

## IT'S THE COVER UP THAT KILLS YOU – ANOTHER AGENCY FAILS VULNERABLE PATIENTS

Following Minister for Health, Greg Hunt's advice to the Parliament that his department made a commitment to the Office of the Australian Information Commissioner (OAIC) in 2019 to register the special arrangement for PBS medicines under the Opiate Dependence Treatment (ODT) Program, the OAIC has joined the Minister and his department in perpetuating the cover-up of this discriminatory program<sup>i</sup>.

Some 50,000 patients rely on the PBS to help them manage their chronic disease of opioid addiction. The majority of these patients became addicted as a result of government-subsidised pain medications.

The Morrison Government will fund their addiction but insists they make huge out-of-pocket costs towards the medications that keep them well – something no other patient group is asked to do. Around 3 people lose their life each day due to the unaffordable cost of these treatments.

[Better Access Australia](#) director David Mackay said, "Better Access Australia sought access under FOI to the undertaking Minister Hunt's department made to the OAIC to 'register a special arrangement for the ODTP' in 2019. It's now August 2021 and the department has still failed to do so, and the OAIC refuses to release the details of this undertaking."

In response to the FOI request, the OAIC stated:

"The subject document is currently being considered by the Information Commissioner in performing an FOI function. As the matter is currently on foot, releasing the document at issue would have a substantial adverse effect on the OAIC's process, as it would have the effect of circumventing the consideration of the matter."

Mr Mackay added, "The OAIC and Minister Hunt's department have let this matter languish for two years. The decision not to release the requested documents seriously undervalues the public interest value of this information."

"Lives are being lost every day as a result of the Minister for Health's intransigency on this issue and having yet another agency be part of the cover-up of this matter on the basis of maintaining good inter-departmental relations doesn't meet the legal or pub test.

"We should expect better from the OAIC, the agency charged with stewardship of transparency and access to government decision-making for the community," he said.

"Rather than make good on this undertaking, Minister Hunt has instead continued the cover-up by initiating a protracted 18-month, post market review and in doing so implicated the independent expert Pharmaceutical Benefits Advisory Committee (PBAC) in perpetuating this legally questionable program.

"In contrast, Minister Hunt announced this week that the entire National Medicines Policy is to be reviewed in just six-months."<sup>ii</sup>

“Unfortunately, the OAIC now joins the PBAC alongside the Minister and his department in the cover-up of this legally suspect instrument underpinning the ODT program.

“In doing so they help continue the discrimination against the 50,000 patients accessing the program and the thousands more not accessing it because they simply cannot afford the hundreds of dollars a month for their medicines. Enough is enough.”

“Just as Robodebt devastated so many vulnerable Australians, the Morrison Government’s refusal to take immediate action to end this discriminatory program is equally devastating.”

“The Minister’s 18 month delaying tactic is unacceptable, while patients remain untreated and are dying as a result.

“We are grateful that the Parliament’s Senate Standing Committee for the Scrutiny of Delegated Legislation continues to pursue the legality of this matter. When everyone else is trying to cover things up, it is reassuring that our Parliament is trying to protect the rights of all in the Australian community. “

Better Access Australia has sought a review of the OAIC’s decision.

The Facts:

1. ODTP medicines are the only medicines on the PBS where a patient can be denied their Medicare (PBS) co-payment and safety net protections.
2. ODTP medicines are the only medicines on the PBS where patients can be charged unlimited out-of-pocket fees on a daily basis to access their medicines.
3. The PBAC has acknowledged that over 75% of patients accessing these medicines face these out-of-pocket costs, and further acknowledge those costs are a barrier to people accessing treatment for their chronic disease. <sup>iii</sup>
4. The instrument establishing the ODT Program under the *National Health Act 1953* is the only s 100 instrument out of 15 not to be registered by the Department of Health as a legislative instrument.
5. The ODTP instrument is likely to have been unlawful since the commencement of the *Legislation Act 2003* (requirement for legal instruments removing entitlements to be legislative instruments) and the *Parliamentary Scrutiny Act 2011* (legislative instruments cannot be discriminatory or infringe human rights).

**[Better Access Australia](#) is a not-for-profit organisation calling on the Morrison Government to protect all patients accessing our PBS by ending this discrimination today through a dual listing of the ODT Program medicines under s 85 and s 100 of the National Health Act so the protections of the PBS safety nets and co-payments can be accessed by these patients.**

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For more information, visit [www.betteraccessaustralia.org.au](http://www.betteraccessaustralia.org.au).

A copy of the OAIC rejection letter can be accessed [here](#).

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<sup>i</sup> [https://www.aph.gov.au/-/media/Committees/Senate/committee/regord\\_ctte/non\\_monitor\\_correspondence/Consolidated\\_correspondence - ODT\\_program.pdf](https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/non_monitor_correspondence/Consolidated_correspondence_-_ODT_program.pdf).

<sup>ii</sup> [Pharmaceutical Benefits Scheme \(PBS\) | National Medicines Policy Review Committee and Terms of Reference](#)

<sup>iii</sup> [buprenorphine-psd-november-2018.pdf \(pbs.gov.au\)](#)