

Chapter 1

Introduction and Background

Introduction

1.1 On 22 March 2012, on the recommendation of the Selection of Bills Committee, the Senate referred the Health Insurance (Dental Services) Bill 2012 [No. 2] (the Bill) to the Finance and Public Administration Legislation Committee for inquiry and report by 8 May 2012. The reasons for referral and principal issues for consideration were to ensure the Bill addresses the wide concerns of the dental professions regarding the actions of Medicare.¹

Conduct of the inquiry

1.2 The inquiry was advertised in *The Australian* and through the Internet. The committee invited submissions from peak organisations, interested parties, and the Commonwealth Government.

1.3 The committee received 432 submissions relating to the Bill and these are listed at appendix 1. The committee considered the Bill at a public hearing in Canberra on 1 May 2012. Details of the public hearing are referred to in appendix 2. The public submissions and transcript of evidence may be accessed through the committee's website at:

http://aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=fapa_ctte/index.htm.

Background to the Bill

1.4 The Chronic Disease Dental Scheme (CDDS) was introduced and implemented during the last few months of the Howard Government. A more limited scheme had been introduced in 2004. The scheme provided for capped dental benefits of \$220 a year for the chronically ill whose dental problems were exacerbating their condition and who were being managed by a GP under an Enhanced Primary Care (EPC) plan.

1.5 This scheme had lower than expected uptake and the Government announced an expansion of the measure in the 2007–08 Budget, with funding of \$378 million over four years.² The *Health Insurance Amendment (Medicare Dental Services) Act 2007* implemented the changes. It introduced a ministerial determination, the Health

1 Senate Selection of Bills Committee, *Report No. 4 of 2012*, Appendix 11, 22 March 2012.

2 The Hon. Peter Costello MP, *Budget Speech 2007–08*, 8 May 2007, p. 9.

Insurance (Dental Services) Determination 2007 (the Determination) to allow eligible patients to access up to \$4250 of Medicare-funded dental treatments over two years. Under the CDDS, Medicare benefits also became payable for dental prostheses, including dentures. The CDDS came in to operation on 1 November 2007.

1.6 The number of services provided under the expanded scheme subsequently rose dramatically, as did expenditure. In contrast to the 2007-08 budget funding of \$378 million over four years, the CDDS has now cost in excess of \$2.3 billion.³

Proposals to cancel the CDDS

1.7 In March 2008, the Rudd Government announced that it would introduce a new Commonwealth Dental Health Program (CDHP), to be established in agreement with the States and Territories. Funding for the new scheme was dependent on the cancellation of the CDDS. The then Minister for Health and Ageing, Hon. Nicola Roxon, MP, stated that:

The Commonwealth Dental Health Program (CDHP) will replace the Howard Government's failed Medicare dental scheme for people with chronic and complex conditions. The discontinuation of that scheme, confirmed today, permits funding to be redirected to the new CDHP.

The Howard Government's scheme helped only around 15,000 people in almost four years. The new CDHP will provide up to one million additional dental consultations and treatments.

From 1 July 2008, following the cessation of the Howard Government's scheme, the Commonwealth will provide \$290 million over three years to the states and territories to bring relief to the 650,000 people on public dental waiting lists around the country.⁴

1.8 The Minister stated that the CDDS would not be available to new patients after 30 March 2008, but existing patients would continue to receive benefits until 30 June 2008. The Department of Health and Ageing was advised medical and dental representative groups about cessation of the program to allow them to inform their members as soon as possible. In addition, letters were sent to existing patients, GPs and participating dental practitioners to inform them of the discontinuation arrangements.

1.9 In May 2008, the Health Insurance (Dental Services) Amendment and Repeal Determination 2008 attempted to cancel dental benefits available under the CDDS. As a disallowable instrument, a motion for disallowance was moved in the Senate by the Coalition on 18 June 2008. On 19 June 2008, the motion of disallowance was passed by the Senate, effectively repealing the ministerial determination. In addressing the

3 Department of Human Services, *Submission 201*, p. 2.

4 The Hon. Nicola Roxon, Minister for Health and Ageing, 'First steps in implementing new Commonwealth Dental Health Program', *Media Release*, 2 March 2008.

motion of disallowance, the then Minister for Human Services, Senator the Hon. Joe Ludwig commented:

The dental programs that we have announced will have a significant impact on Australia's dental crisis. The government is providing a total of \$780 million over five years for additional dental services. This government is getting serious about these issues, unlike the opposition when they were in government.⁵

1.10 On 15 September 2008, the Government gave notice of a motion to rescind the successful disallowance motion. In speaking to the motion, Senator the Hon. Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, provided the reasons for the need to close the CDDS:

Today's motion will decide whether the government can implement the dental policies which the Australian public voted for or whether the government will have to suspend its investment in public dental services because of the economic vandalism of those in the opposition. The motion will decide whether the government can provide a million more dental consultations and treatments for needy Australians, especially pensioners and concession card holders, or whether these people will continue to languish on public dental waiting lists because of the opposition's irresponsible approach.⁶

1.11 The Minister went on to note that while the CDDS helped some people, many, often the most needy people in the community, were missing out on treatment. Further it was not targeted at the most disadvantaged, such as pensioners and concession card holders. This resulted in the take up being 'highly skewed, with many states receiving far less than a fair population share'. The Minister added:

While one in five concession card holders live in Queensland, about 18.9 per cent, it has received only 4.4 per cent of benefits under the chronic disease dental scheme. While one in 11 concession card holders live in South Australia, about 8.9 per cent, it has received only 2.5 per cent of benefits. Again to my colleague from Western Australia, while one in 12 concession card holders live in Western Australia, about 8.5 per cent, it has received only 0.7 per cent—less than one per cent—of benefits for necessary care. While three per cent of concession card holders live in Tasmania, Senator Colbeck, it has received only 0.3 per cent— less than half of one per cent—of benefits.⁷

5 Senator the Hon. Joe Ludwig, Minister for Human Services, *Senate Hansard*, 19 June 2008, p. 2817.

6 Senator the Hon. Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, *Senate Hansard*, 16 September 2008, p. 47.

7 Senator the Hon. Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, *Senate Hansard*, 16 September 2008, p. 47.

1.12 On 16 September 2008, the Senate negated the motion to rescind its resolution of 19 June 2008 disallowing the Health Insurance (Dental Services) Amendment and Repeal Determination 2008.⁸ As a result, services continued to be provided under the CDDS.

1.13 However, concerns continued about the provision of services under the CDDS, particularly the need to target the most disadvantaged members of the community. The National Rural Health Alliance, for example, stated:

New evidence shows just how inequitable the Medicare funded dental health program is – and the critical need for the Government to introduce its planned Commonwealth Dental Health Program (CDHP).

The existing Enhanced Primary Care (EPC) program which provides dental care under Medicare is a move in the right direction towards universally accessible dental care but it is heading towards a massive cost blow-out and failing to provide a service to many in need. If the use of the EPC dental scheme reaches the level spent in New South Wales in August 2008, the national cost will be almost \$900 million a year compared with the Coalition Government's budget for it of \$365 million over four years.

There is mounting evidence to show that, on its own, the EPC program is resulting in massive inequities between jurisdictions. For instance the total dollar benefits paid from November 2007 to August 2008 per 100,000 head of population varies from \$1,431,604 in NSW to \$15,363 in the Northern Territory.⁹

Auditing of providers

1.14 Under the CDDS, where a GP forms the opinion that a patient is suffering from a chronic medical condition, has complex care needs and that their oral health is impacting (or likely to impact) their general health, their GP may refer the patient for dental services.

1.15 In order for these dental services to be provided under the CDDS, there is 'a requirement that there is appropriate communication between the referring general practitioner, the patient and the treating dental practitioner about the treatment plan'.¹⁰ These requirements, as well as eligibility requirements and the services which may be billed, are set out in the Determination. Section 10 of the Determination states:

8 *Journals of the Senate*, No. 30, 16 September 2008, p. 857.

9 Dr Jenny May, Chair, National Rural Health Alliance, 'Dental health programs: equity hinges on introduction of the CDHP', *Media Release*, 14 October 2008.

10 Department of Human Services, *Submission 201*, p. 1.

Section 10: Quotation for dental services and reporting

- (1) This section applies if:
- (a) an eligible dentist, an eligible dental specialist or an eligible dental prosthetist performs an initial examination and assessment of an eligible patient, including consideration of any diagnostic tests; and
 - (b) provides a course of treatment to the patient.
- (2) An item in Schedule 1 applies to a dental service included in the course of treatment only if, before beginning the course of treatment, the eligible dentist, eligible dental specialist or eligible dental prosthetist:
- (a) gave to the eligible patient, in writing:
 - (i) a plan of the course of treatment; and
 - (ii) a quotation for each dental service and each other service (if any) in the plan; and
 - (b) gave a copy or written summary of the plan to the general practitioner who referred the patient for dental services.

1.16 The Department of Human Services noted that compliance with section 10 of the Determination is fundamental to the effective operation of the Scheme.¹¹

The department has an obligation to ensure compliance with the legislative requirements of the Scheme. The department began receiving complaints about dental practitioners within the first 12 months of the Scheme and commenced compliance activities from November 2008. The department takes a risk based approach to managing compliance. Therefore, audits are not random in nature, and dental practitioners are generally selected for audit either as a result of complaints/tip-offs received from members of the public, and/or where high claiming patterns raise concerns.¹²

1.17 The Department of Human Services noted that a project was developed after initial compliance activity indicated that there were significant concerns about claiming under the Chronic Disease Dental Scheme. These concerns included non-compliance with section 10 of the Determination and claiming Medicare benefits prior to services being provided to the patient.¹³

1.18 In its submission to the committee, The Department of Human Services provided the following information¹⁴:

11 Department of Human Services, *Submission 201*, p. 2.

12 Department of Human Services, *Submission 201*, p. 2.

13 Mr Ben Rimmer, Department of Human Services, *Senate Community Affairs Legislation Committee, Supplementary Budget Estimates 2011–12 Hansard*, 20 October 2011, pp 171–173.

14 Department of Human Services, *Submission 201*, p. 2.

Number of complaints	1025
Relating to number of dental practitioners	745
Audits underway	94
Audits completed	29
Number found to be non-compliant	65
Amount identified for recovery	\$21,618,721
Repayments received	\$259,427

1.19 Of the 94 dentists audited as at 29 February 2012, a majority had delivered the services they billed to Medicare. On 16 February 2012, the Department of Human Services indicated that of the 63 practitioners deemed to be non-compliant for administrative breaches, such as not completing appropriate paperwork or providing patients with quotations at that time, 12 were found to be non-compliant due to a failure to actually provide a service.¹⁵

Response to audits

1.20 Concerns have been raised about 'inequities' arising when a dental practitioner who has provided a legitimate service is required to repay the Medicare benefit because of an administrative failure.¹⁶

1.21 On 19 March 2012, the Opposition health spokesman the Hon. Peter Dutton, introduced the Health Insurance (Dental Services) Bill 2012 in the House of Representatives. The Bill was also introduced in the Senate on 21 March by Senator David Bushby.

1.22 The Bill proposes to redress past and future inequities that have arisen from the operation of subsection 10(2) of the Determination.

Overview of the Bill

Purpose of the Bill

1.23 The Bill requires the Minister for Health, in conjunction with such other Ministers as may be necessary, to redress past and future inequities that have arisen from the operation of subsection 10(2) of the *Health Insurance (Dental Services) Determination 2007*.¹⁷

15 Mr Jeff Popple, Deputy Secretary, Department of Human Services, Senate Community Affairs Legislation Committee, Additional Estimates, *Committee Hansard*, 16 February 2012, p. 127.

16 Parliamentary Library, *Flagpost: Calls to waive dentists' debt to Medicare*, 19 April 2012.

17 Explanatory Memorandum, p. 1.

Provisions of the Bill

1.24 The Bill describes the inequities imposed on dental practitioners by the operation of subsection 10(2) of the Determination. The Bill specifies that the Minister must take one or more of five courses of action to redress those inequities. It establishes a timeframe in which action is to be taken and requires a report to be tabled in both Houses of Parliament detailing the actions taken.¹⁸

Financial impact

1.25 The explanatory memorandum does not include a financial impact statement.

Statement of compatibility with human rights

1.26 The explanatory memorandum states that the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.¹⁹

Related inquiries

1.27 The following related Senate committee reports have been tabled:

- Senate Community Affairs References Committee, *Review of the Professional Services Review (PSR) Scheme*, October 2011; and
- Senate Standing Committee on Community Affairs, *Health Insurance Amendment (Medicare Dental Services) Bill 2007 [Provisions]*, September 2007.

18 Explanatory Memorandum, p. 1.

19 Explanatory Memorandum, p. 4.

