



**Australian Government**

**Department of Health  
and Aged Care**

22 March 2024

Mr Julian Hill MP  
Chair, Joint Committee of Public Accounts and Audit  
Box 6021, Parliament House  
CANBERRA ACT 2600  
[jcpaa@aph.gov.au](mailto:jcpaa@aph.gov.au)

Dear Mr Hill

**Re: Inquiry into Commonwealth Financial Statements 2022–23**

The Department of Health and Aged Care (Health) provides this submission to the Joint Committee of Public Accounts and Audit (JCPAA) to support its consideration of the Auditor-General Report No.9 of 2023–24: *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023*.

Thank you for the invitation to submit a response to the JCPAA on the Australian National Audit Office (ANAO) report on the 2022–23 Commonwealth Financial Statements. This submission focusses on improvement actions implemented as part of Health's response to Report 09/ 2023–24 and highlights the continuous improvement actions across Health's departmental operations.

The Report noted the status of ANAO findings<sup>i</sup> as follows.

Category	Closing position (2021–22)	New findings (2022–23)	Findings resolved (2022–23)	Closing position (2022–23)
Significant (A)	-	1	-	1
Moderate (B)	1	1	(1)	1
Legislative Breach (L1)	-	1	-	1
Total	1	3	(1)	3

There was one new significant audit finding in relation to *Governance – legislative compliance, legal matters and legal advice*, one moderate audit finding in relation to the *Commonwealth Home Support Programme (CHSP) – Compliance Program*, and one new legislative breach finding related to potential breaches of section 83 of the Constitution.

The moderate finding reported in Auditor-General Report No.8 of 2022–23 *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2022* relating to Impairment of Administered Inventory was resolved.

Report extracts and subsequent actions in relation to the new findings follow.

**Significant Audit Finding - Governance – legislative compliance, legal matters and legal advice**

The Report noted the following:

*As part of the financial statements audit process, the ANAO requests that DoHAC provides access to all information, such as records and documentation and other matters, of which DoHAC is aware that is relevant to the preparation of the financial statements and additional information that the ANAO requests from DoHAC for the purpose of the audit<sup>ii</sup>.*

*The request includes that DoHAC has disclosed to the ANAO all known instances of non-compliance or suspected non-compliance with laws and regulations, whose effects should be considered in the preparation of DoHAC's financial statements. This includes all known potential and actual breaches of section 83 of the Constitution<sup>iii</sup>.*

*The ANAO was provided with evidence that legal advice was sought by Services Australia and DoHAC regarding the payment of residential aged care subsidies in August 2022. This advice was not considered by DoHAC in the preparation of the 2021–22 financial statements. The ANAO was not advised that this advice had been sought by Services Australia on behalf of DoHAC<sup>iv</sup>.*

**Health response and actions taken**

In response, Health has strengthened governance arrangements, including improving processes to identify, assess and report on non-compliance with legislation, to ensure that responsible program, legal, and finance areas within Health and Services Australia are aware of all relevant legal matters and legal advice. The Chief Financial Officer has been added to the membership of the Strategic Business Committee, which has responsibility for oversight of the Government's health and aged care related policy for which both the Department and Services Australia are jointly accountable, and where consideration of legal matters is a standing agenda item. In addition, the Chief Counsels of the Department and Services Australia meet formally to report on and consider significant legal matters.

Health is undertaking risk assessments of programs in relation to compliance with legislative requirements, including section 83 breaches. For programs assessed as high risk, further assessment will be undertaken to determine whether payments are in compliance with relevant legislation.

In addition, the Department is currently undertaking a comprehensive external review of its financial controls and assurance framework. The scope of the review includes consideration of third-party financial services arrangements and will take into account the findings raised by the ANAO.

## **New moderate audit finding - Commonwealth Home Support Programme – Compliance Program**

The Report noted the following:

*In 2021–22, the ANAO reported a minor audit finding in relation to the CHSP compliance program. The ANAO recommended that DoHAC, in conjunction with the other entities involved in the delivery of the CHSP, agree and document the roles and responsibilities of each entity in relation to the CHSP<sup>v</sup>.*

*As part of the 2022–23 audit the ANAO continued to assess the processes implemented by management in response to the minor audit finding raised. Sufficient progress had not been made by DoHAC to address the weaknesses identified. As a result, the ANAO upgraded this finding<sup>vi</sup>.*

*In the absence of effective monitoring controls, there is an increased risk that payments made are not appropriate and are not in accordance with the Aged Care Act 1997<sup>vii</sup>.*

### **Health response and actions taken**

Health in conjunction with Services Australia, Department of Social Services and the Aged Care Quality and Safety Commission has defined the roles and responsibilities of each agency in relation to the Home Care Packages Program and Commonwealth Home Support Program. This was formalised in a *Financial Roles and Responsibilities – HCPP and CHSP* document, which was endorsed by the participating agencies at the In-Home Aged Care Board meeting in September 2023.

The roles and responsibilities are now finalised, baselined and implemented, with iterative updates to be made when required. The In-Home Aged Care Board will periodically consider the effectiveness of the arrangements and be refined as required.

Health considers that the actions undertaken are well aligned with the intent of the recommendations in the Report. We would be happy to discuss our progress on implementation with the Committee through correspondence or as part of the public hearing process.

### **Legislative Breach - Legislative compliance – potential breaches of section 83 of the Constitution**

The Report noted the following:

*The financial statements for DoHAC for the year ended 30 June 2023 make reference in the Overview section to potential breaches of section 83 of the Constitution in relation to:*

- *payments of the residential aged care subsidies in accordance with the Aged Care Act 1997;*
- *Medicare Easyclaims processed in accordance with the Health Insurance Act 1973;*
- *the assignment of Medicare benefit process, including verbal assignment of Medicare benefits, for payment of benefits in accordance with the Health Insurance Act 1973;*
- *and*

- *services rendered by midwives that did meet statutory requirements to provide, or make referrals for, services eligible for Medicare benefit in accordance with Health Insurance Act 1973<sup>viii</sup>.*

*DoHAC has included in its Annual Report a statement of the significant issues reported to the Minister for Health and Aged Care during the reporting period that relate to the significant non-compliance with the finance law<sup>ix</sup>.*

### **Health response and actions taken**

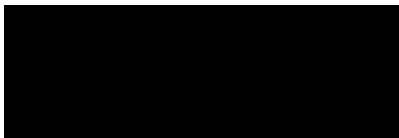
Section 83 of the *Commonwealth of Australia Constitution Act 1901* (the Constitution) provides that no money shall be drawn from the Treasury of the Commonwealth except under an appropriation made by the law. Where a payment is made for which there is no valid appropriation, a potential breach of section 83 has occurred, and must be disclosed in the agency's financial statements

The 2022-23 financial statements included disclosures for four programs or payment types that may have actual or potential breaches section 83 of the Constitution. These were:

- Aged Care Subsidies and fees,
- Medicare Easyclaim program,
- Telehealth assignment of benefits, and
- Services rendered or referred by midwives.

The Department is reviewing appropriate corrective actions in relation to compliance with legislative requirements, including section 83 of the Constitution, and identifying and developing legislative or program changes to prevent breaches of section 83. Oversight of this remediation activity is the responsibility of the Department's Administered Program Board, and progress is reported through the Audit & Risk Committee and the Strategic Business Committee.

Yours sincerely



Charles Wann  
Deputy Secretary  
Department of Health and Aged Care

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<sup>i</sup> *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023*  
(Report 09/ 2023-24) para 4.9.19, Table 4.9.6

<sup>ii</sup> *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023*  
(Report 09/ 2023-24) para 4.9.25

<sup>iii</sup> *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023*  
(Report 09/ 2023-24) para 4.9.26

<sup>iv</sup> *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023*  
(Report 09/ 2023-24) para 4.9.27

<sup>v</sup> *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023*  
(Report 09/ 2023-24) para 4.9.34

<sup>vi</sup> *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023*  
(Report 09/ 2023-24) para 4.9.35

<sup>vii</sup> *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023*  
(Report 09/ 2023-24) para 4.9.36

<sup>viii</sup> *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023*  
(Report 09/ 2023-24) para 4.9.23

<sup>ix</sup> *Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2023*  
(Report 09/ 2023-24) para 4.9.24