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SENATE COMMITTEE REJECTS MINISTER HUNT'S FOB-OFF AND DEMANDS ANSWERS ON THE LEGALITY OF PBS PROGRAM

A key Senate committee has told health minister Greg Hunt to 'try again' on explaining the failure to lawfully implement the discriminatory arrangements for an important PBS program.

The Senate Standing Committee for the Scrutiny of Delegated Legislation is chaired by Liberal Senator Concetta Fierravanti-Wells.

It assesses how ministers exercise their powers through delegated legislation against a set of scrutiny principles that focus on compliance with statutory requirements, the protection of individual rights and liberties, and principles of parliamentary oversight[1].

Better Access Australia [wrote](#) to the committee seeking its action in relation to the Opiate Dependency Treatment Program (ODTP) under which the government funds medicines through the PBS but removes basic PBS protections including co-payments and the safety-net.

Patients trying to recover from an opiate dependence, many of whom had their addiction fully funded through Medicare and the PBS, are forced by the Commonwealth to pay unregulated and uncapped fees for their reimbursed medicines.

Better Access Australia is concerned the instrument for the Program issued under the *National Health Act 1953* does not meet the requirements of a legislative Instrument under the *Legislation Act 2003*, is contrary to the *Disability Discrimination Act 1992* and therefore also fails to meet the requirements of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The committee wrote to Minister Hunt on 14 April 2021. It has published the [minister's response and its own follow-up](#).

They show the committee has found the minister's response insufficient and have given him until 7 July to provide a better explanation of why he and his department have ignored the *Legislation Act 2003*.

"Better Access Australia welcomes the committee's decision to hold the Minister for Health and his department to account for their administration of the ODTP," said Better Access Australia Director David Mackay.

"This latest step by the committee reaffirms the questionable legal status of the out-of-pocket fees patients have been charged under this program. Sadly, it also tells us that the

Department of Health, and now the minister, have known about this issue since 2019 and continued to knowingly let patients face financial discrimination."

"If the instrument is found not to have been legally constituted, the minister and his department could also knowingly have been in breach of the Disability Discrimination Act."

"Approximately 50,000 patients accessing PBS medicines through the ODTP have paid millions of dollars in out-of-pocket fees and been denied access to entitlements every other Australian rightly takes for granted."

Multiple coronial inquests have found these out-of-pocket fees for PBS medicines have resulted in patient deaths.

"When challenged by Better Access Australia, Harm Reduction Australia, the Pharmacy Guild, the Pharmaceutical Society of Australia and Consumers Health Forum, the minister has 'kicked this issue' down the road by at least 18-months by establishing a clinical review, rather than address the issue of program legality and putting an immediate end to the ongoing discrimination of patients."

"Luckily, the Senate Standing Committee for the Scrutiny of Delegated Legislation wasn't taken-in by Minister Hunt's response," said Mr Mackay.

"Better Access Australia congratulates the Senate Standing Committee for its continuing efforts in this matter to ensure the individual rights and civil liberties of Australian patients are legally respected and enforced.

"We thank them for their transparency in their work so the community can have confidence in the parliamentary system."

Media inquiries please contact Tim Davies at tdavies@betteraccessaustralia.org.au

For more information about the discrimination of the Government's ODT Program, please visit: betteraccessaustralia.org.au

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