per individual of administering the compensation schemes.

Ms Godwin—I am not sure if we have the details in that way. We could take that on notice; it would not be very hard to get. Total recoveries under the scheme amount to about \$35 million. The administrative costs are around \$11.5 million. It is hard to be precise because, of course, it costs so much to administer an application regardless of the amount we recover; so it relates a bit to the amount of recovery. We operate on the basis of about 30 per cent of total recoveries in administration.

Senator McLUCAS—Do not take that earlier question that I gave you on notice. But tell me: where is it trending in terms of the administration costs?

Ms Godwin—It has come down from the figures that applied when the review was done a few years ago.

Senator McLUCAS—That was in 1998-99. They are the figures I have.

Ms Godwin—Yes. At that point administration costs were estimated at around 50 per cent of recoveries. There has been a significant reduction.

Senator McLUCAS—Can you give the committee an understanding of why that reduction has occurred?

Ms Godwin—I might have to defer to my colleagues, who know a little bit more about this than I do. In broad terms, I think it is from a couple of sources. For a start, the changes in the legislation a few years ago resulted in small claims not being subject to recovery. It is not now necessary to recover from claims where the amount of compensation is \$5,000 or less. And I think the advance payment option itself has added to the efficiency of the scheme because there tends to be a smaller number of points of processing and transaction between us and the compensation payer.

Senator McLUCAS—How will the proposed legislation affect the administration costs?

Ms Robertson—The main intent of the legislation is that we are looking to remove a sunset provision within the main Health and Other Services (Compensation) Act which will result in the advance payment option ceasing at the end of this financial year. A lot of the administrative streamlining, if you like, that Ms Godwin referred to earlier, has been brought about through the implementation of the advance payment option. It is an option that we would like to see continued for both reasons of administrative efficiency and also convenience

to compensation recipients. So as to whether we are expecting further cost reductions as a result of this bill, I think we would expect to see a continuation of what we have observed over the last couple of years.

Senator McLUCAS—I suppose my question is: when do you get to a threshold? Is that a consideration?

Ms Godwin—I guess there are two things to say about that. We are always trying to find more efficient ways of doing business. I cannot point to a specific example in that context for this program. I thought your question was: would the legislation change the cost structure? It does not fundamentally change the cost structure if the sunset clause is removed. If the sunset clause remains then, as of July, we will no longer be able to manage cases using the advance payment option and our costs will, in fact, increase.

Senator McLUCAS—Can you tell us how many people use the advance payment option as a settlement mechanism, why they do and how that process occurs?

Ms Godwin—Again the numbers vary because it is obviously a subset of the total number of compensation cases and that varies from time to time. On average, if we look back over the last couple of years, it varies between about 70 to 80 per cent of cases that are now using the advance payment option. Why they would use it I guess is because it is administratively simple. It has a greater degree of certainty for people receiving compensation because, at the point the compensation settlement is made, they get 90 per cent there and then. Under the old arrangements and indeed the other option, because some cases still do go through the other process, they get none of the compensation until all the recoveries are worked out. The other thing is that it is a single process for the compensation payer, they send 90 per cent to the person receiving the compensation and they send 10 per cent to us and the rest of the process is then resolved between Medicare Australia and the person receiving the compensation or their legal representatives.

Senator McLUCAS—And at that point of reconciliation what proportion of people have ‘overpaid’ if that is an appropriate word.

Ms Godwin—I guess we would look at it the other way around. I might have to get someone to dissect the stats back the other way. In only about four per cent of cases, do we need to seek additional payments over and above the 10 per cent. For the vast majority, 96 per cent or thereabouts of cases, either the 10 per cent fully covers it or indeed there is a additional payment to the person.

Senator McLUCAS—To the claimant.

Ms Godwin—To the claimant, yes.

Senator McLUCAS—Okay. So of that 96 per cent what proportion are reconciled as zero? What is the nature of those people who you have to pay back? Are we talking about large amounts of money? I am trying to put a human face on a piece of legislation.

Ms Godwin—I understand. I went through precisely the same process myself when I was trying to learn about this. It is very variable because it is a function of the size of the settlement and how much of the settlement relates to medical costs. There is not necessarily a correlation between the two. Some large payments might have a relatively small proportion of

the amount claimable by us. With some relatively small compensation payments, the bulk of it might be related to medical expenses. So it is very variable. We have a lot of statistics that we could give you if it is particularly interesting. I just do not have them right here in front of me.

Senator McLUCAS—What I am looking for is a flavour. I do not want you to send me a whole heap of numbers. I just need a flavour for it. Are we talking about a good proportion of people with a \$10,000 potential refund or is it \$150? They are the figures that I am trying to understand.

Ms Whiting—I do not know that there is necessarily a pattern that we can glean. We tend to look at the statistics in terms of the percentages vis-a-vis the advance payment option. So what we capture is that the advance payment option of 10 per cent satisfies the amount owing in a large proportion of the cases, as Ms Godwin said. But there are not necessarily ascertainable trends in terms of the compensation amount and the recoverable amount. That would be quite difficult for us, I suspect, to try to present in a way that would be meaningful.

Senator McLUCAS—What is the total number of people on an annual basis?

Ms Godwin—We register something in the order of 70,000 cases the year. Only about 60,000 of those actually go to finalisation. In other words, sometimes people will notify us that they are expecting a settlement and for some reason it just does not happen. Another proportion of them get settlements of under \$5,000. So, if you start with 70,000, by the time you take out the ones that do not go to finalisation and the ones that are under \$5,000, we recover moneys from about 50,000 cases a year. So, in very round terms—I am trying to give you a flavour—if about 80 per cent of them are using the advance payment option, that is about 40,000 cases using that option and, as we have said, about 96 per cent of those would not have any more money to pay. They would either get nothing back—they would break even—or they would get some money back.

Of the ones where we have to seek additional payments, again, it is hard to be absolutely precise about this because, from time to time, there can be very big payouts and sometimes big recoveries by Medicare. But on average the amount that we would be seeking over and above the 10 per cent looks to be between about \$200 and \$2,000. There would not be many people who would be required to pay more than about \$2,000 over and above the 10 per cent.

Senator McLUCAS—That gives me a good understanding. Finally, for that group of people who do use the advance payment option, or in fact all people, what proportion of the 50,000-odd people that we deal with on an annual basis get to a point of dispute, where you either have to have some sort of negotiation or decision-making process or, at the worst extreme, go to the AAT?

Ms Godwin—Again, I would have to check because it is not a statistic that I specifically looked at when we were preparing for this. The main point of dispute is when we send a statement of services to the claimant. They have to go through and identify which of those services relate to the compensable injury. They send that back to us. For whatever reason we may not agree with their categorisation. I might point out that that can go both ways. Some people say, 'None of these relate to compensable injury,' and we think, 'That doesn't look right.' At the other end, we have had some people say that all of them relate to the compensable injury and we think that cannot be right either. We only query a very small

proportion. Of course, not all of the ones we query would then be the subject of any appeal, although there is an appeal process to the AAT. We do not have the AAT figures with us, but we could try and get them to the committee this afternoon if you want them.

Senator MOORE—Do you have your AAT figures as determined by type of case? People have a number of reasons to go to the AAT.

Ms Godwin—That is right. My understanding is that the bulk of them are where there has been a query of this type. If there are any others, we could specify that.

Senator MOORE—It would be useful, because sometimes we get AAT figures from other departments. It is a variation of why people go to the AAT to dispute what issues. I know Senator McLucas is after this particular layout, so it would be good if we could get that degree of detail.

Ms Whiting—We will confirm that figure for you. My colleague has just indicated to me that the number is very low—in the order of approximately five. But we will get some detail to you.

Senator MOORE—I do not think you are a big client of the AAT yet.

Ms Godwin—I do not think so.

Senator MOORE—From reading the legislation, I see Medicare is now going to have an internal review process before it goes to the AAT. I was surprised to see that you did not already have that. Did you not have an internal review mechanism until this legislation?

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

Senator MOORE—I am sure people already did it as a matter of course because of their experience with other agencies, but now it is going to be formalised.

Ms Robertson—That is right.

Senator MOORE—And you already have the expertise and the staff who have that facility. Do you have specialised review officers who would handle this process?

Ms Whiting—We have specialist staff who only deal with the compensation recovery program. Obviously, there is a hierarchy of seniority amongst those specialist teams, and that would be utilised in the event of a requirement to review any decision.

Senator NETTLE—You responded to some of the things raised in the Law Council's submission, but one that I was particularly interested in was whether the legal costs are included in the definition of the settlement. They seemed to be saying that that was unclear to them, and they had the view that they should not be. Can anyone clarify that?

Ms Robertson—That is something that could be quite easily clarified with the Law Council, and it comes down to whether the legal costs are actually specified in the settlement and whether they form part of that settlement. In the case that legal costs are specified as separate to the settlement, then my understanding is that they are not included in the total

package of the settlement, under which, say, the advance payment option may be calculated. But I think that is something we could work on with them to clarify.

Ms Godwin—But the corollary is that if it is not specified, yes, it is in the total settlement on which we base the 10 per cent. So even if the claimant has to work out payments with their legal representative, the 10 per cent advance payment option is based on the totality of the settlement.

Ms Robertson—I suppose it comes down to whether it is specified. I think it is best for the claimants if it is specified.

Senator McLUCAS—I understand that when the review was conducted there was a recommendation that there be a sliding scale for the advance payment option. Why has that not been adopted, what were the benefits or otherwise of it, and why have you just taken a flat 10 per cent?

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

CHAIR—That ends our public hearing into this bill. I thank all of you for your appearance here today and for your evidence. As I indicated before, draft reports on both of these bills will be circulated to members of the committee. In the case of the NHMRC report, it will be later today. In the case of the other report, it will be some time next week. I thank members of the committee secretariat and Hansard for their work today.

Committee adjourned at 1.36 pm