



SENATOR JORDON STEELE - JOHN
AUSTRALIAN GREENS
SENATOR FOR WESTERN AUSTRALIA

17 November 2021

Mr Grant Hehir
Auditor-General for Australia
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

By email: grant.hehir@anao.gov.au

Dear Mr Hehir,

I write to you to request an audit in relation to public concerns over the administration of a Pharmaceutical Benefits Scheme (PBS) program for opioid dependency treatment (ODT).

The ODT program is established through a non-legislative instrument, which the advocacy organisation *Better Access Australia*, raised concerns as to whether this constituted an unlawful exercise of power. The ODT program instrument:

- Removes the normal operations of the PBS co-payment,
- Removes a patient's access to the PBS safety net, and
- Allows for uncapped administration fees for the dispensing of the nominated medicines under the program.

Better Access Australia referred its concerns to the Senate Standing Committee on Delegated Legislation (the Committee). In its correspondence dated 16 August 2021 between the Chair of the Committee, Senator the Hon Concetta Fierravanti-Wells, and Minister for Health, the Hon Greg Hunt MP, the Committee raised serious doubts about the legality of the ODT program instrument:

"...a challenge to the validity of the current special arrangement on the basis that it should have been registered as a legislative instrument may result in a court finding the actions undertaken under the current arrangement to be unlawful."

Under subsection 100(1) of the *National Health Act 1953* 'special arrangements for, or in relation to, providing that an adequate supply of pharmaceutical benefits will be available to persons' can be made through delegated instruments. There are currently 15 s100 instruments, 14 of which are legislative instruments. The ODT program remains the only 'special arrangement' made under s100 that is not a legislative instrument despite meeting the requirements of the *Legislation Act 2003*.

I would also draw your attention to the Minister's reference to an undertaking in 2019 by the Department of Health to the Office of the Australian Information Commissioner to register a legislative instrument for the ODT program. The Department of Health have failed to do this.

I am concerned that the administration of the ODT program has been allowed to continue with the knowledge that its current arrangements are likely unlawful and that the department has been aware of this fact since at least 2019. This is a program that is meant to support 50,000 vulnerable Australians, but instead is discriminating against them and imposing significant financial barriers in accessing their medicines. No other patients are subject to this type of discrimination.

I am concerned for the safety and wellbeing of these patients and, based on the Committee's findings, the potential for serious financial loss to the Commonwealth resulting from possible ongoing maladministration.

Thank you for consideration and awaiting your determination in due course.

Yours sincerely,



Senator Jordon Steele-John
Australian Greens Spokesperson for Health