# MEDICAL FRAUD AND OVERSERVICING—

## Response to Pathology Report

Report

**260**

Joint Committee of Public Accounts

Parliament of the Commonwealth of Australia 1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE OF PUBLIC ACCOUNTS

# 260TH REPORT

# MEDICAL FRAUD AND OVERSERVICING INQUIRY

## RESPONSE TO REPORT ON PATHOLOGY

## (DEPARTMENT OF FINANCE MINUTE ON THE COMMITTEE'S 236TH REPORT)

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1. Refer also to Appendix 3 for details of Committee Membership during this inquiry.

## DUTIES OF THE COMMITTEE

Section 8.(1) of the Public Accounts Committee Act 1951 reads as follows:

> Subject to sub-section (2), the duties of the Committee are:
>
> (a) to examine the accounts of the receipts and expenditure of the Commonwealth including the financial statements transmitted to the Auditor-General under sub-section (4) of section 50 of the Audit Act 1901;
>
> (aa) to examine the financial affairs of authorities of the Commonwealth to which this Act applies and of intergovernmental bodies to which this Act applies;
>
> (ab) to examine all reports of the Auditor-General (including reports of the results of efficiency audits) copies of which have been laid before the Houses of the Parliament;
>
> (b) to report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
>
> (c) to report to both Houses of the Parliament any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue of payment of public moneys; and
>
> (d) to inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question,
>
> and include such other duties as are assigned to the Committee by Joint Standing Orders approved by both Houses of the Parliament.

## PREFACE

This is the fourth report of the Committee's medical fraud and overserving inquiry[1]. It contains responses from the Government, the medical profession and others to the Committee's report on pathology (PAC Report 236).

Since 1952 formal procedures have been in operation to ensure that appropriate action is taken in response to each of the Committee's reports[2]. These procedures involve the preparation of a response, known as a Department of Finance Minute, as follows:

1. The Committee's report is tabled in the Senate and the House of Representatives.

2. The Committee's Chairman then forwards a copy of the report to the responsible Minister and to the Minister for Finance with a request that the report be considered and the Chairman subsequently informed of action taken and planned to address the Committee's recommendations.

3. The reply, in the form of a Department of Finance Minute is then examined by the Committee and submitted with comment as soon as possible as a report to the Parliament.

The Committee welcomes the Government's response to the 236th Report. The response is timely and establishes an appropriate legislative framework to address many of the problems outlined in the Committee's Report. The development and introduction of this legislation represents a major step forward for the Government in tackling the issue of pathology laboratory accreditation and creating effective mechanisms to review the rendering of excessive pathology services. Frameworks have been established for the administration of approved pathology practitioner/authority undertakings, the creation and operation of a Pathology Services Advisory Committee and Medicare Participation Review Committees. In particular it is noted that the provisions of section 129 of the Health Insurance Act, covering false statements relating to Medicare benefits, have been revised.

However, the Finance Minute gives scant indication of the underlying management systems required to implement these changes. It is only through subsequent Committee correspondence with the Health Insurance Commission, the Department of Health, the Australian Federal Police and the Office of the Director of Public Prosecutions that some information on this aspect has become available. The Committee expects that future Department of



1. Previous reports in the medical fraud and overservicing series are PAC Report 203 (Progress Report), Report 212 (Finance Minute on Report 203) and Report 236 (Pathology).
2. Formal responses to the Committee's Reports are not prepared in the case of discussion papers, handbooks and the Committee's annual report.

Finance Minutes will more adequately describe the resources available and planned to implement the Committee's recommendations. Too often the administrative challenges inherent in introducing and operating new regulatory measures go unaddressed or are underestimated in terms of their operational demands. To be effective Acts of Parliament need to be complemented by appropriate and efficient administration and, in the case of medical fraud and overservicing, liaison with and the support of the medical profession.

As previous reports for this inquiry have emphasised, a legislative response to medical overservicing is appropriate only to establish the framework within which professional review mechanisms can operate effectively. It remains that medical overservicing is a problem where the judgement of providers by their peers is required.

This Report also details other responses to the Committee's pathology report. The support of the Royal College of Pathologists of Australasia, the Australian Medical Association (AMA) and major specialist pathology practices for the Committee's recommendations is welcomed. This notwithstanding, the Committee is disappointed to note that the AMA's response is constructed and written in a negative style that masks its true position - that of agreement with the Committee's recommendations.

The Committee remains resolute in its opposition to those 'medical entrepreneurs' who rank the pursuit of profit and market control over and above patient care. It is now the responsibility of the Commonwealth and State governments, in conjunction with the medical profession, to examine the activities of 'medical entrepreneurs' and bring them to public account where their actions are judged not to be in the public interest.

The Committee has also carefully examined the responses of Dr G W Edelsten. Because of sub judice principles comment on Dr Edelsten's submission will be tabled at a later date.

This report completes the Committee's inquiry into medical fraud and overservicing.

For and on behalf of the Committee,

Senator G Georges
Chairman

M J Talberg
Secretary
Joint Committee of Public Accounts
Parliament House
Canberra ACT
17 November 1986

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## DIAGRAMS

## ABBREVIATIONS

| | | |
|---|---|---|
| AAT | - | Administrative Appeals Tribunal |
| AFP | - | Australian Federal Police |
| AIH | - | Australian Institute of Health |
| APA | - | Approved Pathology Authority |
| APP | - | Approved Pathology Practitioner |
| AMA | - | Australian Medical Association |
| CO | - | central office |
| DoH | - | Commonwealth Department of Health |
| DPP | - | Director of Public Prosecutions |
| FODS | - | Fraud and Overservicing Detection System |
| HIA | - | Health Insurance Act |
| HIC | - | Health Insurance Commission |
| HP | - | hospital pathologist (Medicare benefit rate) |
| MBAC | - | Medicare Benefits Advisory Committee |
| MBS | - | Medicare Benefits Schedule |
| MPRC | - | Medicare Participation Review Committee |
| MSCI | - | Medical Services Committee of Inquiry |
| MSRT | - | Medical Services Review Tribunal |
| NATA | - | National Association of Testing Authorities |
| NPAAC | - | National Pathology Accreditation Advisory Council |
| OP | - | other pathologist (Medicare benefit rate) |
| PAC | - | Public Accounts Committee |
| RACR | - | Royal Australian College of Radiologists |
| RCPA | - | Royal College of Pathologists of Australasia |
| SP | - | specialist pathologist (Medicare benefit rate) |

# CHAPTER 1

## COMMITTEE COMMENT ON THE GOVERNMENT'S RESPONSE TO THE 236TH REPORT

- A Legislative Response
- Resources and Administrations
- NATA Accreditation of Laboratories
- The Health Legislation Amendment Act (No. 2) 1985
- The Health Legislation Amendment Act 1986

### A Legislative Response

1.1 This Chapter comments on the Department of Finance Minute (refer Chapter 3) responding to the Committee's 236th Report. The Department of Finance Minute was received by the Committee on 13 August 1986.

1.2 Overall the Committee welcomes the Government's response to the report on pathology. The response is timely and appears to establish an appropriate legislative framework to address many of the problems outlined in the Committee's Report. The key to this response has been the introduction of major amendments to the Health Insurance Act 1973 by the Health Legislation Amendment Act (No. 2) 1985 and the Health Legislation Amendment Act 1986.

1.3 In this case the Government's response to the recommendations of a parliamentary committee may be unique. Legislation directly addressing many of the Committee's recommendations was drafted by the Government, agreed to by the Parliament and assented to in the eleven months between the tabling of the Committee's Report and receipt of the Government's response. There are many reasons why this prompt action was possible and occurred. However it remains that, as with previous PAC inquiries, the Committee's Report and inquiry process acted as a catalyst for positive action in this instance.

1.4 34 of the Committee's 41 recommendations made in Report 236 have been accepted by the Government as follows.

| PAC Report 236 Recommendation No. | Finance Minute Response |
|---|---|
| 1 ,2, 3, 6, 10, 11, 14, 15, 18, 21, 22, 25, 26, 27, 28, 39 | 'Recommendation accepted and implemented by' or 'achieved in principle' by the Health Legislation Amendment Act (No. 2) 1985 and/or the Health Legislation Amendment Act 1986 |
| 4, 7, 8, 9, 12, 19, 24, 32 | 'recommendation accepted in principle' |
| 13, 16, 17, 29, 30, 31, 33, 40 | 'recommendation accepted' |
| 5, 23 | partial acceptance of recommendation |
| 20 | 'an alternative mechanism will be established' to that recommended |
| 34, 35, 36 | 'recommendations are desirable' but under consideration in the context of the Government's review of the 'Kerr White' Report on the Australian Institute of Health |
| 37, 38 | recommendations now not applicable |
| 41 | 'recommendation not accepted' |

1.5 The Health Insurance Act, as amended, and the Medicare Benefits Schedule regulate the payment of public money to providers of health services. They proceed on an assumption of good faith by those whose conduct they regulate. While medifraud matters can be directly addressed by legislative offence provisions it remains that, by their very nature, medical overservicing matters are matters for clinical judgement.

1.6 Formal arrangements for mechanisms leading to judgements about medical overservicing can be constructed as per the Health Insurance Act, e.g. Medical Services Committees of Inquiry, Medicare Participation Review Committees, ministerial approval of approved pathology practitioners and approved pathology authorities. However medical overservicing cannot, per se, be effectively legislated against. Indeed the word overservicing does not itself appear in the Health Insurance Act nor is it used by the Health Insurance Commission or the Department of Health. The term 'excessive services' is now used in preference to the word 'overservicing'.

1.7 Section 79(1B)(a) of the Act defines excessive services as:

> professional services, being services in respect of which medicare benefit has become or may become payable and which were not reasonably necessary for the adequate medical or dental care of the patient concerned.

1.8 Section 4 of the Health Legislation Amendment Act 1986 amends the Health Insurance Act by inserting a definition of an excessive pathology service in similar terms to that above.

1.9 In correspondence with the Committee the HIC Chairman has stated that :

> The Commission sees the term 'overservicing' as covering a much broader subject than the word suggests and therefore tends not to use the word to indicate excessive numbers of services upon which benefits have been paid. The Commission sees its responsibility to extend to all instances where benefits have been or are likely to be paid on services which should not attract benefit because they are either :
>
> - excessive in number,
> - excessive in scale (those where a simple procedure or test is replaced by a more complex procedure or test which has a higher schedule fee),
> - incorrectly described services in circumstances not provable as fraudulent misuse of the Medicare Benefit Schedule, eg billing separately for a service which is in itself part of another service or is an unnecessary prelude to a major service, or

- payable through manipulation at the point of delivery whilst being services which would not ordinarily attract benefit, eg situations where persons engaged in research or working privately alongside State programs (eg methadone programs) create cost in the private arena.

Resources and Administrations

1.10 The Committee believes that an essential caveat must apply to acceptance of the Government's response in the Finance Minute. The new legislative framework established by the Health Legislation Amendment Act (No. 2) 1985 and the Health Legislation Amendment Act 1986 will only be as good as the administration implementing it. This framework needs to be developed and reviewed regularly in consultation with the profession.

1.11 To improve the legal framework for combatting medical fraud and overservicing may be of little value if the administration of those laws is poor, unresponsive, unco-ordinated, inadequately structured or inappropriately resourced. Parliament, the Government and officers of the Public Service are responsible for ensuring that the Commonwealth's administrative effort in this area does not suffer these problems.

1.12 The Finance Minute (refer Chapter 3) gives little indication of how these legislative changes will be implemented. There is no information on the management systems backing these changes nor is there any significant measure of the resources (human and financial) that will be devoted to these changes.

1.13 Diagrams 1 to 3 overleaf portray the current view of systems for addressing provider fraud, public fraud and provider excessive servicing as at November 1986. These diagrams were obtained from the HIC as a result of recent Committee correspondence requesting the Commission's comments on the adequacy of present administrative arrangements and financial/personnel resources devoted to addressing medical fraud and overservicing. Similar comment was also sought from the Department of Health, the Director of Public Prosecutions and the Australian Federal Police.

Diagram 1

System for Addressing Provider Fraud as at November 1986

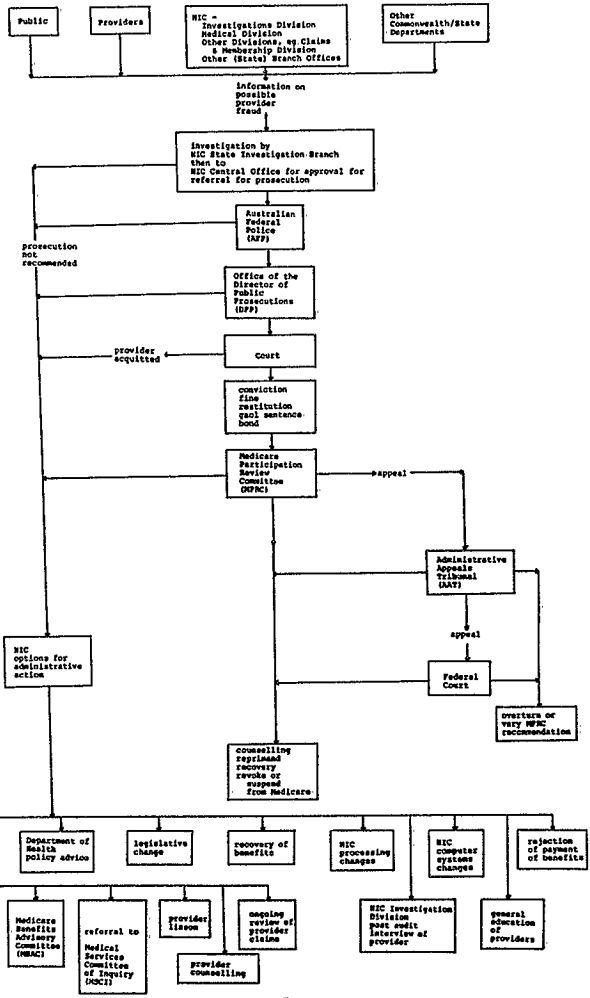
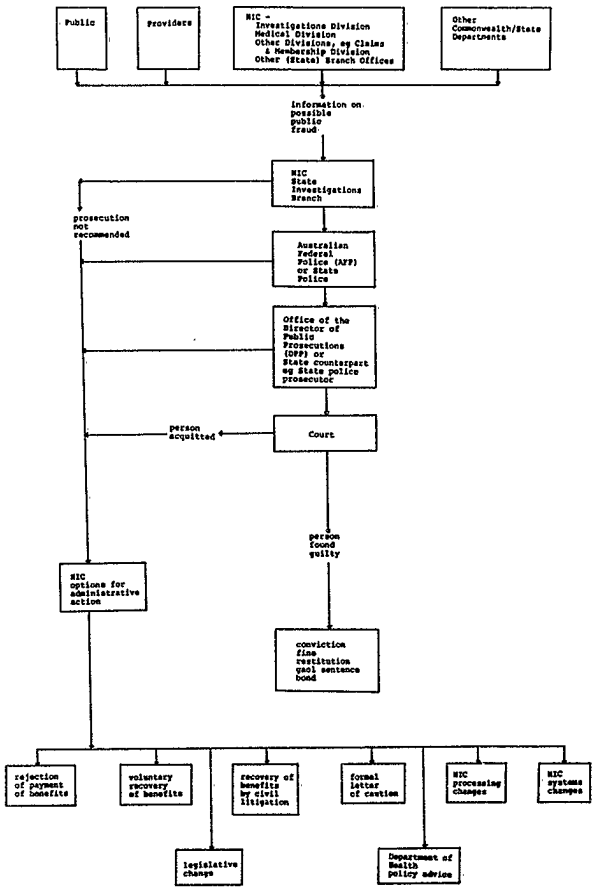


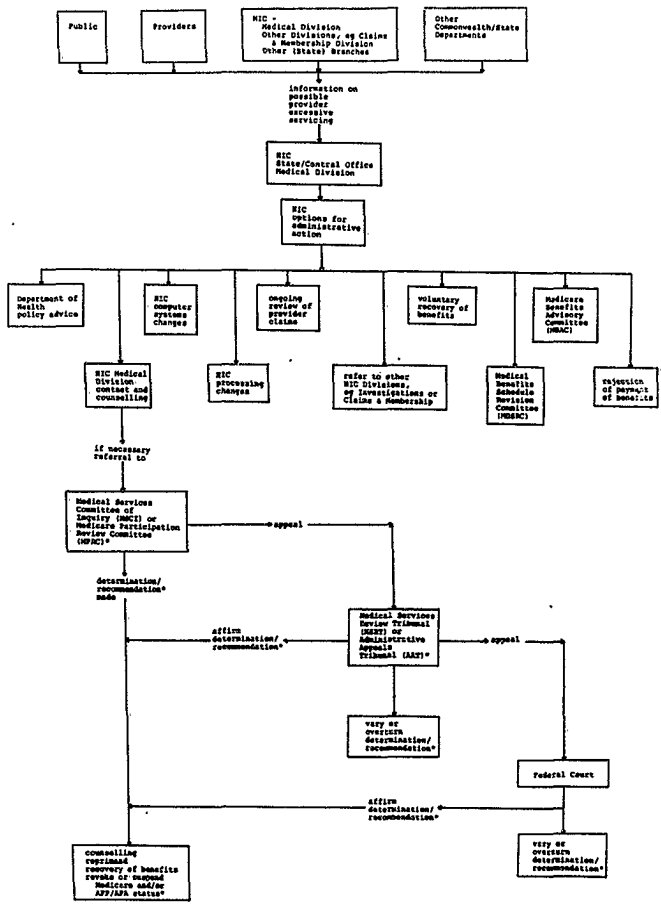
Diagram 2

System for Addressing Public Fraud as at November 1986



## Diagram 3

## System for Addressing Provider Excessive Servicing as at November 1986




*where an alternative course of action is denoted by an asterisk the second option is most case is expected to apply to excessive pathology services cases and breaches of pathology undertakings as per the new legislative arrangements assumed to but not yet promulgated

1.14 On the issue of the adequacy of finance it is refreshing to note that the Health Insurance Commission and the Director of Public Prosecutions said that present resources were generally satisfactory. The HIC Chairman commented that :

> The financial resources allocated to the various functions in the 1986/87 Budget are consistent with the proposed work program. Additional funding is being sought for the administration of the revised Approved Pathology Practitioners scheme.

1.15 The Office of the Director of Public Prosecutions also stated that :

> For the DPP's part sufficient resources have been allocated to the prosecution of medifraud offences as appears warranted and in fact the attention given to medifraud matters at present occupies a substantial amount of the Office's resources.

1.16 The Department of Health did not comment on the adequacy of its financial resources for this task, reflecting perhaps, the reduction in its functional/operational role and that its policy development and co-ordination role in medical fraud and overservicing matters may not now require additional funds.

1.17 The position of the Australian Federal Police, however, is substantially different to that of other Commonwealth agencies involved in administration relating to medical fraud and overservicing cases. In responding to the Committee's request for comment on the adequacy of present financial/personnel resources devoted to medical fraud and overservicing the Australian Federal Police stated that :

> The question of resources allocated by the AFP to medical fraud is a matter that has been covered in many forums over recent years and is now governed by the Charter of Objectives and Priorities issued by the Government in August 1985. You will note that the first two priorities for the AFP are drug trafficking and organised crime.
>
> The shortage of trained investigators within the AFP, against increased requirements, has become a matter of record.

> Any action to reduce the time taken to address cases of medical fraud is directly related to the level of resources available to the AFP and the priorities already mentioned. At present it is not possible to identify any increase in resources which would materially affect the present delays in completing criminal investigations into medical fraud. The time taken to complete such investigations will vary depending upon the circumstances of each case.

1.18 The AFP also commented on the difficulty it experiences when other related agencies become more effective :

> A major difficulty confronting the AFP in the area of medical fraud, and criminal investigations generally, is the increase in resources or changes in policies of Government departments and agencies. Clearly an increase in activity within such bodies as the Health Insurance Commission, results in a flow-on to the AFP in terms of the expected investigative response. The prioritisation of AFP investigations has been examined and a national priority system will soon be in place to ensure consistency in approach and resource allocation. This will not, however, resolve any imbalance between increased activity at the detection stage and AFP investigative resources. In enforcing priorities and applying the Government's directive on objectives and priorities it is not possible to maintain standing medical fraud investigative teams in each AFP region.

1.19 The adage that justice delayed is justice denied is also appropriate here.

1.20 The Committee believes that if problems with AFP personnel resource allocations delay proceedings to medical fraud prosecutions then there may be:

- a reduced prospect of success of prosecution matters as the credibility of witnesses suffers with the passage of time,
- a perception by complainants that nothing is being done to address the issues they have raised, and

- a perception in the community that, as matters are not being prosecuted, statements made concerning the nature and extent of medical fraud and overservicing are exaggerated or unfounded.

1.21 The Committee is aware that the Government, through the current Department of Special Minister of State 'Review of Systems for Dealing with Fraud on the Commonwealth', hopes to address this 'imbalance' referred to above. The AFP commented that the Review :

> is expected to be the widest and most thorough review of fraud upon the Commonwealth yet undertaken. In announcing the review the Special Minister of State said that it '... should provide an improved system for balancing investigation demands by agencies, better use of resources between departments and guidelines to assess cost effectiveness of present practices and new proposals'. There is no doubt that flowing from the review there will be changes in practices and procedures for combatting medical fraud and overservicing.

1.22 The Committee notes that the HIC is not optimistic about the prospect of short term solutions to AFP resources problems. The HIC General Manager has commented to the Committee that :

> Despite the current activity designed to address the Australian Federal Police resources problem the Commission sees no short term solutions. It is the Commission's policy to concentrate its efforts and resources towards major abuses of the Medicare program. Whilst this results in fewer cases being referred to the Australian Federal Police and Director of Public Prosecutions they are generally more complex. Constant changes of Australian Federal Police personnel allocated to medical fraud cases and the relative inexperience of some officers tends to contribute to inordinate delays in pursuing matters. Simply providing more officers to the Australian Federal Police may not resolve these problems in the short term unless they result in stability, and experienced officers being allocated to complex matters.

1.23 It is also noted that both the HIC and DPP are of the view that it is more effective to avoid the use of the criminal law (and hence AFP involvement) in medical fraud matters. The Office of the Director of Public Prosecutions, for example, comments as follows.

> In our last submission we expressed the view that consideration must be given to alternative means to enforce compliance with the (Health Insurance) Act, including improved procedures to delay or withhold payment on suspect claims and the greater use of civil proceedings to ensure that practitioners derive no benefit from making false claims. We remain of that view. In many cases in this area the use of the criminal law is an inappropriate and ineffective tool to ensure compliance with the (Health Insurance) Act.

1.24 Similarly the Chairman of the Health Insurance Commission states that :

> The present judicial processes do not easily accomodate matters as complex as medical fraud. The processes are time consuming, expensive and tend to expose to the public view aspects of a witness' private affairs which historically are regarded as confidential. Alternative means of addressing these matters need to be explored with the medical profession which would necessitate the profession taking greater responsibility for the conduct of its members.

1.25 Previously the Committee has stated its belief that ex post legal action and attempts at restitution and recovery are clumsy, inefficient and costly. It remains, however, that some degree of fraud can be expected to always occur within the Medicare system and that current cases of fraud need to be promptly and effectively addressed even if future cases are handled differently.

1.26 Generally the Committee supports the view that criminal sanctions for medifraud offences have a limited value. The over-use of criminal proceedings may prove counter-productive.

1.27 It appears to be more desirable to ensure compliance with the Health Insurance Act by improved procedures to delay or withhold payment on suspect claims and to have greater use of civil proceedings and Ministerial determinations with appropriate appeal mechanisms. This would appear to be particularly relevant where some 'entrepreneurial' practitioners are concerned.

1.28 The Office of the Director of Public Prosecutions has commented to the Committee that :

> ... cases of entrepreneurial doctors and cases where the aim is to maximise income under the system without necessarily infringing the law fall

within a very grey area. In these cases criminal prosecution may have a very limited role. Administrative measures and judgement by peers would seem to be a more appropriate manner by which such conduct can be regulated.

1.29 As well as the Finance Minute not providing any discussion on the financial/personnel resources allocated to the new legislative framework, no effective comment is provided on the administrative arrangments which underly this framework. In the main the Health Insurance Commission's administrative arrangments are most relevant here. The Commission's current administrative arrangements provide for the Audit and Investigations Division to administer matters relating to fraudulent activity whilst the Medical Division addresses all other anomalous claiming patterns, including excessive servicing.

1.30 The General Manager of the Commission commented to the Committee that :

> This ensures that the Medical Advisers work independently of the measures designed to eliminate fraudulent practices. A recent review of the two areas has confirmed that duplication and overlap of the two functions is being avoided by means of the computer systems and procedures designed to achieve that result.
>
> This arrangement has proved very successful. The medical profession, and in particular their representative professional bodies appear to appreciate the clear distinction which the Commission has drawn between fraud and other anomalies. This has facilitated the work of the Medical Advisers, who are no longer regarded as being part and parcel of the Investigations function. The revised legislation has also assisted in an improved relationship with the providers of services, as their concerns that they may be prosecuted for 'honest mistakes' or trivial breaches of the legislation have been allayed.

1.31 The Committee welcomes this separation of HIC administrative divisions addressing medical fraud and medical overservicing. Diagrams 1 to 3 reflect this separation as does the data at Appendix 7 detailing the establishments of the HIC Audit and Investigations Division and Medical Division. Notwithstanding this it remains that some providers, who both defraud and render excessive services under the Medicare system, will be the subject of attention from both HIC Divisions.

1.32 In addition current HIC policy provides that officers located in the States are Central Office outposted staff. This is designed to ensure consistency of policy and consistency in the implementation of policy - a welcome change from the previous unco-ordinated decentralised arrangements under the Department of Health when that Department had responsibility for 'surveillance and investigation' of medical fraud and overservicing.

1.33 The HIC also has systems resources dedicated to the functions of the Investigations Branch and the Medical Division. There are 8 officers within the HIC Systems Division who are engaged full time in maintaining, refining and developing computer systems unique to the Investigations and Medical areas. It is understood that systems developments and amendments are co-ordinated between the two areas to ensure that resources are allocated and used efficiently.

1.34 In response to the Committee's conclusion that appropriate resources be devoted to the HIC to ensure continued development of its Medicare claims review systems the General Manager of the Commission commented that :

> The amount of resources appropriate to administer a function such as this is always debatable. The resources allocated by the Commission as indicated at (Appendix 7) are considered appropriate but are kept under constant review so that an efficient and cost-effective performance is maintained.

Accreditation of Laboratories

1.35 The Committee observed at paragraphs 2.26-2.28 of its 236th Report that:

> One of the most serious problems with the APP scheme is that there is no requirement for APPs to either operate an accredited laboratory, and/or only refer work to other accredited pathology laboratories. Mandatory pathology laboratory accreditation is urgently needed to discourage the setting up and operation of 'backyard' pathology laboratories. Accreditation should also ensure that all pathology laboratories provide a high quality of service which is regularly reviewed by a respected, objective, professional agency to ensure maintenance of quality control, appropriate laboratory standards and required levels of clinical supervision. APP status should be linked to accreditation such that pathology services billed by the APP can only be provided via a fully accredited laboratory.

1.36 The Committee welcomes the Government's move to make pathology laboratory accreditation mandatory and understands that, consistent with the Government's decision on the Report of the Committee of Inquiry into Commonwealth Laboratories (Ross Report) the National Association of Testing Authorities (NATA) is the most appropriate testing authority for this purpose.

1.37 It is noted that NATA was established by a decision of Federal Cabinet in 1946 to operate a comprehensive national laboratory accreditation system. Its primary functions are:

- to define standards for good laboratory practice,
- to assess laboratories for compliance with those standards, and
- to encourage all laboratories to achieve those standards.

1.38 NATA's recognition of competence or accreditation follows a process of evaluation by expert assessors who examine a laboratory for compliance with predefined criteria which address all elements of laboratory operations such as staff, equipment, accomodation and facilities, quality assurance and laboratory practices. It is understood that accreditation is granted only when full compliance is demonstrated.

1.39 NATA's expertise is in the administration of an accreditation system. The technical expertise is provided by the voluntary contributions of individuals nominated by the Royal College of Pathologists of Australasia (RCPA), the Australian Society for Microbiology, the Australian Associated of Clinical Biochemists and the Australian Institute of Medical Laboratory Scientists. The Committee understands that NATA's discussions to date indicate that the NATA/RCPA program will have wide acceptance from laboratories throughout Australia.

1.40 Although the Finance Minute's response to Recommendation 1 'expects (that NATA/RCPA will) be responsible for the assessment of laboratories for accreditation purposes', the 1 August 1986 update of the Medicare Benefits Schedule Book (at paragraph 30, page iv) states that 'NATA in conjunction with the Royal College of Pathologists of Australsia is the testing authority' for accreditation.

1.41 The Committee welcomes this move as a long overdue reform but recognises that it will not necessarily reduce the amount of medical overservicing or the overall cost of medical services as accreditation is only concerned with the assessment of technical competence and the ability of a laboratory to generate reliable data. Mandatory pathology laboratory accreditation is essential for improving the quality of medical care but other systems are required to address the issue of medical overservicing.

1.42 The Committee reiterates the comment, made at paragraph 2.34 of its Report, that :

> Even with accreditation it is possible that commercial pathology laboratories - operated by entrepreneurs who rank profit maximisation, market control and accountability to shareholders over and above patient care - may perpetuate and possibly institutionalise overservicing.

1.43 The Committee notes with concern the comments made by Dr J Best in an article on the Australian pathology industry (Medical Journal of Australia, September 15, 1986, Vol. 145, pp. 291-293). Dr Best discusses the RCPA quality control programme where specimens for analysis are circulated to various pathology laboratories to test both the accuracy and the reproducibility of results from the different laboratories.

1.44 Dr Best comments that :

> In relation to the quality control programme, there have been reports of laboratories that send the unknown samples, which have been circulated to them as part of the programme, on to another laboratory with a 'reputation', the samples being sent with dummy names. The reputable laboratory performs the tests in good faith, and thus the first laboratory has its quality control tests performed unwittingly by another laboratory.

The Health Legislation Amendment Act (No. 2) 1985

1.45 This Act, together with the Health Legislation Amendment Act 1986, underpins the responses detailed in the Finance Minute at Chapter 3. The Act amends the Health Insurance Act 1973 to, among other things, :

(a) Introduce new recovery provisions and revised summary and indictable offences to cover circumstances where an overpayment of Medicare benefits has occurred as a result of the making of a false misleading statement. The recovery arrangements enable recovery action to be instituted against the person responsible for making the false or misleading statement, even though the person is not the recipient of the benefits.

(b) Provide for the establishment of Medicare Participation Review Committees to consider whether any action, including partial or full disqualification, should be taken in respect of a medical, dental or optometrical practitioner or an approved pathology practitioner who has been found guilty of offences related to the unlawful obtaining of medicare benefits.

(c) Provide for certain evidence obtained during counselling of practitioners by the Health Insurance Commission to be inadmissible in prosecutions for relevant offences under the Act.

(d) Specify that practitioners are to be responsible for the provision on accounts of the information necessary for the payment of medicare benefits.

1.46 Recommendation 21 of Report 236 related to improving the operation of the offences, recovery and disqualification provisions of the Health Insurance Act. The Finance Minute response (refer Chapter 3) accepting this recommendation is pleasing to note for several reasons.

1.47 The response refers to the Health Legislation Amendment Act (No. 2) 1985 which came into effect on 22 February 1986 providing a more flexible range of offence provisions, recovery of benefits wrongfully paid and the establishment of a Medicare Participation Review Committee. These moves are important in improving the unsatisfactory state of the Health Insurance Act for the purpose of prosecution. As mentioned previously, the Health Insurance Act is beneficial in nature and does not sit well with prosecution procedure. It appears that the complexity of the legislation may have, in the past, resulted in juries having trouble comprehending it for prosecution purposes. As well there appears to have been an understandable benign attitude on the part of courts and juries to offences by doctors under the legislation.

1.48 Prior to its amendment, Section 129(1) of the Health Insurance Act read as per Appendix 4.

1.49 A significant problem occurred with sub-section 129(3) where a defendent in a prosecution had a defence if he could establish, on the balance of probabilities, that he 'did not know, and had no reason to suspect', that a relevant statement was false or misleading. The rules of evidence require strict consruction for an indictable offence. Practitioners have been acquitted on the basis that a false statement was made by error,

that the practitioner or his staff misread or misconstrued the Schedule and where practitioners do not read material circulated by the Department of Health. Thus while sub-section 129(1) created an absolute offence there was little point in commencing proceedings unless there was clear evidence to rebut defences raised under sub-section 129(3).

1.50 The introduction of Sections 49 and 50 of the Health Legislation Amendment (No. 2) Act 1985 has improved this situation. Section 50 omits sub-sections (1), (1A), (1B) and (4) of Section 129 of the Health Insurance Act while Section 49 inserts two new Sections - 128A and 128B - into the Health Insurance Act as per Appendix 5.

1.51 Section 128A ('False statements relating to Medicare benefits, etc.') and 128B ('Knowingly making false statements relating to Medicare benefits, etc.') are important in introducing much needed new summary offence provisions with penalties of $2000 (sub-section 128A(1), (2) in addition to the indictable offence provision with a penalty of $10,000 or imprisonment for 5 years, or both (sub-section 128B (1), (2)). Sub-section 128A(5) appears to be an important improvement of the wording of the in-build defence provision (refer previous sub-section 129(3)). The effect of sub-section 128B(4) where a person not found guilty of 'knowingly making false statements relating to Medicare benefits ...' may be found guilty of 'making false statements ...' under sub-section 128(A) is also welcomed by the Committee.

1.52 These amendments should counteract previous problems with the enactment of the disqualification provisions of the Health Insurance Act. Previously such matters were not proceeded with because the defendant's alleged misconduct did not appear to warrant disqualification in the event of conviction.

1.53 The Committee notes that the Medicare Participation Review Committees established by Section 48 of this Act have relevance to the provisions of the new Sections 128A and 128B of the Health Insurance Act as outlined above. Where an offence under the new provisions or a relevant offence under the Crimes Act is found proven in a court of law against a practitioner the Minister for Health must notify the Chairperson of a Medicare Participation Review Committee of the court's findings. The Chairperson is then to form a Committee which will consider and determine whether any action should be taken concerning the practitioner's participation in the Medicare scheme. The Committee's powers include provision for counselling, reprimand and partial or full disqualification from participation in the Medicare scheme for a period of up to 5 years. The Committee's determinations are reviewable by the Administrative Appeals Tribunal.

1.54 In addition the Committee recognises that timely determinations of Medicare Participation Review Committees will be, as outlined below, crucial to the administration of the approved pathology practitioner scheme and the approved pathology authority scheme, particularly where excessive pathology services have been initiated. The provisions of the Health Legislation Amendment Act 1986 (refer below) are of relevance to this measure to combat overservicing.

1.55 Whilst it is too early to gauge the effect of these new provisions it is encouraging that both the 1985 and 1986 amendments to the Health Insurance Act appear to have the general support of the medical profession. The HIC General Manager commented to the Committee that :

> In particular the creation of the Medicare Participation Review Committees to provide for independent review of provider conduct with regard to the disqualification provisions and the removal of Approved Pathology Practitioner status is seen by the profession as a positive step. It provides for the profession a vehicle by which it can become involved in the processes which previously have caused it some concern. Whilst these measures remain untested at the time of writing (August 1986), the degree of co-operation afforded the Commission and the Department (of Health) by the various professional bodies in establishing their Committees augurs well for the future success of the scheme.

The Health Legislation Amendment Act 1986

1.56 This Act, like the Health Legislation Amendment Act (No. 2) 1985, amends the Health Insurance Act 1973 and in doing so lays the foundation for the direct or indirect implementation of most of the Committee's recommendations in Report 236. Introduced into the House of Representatives on 8 May 1986, it was passed by the Senate on 10 June 1986 and assented to on 24 June 1986 as Act No. 75 of 1986.

1.57 The Act amended the Health Insurance Act 1973 by:

(a) introducing a new 'approved pathology practitioner' scheme under which only medical practitioners (and a very small number of medical laboratory scientists) are eligible for approved pathology practitioner status. The amendments made by the Act also deal with how 'approved pathology practitioner' or 'approved pathology authority' status is achieved;

(b) providing that prima facie cases of breaches of required undertakings by approved pathology practitioners and Approved Pathology Authorities are referred by the Minister to Medicare Participation Review Committees for investigation and determination;

(c) providing for a system of accrediting pathology laboratories;

(d) making provision for the establishment of a Pathology Services Advisory Committee to advise and recommend to the Minister on item services for inclusion in a pathology services table and the fees appropriate for such services;

(e) making provision for a pathology services table, which is a table of medical services, to be included as Schedule 1A to the Health Insurance Act. This includes a number of 'prescribed pathology services' determined by the Minister which may be rendered by a medical practitioner who is not an approved pathology practitioner; and a number of 'pathologist-determinable' services which can be rendered by an approved pathology practitioner without a request from a medical practitioner - these services to be determined by the Minister following consultation with the Royal College of Pathologists of Australasia;

(f) providing that request forms for pathology services used by referring practitioners be approved by the Health Insurance Commission; and

(g) making certain other minor or consequential amendments.

1.58 Recommendations 1,2,27 and 28 of Report 236 all stress the need for pathology services to be personally supervised by approved pathology practitioners. The Committee welcomes the Finance Minute responses to these recommendations which refer to the implementation of Section 5 of the Health Legislation Amendment Act 1986. This Section is as follows (wherein the 'Principal Act' is the Health Insurance Act 1973):

5. After section 3 of the Principal Act the following section is inserted:

**Approved pathology practitioners to carry out pathology services or to supervise pathology services personally.**

3AAA.(1) For the purposes of this Act, a pathology service shall not be taken to be rendered on behalf of an approved pathology practitioner unless the service is rendered under the personal supervision of the approved pathology practitioner.

(2) For the purposes of this Act, a pathology service shall not be taken to be rendered under the personal supervision of an approved pathology practitioner unless the approved pathology practitioner-

(a) exercises a reasonable level of personal control over the rendering of the service; and

(b) has personal responsibility for the proper rendering of the service.

1.59 The 1 August 1986 update of the Medicare Benefits Schedule book's 'Notes for the Guidance of Medical Practitioners' details this amendment to the Health Insurance Act and explains the concept of personal supervision further, as follows.

Personal supervision by approved pathology practitioners means that they have to exercise a reasonable level of personal control over the rendering of the services and they have personal responsibility for the proper performance of the services.

Whilst it is recognised that approved pathology practitioners do not personally render all pathology services, there is an obligation on approved pathology practitioners to bear responsibility for those services which others provide on their behalf. In practice, personal supervision means that an approved pathology practitioner must, to the fullest extent possible, be responsible for exercising an acceptable level of control over the proper rendering of pathology services performed.

The approved pathology practitioner is directly accountable for the quality of the services performed and the methods used in rendering test. A nexus will be established as between the approved pathology practitioner/approved pathology authority undertakings and the accreditation standards to ensure that the appropriate levels of supervision are adequate. For example, it will be necessary to ensure that an adequate level of supervision exists to cover such matters as:

(i) compliance with accreditation requirements;
(ii) the proper performance of pathology tests;
(iii) the choice and correct application of test procedures;
(iv) the application of proper procedures for quality control; and
(v) the issuing and recording of the test results.

1.60 It is noted that Section 5 of the Health Legislation Amendment Act 1986 only restricts the rendering of 'for or on behalf of' pathology services to personal supervision circumstances. While the Committee appreciates that it may not be possible to abolish pathology services rendered 'for or on behalf of' approved pathology practitioners it remains that:

- Several interpretations can be placed on the term 'personal supervision' and while such difficulties with terminology could be reduced by amendments to the Health Insurance Act and Medicare Benefits Schedule it is questionable how far the process can be taken. It may become so long and complex that it may be virtually impossible to answer assertions by defendants that they were confused by the legislation into committing breaches of it.

- The amendment to the Health Insurance Act may not necessarily ensure that an approved pathology practitioner will be in attendance at all laboratories of a pathology group which has several branch/regional laboratories and a central laboratory. This would appear to be especially important where branch laboratories are processing tests at the SP (specialist pathology) Medicare Benefit Schedule fee rate but only being remotely 'personally supervised' by a specialist pathologist at the central/main office of the laboratory group.

- The 'personal supervision' amendment of the Health Insurance Act may not prevent an approved pathology practitioner or a specialist approved pathology practitioner working part-time for several laboratories and concurrently 'personally supervising' pathology services.

1.61 The Committee notes with concern that 'interpretation of test results' is not included in the list of matters given as examples in the Medicare Benefits Schedule book's 'Notes for the Guidance of Medical Practitioners' explanation of what 'an adequate level of supervision' is in respect of personal supervision of pathology services.

1.62 Section 19 of the Health Legislation Amendment Act 1986 addresses many recommendations of the Committee's 236th Report, including recommendations 1-8, 10-12, 14, 15, 20, 21, 27, 28, 30, 31, and 33. Because of the length and relevance of this Section to the Inquiry it has been included as Appendix 6 of this Report.

1.63 Section 19 inserts a new Part IIa 'Special Provisions Relating to Pathology' into the Health Insurance Act which contains a set of 15 provisions (Sections 23DA to 23DP) for:

- the undertakings provided by approved pathology practitioners and approved pathology authorities,
- procedures for investigating and determining breaches of undertakings and the initiation of excessive pathology services, and
- the framework for a scheme of accrediting pathology laboratories.

1.64 In line with recommendation 2 of the Committee's Report the Act (at Section 23DC) now provides that only natural persons - medical practitioners and certain medical laboratory scientists - can become approved pathology practitioners. Similarly recommendations 4 and 6 of the Committee's Report have been implemented by Sections 23DC and 23DF of the Act (refer Appendix 6 herein) relating to an annual review and levying of a fee for approved pathology practitioner and approved pathology authority status.

1.65 The Committee is particularly pleased to note that Section 23DC (2)(c), 23DC(6), 23DF(2)(c), 23DF(3) and 23DF(6) of the Act, in accordance with the Committee's recommendations, require annual applications for approved pathology practitioner and approved pathology authority status to be accompanied by a range of information about the applicant and that the Minister may require the provision of additional information.

1.66 The Committee welcomes the changed proceedures implemented by Section 23DM of the Act relating to pathology overservicing.

1.67 By virtue of Section 23DM the Act now stipulates that the Minister must follow the same procedures in relation to the initiation of excessive pathology services as apply to breaches of approved pathology practitioner or approved pathology authority undertakings. That is, notice must be given in writing to the person setting out the grounds for believing that the person has initiated excessive pathology services and asking that the person show cause why no further action should be taken. After the time allowed for the person to respond elapses the Minister may take no further action or refer the matter to the Chairperson of a Medicare Participation Review Committee.

1.68 It is understood that a major difference in relation to excessive pathology services procedures is that the Minister may notify any one of three classes of persons of the grounds for believing that the person had been instrumental in initiating excessive pathology services. These classes of persons are:

- the practitioner who initiated the services,
- the employer of the practitioner who caused or permitted the practitioner to initiate the services, or
- an officer of the body corporate employing the practitioner who caused or permitted the practitioner to initate the services.

1.69 The Committee notes that Section 15 of the Health Legislation Amendment Act 1986 assists in the implementation of recommendations 2, 3, 14, 15, 18, 27 and 28 of the Committee's 236th Report. This section repeals Section 16A, 16B and 16C of the Health Insurance Act and inserts a new Section 16A which specifies the conditions for the payment of Medicare benefits in respect of pathology services.

1.70 As recommended by the Committee this section details, among other things, that the following requirements need to be satisfied for Medicare benefits to be attracted:

(a) the treating practitioner must determine that the pathology service is necessary;

(b) the service has to be provided by or on behalf of an approved pathology practitioner (who must be a medical practitioner);

(c) the proprietor of the laboratory where the service is performed must be an approved pathology authority;

(d) the service is to be provided in a pathology laboratory accredited for that kind of service;

(e) the approved pathology practitioner providing the service must either be the proprietor of the laboratory or party to an agreement, either by way of contract of employment or otherwise, with the proprietor under which the service is provided;

(f) the service may only be provided in response to a request from the treating practitioner or from another approved pathology practitioner, and the request must be made in writing (or, if oral, confirmed in writing within fourteen days). A request is not required for a pathologist-determinable service or for a prescribed pathology service rendered by or on behalf of a medical practitioner (not being an approved pathology practitioner) and the medical practitioner by or on whose behalf the service is rendered is either the treating practitioner or one of a group of medical practitioners of which the treating practitioner is a member and who requested the service to be rendered.

1.71 The Committee is pleased to note the Government's response to recommendation 10 of Report 236 relating to the introduction of a campaign to educate practitioners on appropriate use of pathology services. The Government has adopted the Committee's recommendation. A start has been made by the allocation of $100,000 each year over the next three years to fund a program to encourage more appropriate use of pathology services. The program will include assistance to the Royal College of Pathologists of Australasia for the development and distribution of educational material to the RCPA and the Royal College of General Practitioners for continuing education activities for medical practitioners as well as an education program for medical interns in co-operation with the Deans of Medical Schools.

1.72 While the Committee welcomes the initiatives of the Government connected with the amendments to the Health Insurance Act it is disappointed with the ambiguity of some of the Finance Minute responses.

1.73 For example the response to recommendation 19 appears to shed little light on the question of resources for the Health Insurance Commission, the Department of Health and the National Association of Testing Authorities for the implementation of the new programs announced in the Finance Minute. It is always to be be expected that 'resources will be considered by the Government in the normal budgetary context'. The Committee's recommendation referred to 'appropriate' resources and not necessarily 'additional' resources. It may be possible for an internal re-allocation of funds to occur within the ministerial portfolios of Health and Industry, Technology and Commerce or within the Health Insurance Commission and the Department of Health.

1.74 Finally the Committee wishes to reiterate the statement, made in the preface of Report 236, that :

> The Committee believes the profession is well aware of most of the problems detailed in this Report and is anxious to improve the situation. The continued development of co-operation and consultation between the profession, the Minister and the Commonwealth's administration is essential if improvements are to be made in this area.

1.75 If the profession is to remain committed to combatting medical fraud and overservicing its participation and support for those areas that require direct professional input, for example (in the case of pathology) Medicare Participation Review Committees and the Pathology Services Advisory Committee, is essential.

## CHAPTER 2

## SUMMARY OF THE COMMITTEE'S 236TH REPORT

2.1 Tabled on 11 September 1985, (Parliamentary Paper 264/85) this report complemented the Committee's earlier medical fraud and overservicing reports by focussing on the accountability of Commonwealth Medicare benefits for pathology services.

2.2 The report's findings related to two broad areas - the changing nature of the pathology 'industry' in Australia and the difficulties and deficiencies in the Commonwealth's administration of the Approved Pathology Practitioner scheme, the Medicare benefits schedule and other associated responsibilities related to the Health Insurance Act.

2.3 The Report was an example of the Committee discharging its traditional duty of scrutinising the expenditure of public moneys as Medicare pathology benefits of some $300m were involved.

2.4 Many serious concerns about pathology were expressed to the Committee by the major medical associations, senior Commonwealth administrators, the Royal College of Pathologists of Australasia, pathology corporations, specialist pathologists and their technicians, other practitioners and patients. The report provided an insight into an 'industry' which the Parliament and the public appeared to know very little about. This was despite the somewhat ironic fact that most Australians are users of pathology services.

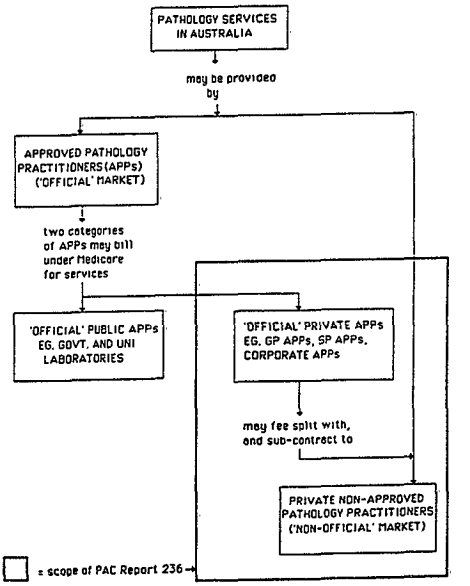
2.5 The first chapter of the report gave a statistical overview of the private Approved Pathology Practitioner sector of the local pathology 'industry' (refer Diagram 4). It detailed the degree of concentration in the private pathology industry and also gave an idea of the general cash flows involved and the location and number of practitioners who may render pathology. For example, the top 25 pathology groups received just over 50 per cent, or $44m, of Medicare pathology benefits during the March quarter of 1985. The top 7 pathology groups received 26 per cent of Medicare pathology benefits during the same three month period. Overall the Committee concluded from its examination of such statistics that:

- Pathology benefits are a significant and growing segment of Medicare expenditure which should be fully accounted for.

Diagram 4

Extract from PAC Report 236

"The Australian Pathology 'Industry'"



- There is legitimate cause for concern about some aspects of the nature of growth in pathology benefits, services and providers pre and post Medicare.

- The private pathology industry in Australia appears to exhibit oligopolistic characteristics, i.e. a small number of large pathology groups provide the majority of services.

- With the commencement of Medicare, and the Health Insurance Commission's provider claims review function, this Committee's and the Penington Report's concerns about the effective monitoring of medical services such as pathology should be addressed.

2.6 The second chapter of the Report revealed severe problems with the Department of Health's administration of the Approved Pathology Practitioner scheme and the urgent need to review all pathology practitioners, and their laboratories, for accreditation. In its review of the Approved Pathology Practitioner scheme the Committee concluded, among other things, that:

- The design and administration of the Department of Health Approved Pathology Practitioner scheme is grossly deficient and requires immediate reform.

- The membership of the Approved Pathology Practitioner scheme is 'open-ended' and its potential membership is huge because of inappropriate eligibility criteria.

- No regular, effective review of Approved Pathology Practitioners is undertaken or linked to Health Insurance Commission claims review montoring.

- There is no effective stimulus for Approved Pathology Practitioners to abide by the conditions of their Undertaking and its associated Code of Conduct.

- The 'once only' $10 Approved Pathology Practitioner license fee is an immaterial amount which appears to engender derision and disrespect of the Commonwealth's administration of the Approved Pathology Practitioner scheme.

- Fee splitting of pathology services is encouraged by current legislative arrangements, these arrangements may foster overservicing and allow poor quality services to be rendered to patients unchecked.

- The majority of professional pathologists and those allied to the profession appear to welcome the introduction of a high quality and nationally consistent pathology accreditation programme like that proposed by the National Association of Testing Authorities.

- Current legal remedies to combat pathology fraud and overservicing based on the Medical Services Committee of Inquiry system are completely unsatisfactory, inefficient and need urgent reform.

2.7 In chapter 3 of the Report the Committee examined the Medicare Benefit Schedule fees paid for pathology and the overwhelming and questionable dominance of pathology services rendered at high specialist (SP) pathology benefit rates as opposed to the very few services rendered at the ordinary (or other, OP) rate. It concluded, amongst other things, that:

- It could be expected that commercial laboratories will, if they have not done so already, move to 'acquire' specialist pathologists.

- Accreditation of Approved Pathology Practitioners and assessment of their laboratories may (if it is robust enough) counteract the 'lending' of specialist pathologists names but, by itself, not necessarily hinder the 'for-profit' attitude of some laboratories.

- Evidence suggests that there are insufficient specialist pathologists 'supervising' tests effectively enough to warrant SP (specialist pathology) fees being charged for all tests done at laboratories with SP (specialist pathology) status.

- The widespread application of advanced technology has greatly reduced the cost of many pathology investigations and the Medicare benefits do not appear to have been proportionately reduced.

- It is too late, difficult and inefficient to take effective action against pathology screening via ex post legal channels once an abuse has been detected. Preventative action via Medicare Benefits Schedule reform is preferable. Ex post legal action and attempts at restitution and recovery have been shown to be clumsy, inefficient and costly.

- There are parts of the Health Insurance Act and its Regulations which need amendment to clarify their meaning, limit their application, and facilitate prompt legal remedies.

- In respect of 'self determined' tests ('self determined' by the specialist Approved Pathology Practitioner or non-specialist Approved Pathology Practitioner) the initiating practitioner often has no say in their provision, nor does the patient or the Health Insurance Commission. Yet the initiating practitioner may be held responsible overall for the pathology costs he or she incurs, the patient who was not consulted may have to pay an additional moiety, and Medicare pays most if not all of the additional bill.

2.8 The final chapter in the Report commented on the way in which infiltration of 'entrepreneurs' into the industry had the potential to jeopardise the provision of universal health care in Australia.

2.9 The report expressed the view that the development of 'medical entrepreneurs' was the most difficult and serious problem confronting the profession and the Government. These people may or may not be medical practitioners and usually possess a very highly developed sense of organisational ability and business acumen. Entrepreneurial schemes offered to doctors to participate in the establishment of expensively decorated and equipped centres appear to, as stated by the AMA, 'imply a considerable amount of overservicing.'

2.10 The Committee found that these 'entrepreneurs' work just within the bounds of the law, pay lip service to professional ethics, and vigorously scrutinise regulatory measures both professional and governmental for loopholes and areas of imprecise specification. They rank the pursuit of profit and market control over and above patient care. The emergence of the incorportated 'medical entrepreneur' poses a serious threat to the quality of patient care in the community and has the potential to distort the allocation of Commonwealth Medicare benefits.

2.11 The Committee concluded that:

- Strengthening of the administration of the Approved Pathology Practitioner scheme - in particular *regular review of Approved Pathology Practitioners* upon re-appointment and the immediate introduction of mandatory accreditation should quickly remove unscrupulous 'entrepreneurs' from the non-Approved Pathology Practitioner market, and to some extent *dampen the undesirable side of some* Approved Pathology Practitioner and specialist Approved Pathology Practitioner commercial laboratories' 'entrepreneurial spirit'.

- *The recommendations of the Report should reveal* the 'medical entrepreneurs' business practices to the profession, the Commonwealth's administration

and the community and thus help generate a greater degree of public accountability. The need for such accountability is indisputable and paramount given the public funding of Medicare pathology benefits.

2.12 The Committee expressed their belief that further measures are needed in order to strengthen the resolve of both the profession and the Government to check the growth of undesirable 'entrepreneurial' practices in pathology. These measures involve both long and short term commitments to:

- strengthen professional ethics and their application;
- improve co-operation between the profession and the Government;
- enhance the information on 'entrepreneurial' activities available to agencies involved in reviewing Medicare claims; and
- developing a program of independent and objective research into the structure, ownership and economics of the Australian pathology industry.

2.13 The Committee reported that the growth of the new breed of 'medical entrepreneurs' needs to be checked if the profession is to maintain its effectiveness in society and accountability to society. Socially undesirable 'entrepreneurial spirit' in the provision of pathology services, or in any other area of medicine, cannot be combatted by any single or simple solution. Rather a combination of techniques need to be applied at a variety of levels - the problem is one for both the Government and the profession.

2.14 In respect of the impact of technology the Committee found that technological advances in pathology may assist 'entrepreneurs' to overservice. Generally, technological change in the field of pathology has led to a reduction in testing time, labour and cost through the increased use of multiple analysis procedures. The cost effectiveness of the technology which performs a number of pathology tests must be considered in the assessment of the Medicare Benefits Schedule, especially when new pathology tests are being considered for inclusion in the Schedule. Advances in technology have been rapid and have had significant effect on the operations of pathology laboratories, especially the larger commercial laboratories. These developments need to be closely monitored to allow consequential adjustments in remuneration to Approved Pathology Practitioners.

2.15 The Committee also formed the conclusion that in many cases where pathology abuse has occurred it appears that the patient has not been aware of the general type or extent of

pathology tests being ordered. Better informed patients, interacting with their medical practitioners on the pros and cons of pathology investigations and having increased potential to audit the bills for services provided, could lead to more rational health care and use of pathology services.

2.16 Generally the Committee found that there are significant problems in the profession taking action to self regulate 'pathology entrepreneurs' via peer review and the application of professional ethics. Also, knowledge of many characteristics of the Australian pathology industry is poor in both the Commonwealth's administration and the profession generally.

2.17 *When tabling the report the Committee's Chairman said:*

> It is clear from the report that further improvements need to be made to systems in the Department of Health and the Health Insurance Commission. Undoubtedly the most disappointing aspect of this inquiry concerns a continued lack of suitable effective structures to handle cases of overservicing. Current remedies to combat pathology overservicing based on the Medical Services Committee of Inquiry system are completely unsatisfactory, inefficient and need urgent reform. Three years ago the Committee recommended that this system be scrapped and replaced. Yet to date, despite what appear to be the best intentions of government, in consultation with the profession, there has been no change. This situation needs to be remedied immediately. The provision of quality health care in Australia needs to be both publicly accountable and cost effective.

## CHAPTER 3

## DEPARTMENT OF FINANCE MINUTE

- General Comments - Department of Health
  - Department of Industry, Technology and Commerce
- Response to Recommendations

3.1 This Minute has been prepared on the basis of responses received from the Departments of Health and Industry, Technology and Commerce.

3.2 In this chapter each of the Committee's recommendations is reproduced in turn and is followed by the response provided by the Department of Health following consideration of the issues by the Government. In addition to the responses, the following general comments are made.

### General Comments

### Department of Health

3.3 In October 1985 the Minister for Health announced the Government's intention to introduce legislation as soon as practicable in 1986, to improve the existing pathology arrangements particularly in relation to the monitoring of pathology services and to remove areas of abuse identified by the Joint Parliamentary Committee of Public Accounts.

3.4 In keeping with this intention the Minister introduced the Health Legislation Amendment Bill 1986 into the House of Representatives on 8 May 1986. The Bill received Royal Assent on 24 June 1986. The amendments contained in the Act are a result of a review by the Government of the existing provision of pathology services and substantially incorporate the recommendations of the Committee.

3.5 The existing Part 7 (Pathology) of the Medicare Benefits Schedule has been removed and placed in a separate Schedule as per Schedule 1 of the Act.

3.6 The Act introduces a new Approved Pathology Authority (APA) scheme under which proprietors of pathology laboratories will be required to sign Undertakings before they can participate in the new arrangements. Only medical practitioners will be eligible to become Approved Pathology Practitioners (APPs) under the APP arrangements.

3.7 This revised APP scheme, in combination with the new APA scheme and the accreditation of laboratories, will provide effective measures to control those abuses and deficiencies identified in the Committee's report on pathology. The Health Insurance Commission will administer the APP and the APA schemes since these schemes will become an integral part of the Commission's administration of Medicare benefit payment arrangements.

3.8 The main purpose of accreditation is to provide quality assurance and this is primarily a matter for the States. The States will continue to be encouraged to introduce legislation for the accreditation of pathology laboratories. New South Wales and Victoria have already passed legislation to enable accreditation to be introduced, based on the National Pathology Accreditation Advisory Council (NPAAC) guidelines. The Commonwealth will operate laboratory accreditation arrangements for those States which do not have legislation. Payment of Medicare benefits for pathology tests will only be made for tests performed in an accredited laboratory, personally supervised by an APP and where the proprieter of the laboratory has APA status.

3.9 It is anticipated that the revised APP and new APA schemes and the accreditation arrangements will commence on 1 January 1987. Provisional accreditation will be available on application but the Commonwealth expects laboratories to be fully accredited within two years of the commencement of the scheme.

3.10 A feature of the Act, which is not reflected in the responses, is the Government's decision to reduce the fees at the specialist pathologist (SP) and other pathologist (OP) rate for a group of 18 tests which include the most commonly performed pathology items in the Medicare Benefits Schedule, and to eliminate the corresponding hospital pathologist (HP) rate which is unique to those items.

3.11 The Act provides for the Minister to have new power to restrict the number of pathologist-determinable services (self-determined tests) that can be provided without a request from a treating practitioner.

3.12 Penalty provisions have been introduced in relation to requests for tests and confirmation of requests. It is an offence (subject to a fine not exceeding $1000) if: an APP does not keep request forms for 18 months and does not produce a request form to an officer of the Health Insurance Commission before the end of the day following the day of the officer's request; an APP or a practitioner does not confirm in writing an oral request within seven days; or an APP or an APA provides request forms to practitioners which are not in accordance with an approved form.

3.13 In addition, section 129AA, relating to bribery, has been strengthened. It will be an offence for a person to offer inducements or threaten a practitioner or to invite or pressurise a practitioner into requesting the rendering of a service. The section extends the existing provision to both direct and indirect inducements and it clarifies that the threatening of detriments can be as much a part of bribery as inducements are.

3.14 It is stressed that the new administrative arrangements are expected to provide effective measures to control abuses and place restrictions on eligibility to receive benefits. Whilst a more effective mechanism will be used to deal with breaches of the Undertakings and the initiation of excessive pathology services through the Medicare Participation Review Committee, the need for penalty provisions to cover breaches of the legislation over and above those previously mentioned has substantially diminished.

3.15 In summary, the new arrangements are designed to:

- provide greater control and supervision over quality and standards for pathology services through accreditation of laboratories;
- restrict payment of Medicare benefits to those pathology services performed in laboratories which are accredited under State legislation or accredited by the Minister for Health;
- introduce new arrangements whereby the proprietors of laboratories are required to give Undertakings (APA scheme) similar to APPs;
- ensure that the APP supervises and is responsible for the quality of work performed in accredited laboratories;
- revamp the APP arrangements which will ensure that only natural persons who are medical practitioners can be APPs;
- generally tighten the overall arrangements to ensure that possibilities for abuse are, as far as possible, significantly reduced or eliminated;
- reduce significantly the ability of pathologists to perform self-determined tests; and
- provide a separate Pathology Services Advisory Committee to oversight the new pathology schedule.

Department of Industry, Technology and Commerce

3.16 The National Association of Testing Authorities (NATA), which is an incorporated non-profit company established by the Commonwealth in 1947, is a respected independent authority on laboratory accreditation generally. The Association has proven expertise and widespread industry support for its operation. NATA's governing council has a balanced structure with representatives drawn from Commonwealth and State governments, regulatory bodies and industrial and commercial interests. The Department of Industry, Technology and Commerce represents the Commonwealth's interests on NATA's Board of Management.

3.17 The Department funds NATA to accredit private and public sector laboratories of demonstrated competence and capability to provide a nationwide network of facilities to meet the calibration, measurement and testing needs of industry, government and the community. The Commonwealth grant to NATA for 1985/86 is $918,000.

3.18 Since 1983 NATA has conducted a voluntary pathology laboratory registration scheme throughout Australia in conjunction with the Royal College of Pathologists of Australasia (RCPA). To date NATA has made direct contact with 183 pathology laboratories and has registered 5 laboratories.

3.19 Of relevance to the consideration of the Committee's recommendations is the Government's decision of 18 November 1985 on the Report of the Committee of Inquiry into Commonwealth Laboratories (Ross Report). This decision requires, inter alia, that all Commonwealth laboratories which provide testing services secure and maintain NATA accreditation. (see G47(i) of the attached Government Endorsed Recommendations at Appendix A) and that non-Commonwealth laboratories to which the Commonwealth contracts the delivery of scientific services be NATA accredited (see G48(i) at Appendix A).

3.20 In addition, the decision makes mandatory NATA accreditation of private pathology laboratories for whose services the Commonwealth meets the greater part of the cost (see G49 at Appendix A).

RECOMMENDATION 1

> Pathology tests for which Medicare benefits are paid must be performed in laboratories personally supervised by resident Approved Pathology Practitioners who are accredited for the Commonwealth by the National Association of Testing Authorities.

Response

3.21 This recommendation has been implemented by section 5 of the Act which provides for tests to be rendered under the personal supervision of an APP and section 19, Division 4 which provides for the accreditation of pathology laboratories.

3.22 NATA, in conjunction with the Royal College of Pathologists of Australasia, is expected to be responsible for the assessment of laboratories for accreditation purposes, whilst the Health Insurance Commission will be responsible for the administration of the revised APP arrangements. In addition, the Commission will also administer the new APA arrangements.

RECOMMENDATION 2

> The Approved Pathology Practitioner eligibility criteria in the Health Insurance Act be amended such that pathology services may not be rendered 'for or on behalf of' an Approved Pathology Practitioner and that only natural persons can be considered for Approved Pathology Practitioner status and accreditation.

Response

3.23 The restriction of APP status to natural persons has been accepted.

3.24 Section 5 of the Act provides that tests must be rendered under the personal supervision of an APP. This will restrict "for or on behalf of" services to these circumstances. Sections 15 and 18 set out the conditions for the payment of Medicare benefits and for the assignment of benefits. Section 19 provides that only medical practitioners (natural persons) can be APPs.

RECOMMENDATION 3

> If a need for pathology services to be rendered 'for or on behalf of' an accredited Approved Pathology Practitioner can be demonstrated because of special conditions, eg geographical isolation, then Department of Health approval for the rendering of such services should be specific and appropriately constrained.

Response

3.25 See Response to Recommendation 2.

RECOMMENDATION 4

> Approved Pathology Practitioner status be renewable annually after adequate administrative examination and review of the Approved Pathology Practitioner by the Department of Health, in conjunction with the Health Insurance Commission, and after consultation with the National Association of Testing Authorities about the adequacy of the Approved Pathology Practitioner's laboratory standards and organisation.

Response

3.26 This recommendation has been accepted in principle.

3.27 Section 19 of the Act provides for the annual review of APP status and for the accreditation of pathology laboratories.

3.28 The new arrangements covering APPs and APAs are to be administered by the Health Insurance Commission.

RECOMMENDATION 5

> The Approved Pathology Practitioner Undertaking and associated Code of Conduct be immediately revised by the National Pathology Accreditation Advisory Council and thereafter kept under regular review by a sub-committee of the National Pathology Accreditation Advisory Council in consultation with the National Association of Testing Authorities.

Response

3.29 This recommendation has been accepted in principle (see section 19, Division 2 of the Act) but the Government has decided against any direct involvement by the NPAAC.

3.30 The current Undertaking for APPs is being revised and a new Undertaking for the new APAs is being developed by the Health Insurance Commission in consultation with the Department of Health and the Attorney-General's Department.

3.31 Both Undertakings will be kept under review by the Health Insurance Commission.

3.32 There will be no specific Code of Conduct.

RECOMMENDATION 6

> The Approved Pathology Practitioner license fee be reviewed and made an annual fee of a material amount, linked to the scale of an Approved Pathology Practitioner's practice and sufficient to cover an appropriately apportioned element of the Approved Pathology Practitioner scheme's administrative cost.

Response

3.33 This recommendation has been implemented in part by section 19, Division 2 of the Act.

3.34 The revised APP and the new APA fees are to be set at $100 initially. (An accreditation inspection fee will be implemented and set by the testing authority.)

3.35 The Government has decided that the fees should not be linked to the scale of the APP's/APA's practice but rather will be prescribed from time to time by Regulation and varied by the Minister for Health having regard to the administrative costs of the accreditation arrangements.

RECOMMENDATION 7

> All pathology laboratories operated by accredited Approved Pathology Practitioners be required to be examined as part of the National Association of Testing Authorities Approved Pathology Practitioner accreditation process under the terms recommended by the National Pathology Accreditation Advisory Council.

Response

3.36 This recommendation has been accepted in principle.

3.37 Section 19, Division 4 of the Act provides for the accreditation of pathology laboratories.

RECOMMENDATION 8

> The National Association of Testing Authorities/Royal College of Pathologists of Australasia scheme be adopted for pathology laboratory inspection and assessment as part of an Approved Pathology Practitioner's accreditation renewal.

Response

3.38 This recommendation has been accepted in principle.

3.39 All States, through the NPAAC, have agreed in principle that the NATA/RCPA be the inspecting authority for accreditation assessment of laboratories.

3.40 Section 19, Division 4 of the Act empowers the Minister for Health to determine guidelines to be applied for accreditation purposes.

RECOMMENDATION 9

> The Commonwealth ensure that its mandatory Approved Pathology Practitioner accreditation arrangements complement, or be satisfied by, similar existing State Government programs where applicable.

Response

3.41 This recommendation has been accepted in principle.

3.42 The Commonwealth will accept laboratories accredited under State legislation (currently New South Wales and Victoria) in conjunction with its own accreditation scheme.

3.43 It should be noted that pathology laboratories and not APPs will be accredited.

RECOMMENDATION 10

> Commonwealth pathology accreditation legislation should be designed to introduce a national programme for those State and Territory governments currently lacking legislation.

Response

3.44 The recommendation has been accepted and is reflected in section 19, Division 4 of the Act.

RECOMMENDATION 11

> Where States and Territories do not have pathology accreditation implementation programmes, the Commonwealth should offer to provide those programmes.

Response

3.45 See Response to Recommendation 10.

RECOMMENDATION 12

> In the absence of State or Territory accrediting machinery, the Commonwealth's National Association of Testing Authorities based accrediting machinery should be employed.

Response

3.46 This recommendation has been accepted.

3.47 See Response to Recommendation 8.

RECOMMENDATION 13

> Commonwealth inspection reports and recommendations obtained via the National Association of Testing Authorities system should be forwarded to State and Territory accreditation boards where constituted, and pro rata cost sharing arrangements be negotiated.

Response

3.48 This recommendation has been accepted. The inspection authority, expected to be NATA, will provide reports, recommendations and other relevant data to those States which establish Accreditation Boards - currently New South Wales and Victoria.

3.49 As the Commonwealth will accredit laboratories in the other States, NATA reports will be forwarded to the Commonwealth Department of Health for consideration.

3.50 Inspection fees for all laboratories will be a matter between NATA and the individual laboratories.

RECOMMENDATION 14

> Service companies be permitted to provide premises, equipment and staff to accredited Approved Pathology Practitioners at commercial rates. All documentation specifying the conditions for the provision of such resources be available for inspection at the granting and annual renewal of Approved Pathology Practitioner status by the Department of Health in conjunction with the Health Insurance Commission.

Response

3.51 This recommendation has been accepted and implemented by section 15, which provides for contractual arrangements between APPs and proprietors of laboratories which are APAs and section 19, Division 2, which covers the Undertakings to be given by APPs/APAs.

RECOMMENDATION 15

> The Health Insurance Act be amended specifically to prohibit fee splitting.

3.52 This recommendation has been accepted in principle and has been implemented by the combined effects of section 5, which provides for the personal supervision of the APP in the performance of tests; sections 15 and 18 which set out the conditions for the payment of Medicare benefits and for the assignment of Medicare benefits; and section 19, Division 4, which provides for the accreditation of pathology laboratories.

RECOMMENDATION 16

> SP (specialist pathology) Medicare benefits be payable only to accredited specialist pathologists who are recognised by the National Specialist Qualification Advisory Committee.

Response

3.53 This recommendation has been accepted.

3.54 Tests will attract the SP rate only where they have been performed in an accredited laboratory and supervised by a recognised specialist pathologist who is an APP.

RECOMMENDATION 17

> OP (other pathology) Medicare benefits be available to accredited medical practitioners, and certain recognised accredited scientists.

Response

3.55 This recommendation has been accepted.

3.56 The OP rate will continue to be available for tests performed by:

- APPs who are not recognised specialist pathologists;
- Medical Scientists who currently have APP status;
- Specialist pathologists rendering services to private patients in a recognised hospital;
- Specialist pathologists rendering services at an out-patient clinic of a recognised hospital; and
- Specialist pathologists rendering pathology services using facilities provided by a recognised hospital or laboratory facility, or when a member of staff of a recognised facility participates.

RECOMMENDATION 18

OP (other pathology) Medicare benefits remain applicable to tests self-determined by accredited recognised specialist pathologists.

Response

3.57 This recommendation has been accepted and implemented by section 10 in respect of 'pathologist determinable services' which will continue to attract the OP rate.

RECOMMENDATION 19

Appropriate resources be devoted -

- to the Health Insurance Commission to ensure continued development of its Medicare claims review systems;
- to the Department of Health to permit the administration of the Approved Pathology Practitioner scheme to be significantly upgraded and maintained; and
- to the National Association of Testing Authorities to enable it to accredit Approved Pathology Practitioners effectively.

Response

3.58 This recommendation has been accepted in principle.

3.59 The question of additional resources will be considered by the Government in the normal budgetary context.

RECOMMENDATION 20

As a matter of urgency, the existing Medical Services Committee of Inquiry system be replaced with a Medical Tribunal system along the lines of that originally recommended by the Committee in its 203rd Report.

Response

3.60 The Government has decided that an alternative mechanism will be established.

3.61 Section 19, Division 3 of the amending legislation provides for breaches of Undertakings, including the initiation of excessive pathology services by the treating practitioner, the APP or the APA, to be considered by the Medicare Participation Review Committee established under the Health Insurance Act instead of the Medical Services Committees of Inquiry.

3.62 The Health Insurance Commission is developing a proposal in consultation with the Australian Medical Association to replace the Medical Services Committees on Inquiry.

RECOMMENDATION 21

**After appropriate consultation with the medical profession, the Health Insurance Act be amended to ensure that the offences, recovery and disqualification provisions of the Act can be effectively and efficiently used to combat medical fraud, and where applicable, medical overservicing.**

Response

3.63 This recommendation has been accepted.

3.64 The Health Insurance Act 1973 was amended by the Health Legislation Amendment Bill (No. 2) 1985, which came into effect on 22 February 1986. This Act:

- provides for a new summary offence provision in respect of practitioners for the making of false or misleading statements with a maximum penalty of $2,000;
- provides for a new indictable offence provision against practitioners who knowingly make false or misleading statements with maximum penalties of 5 years imprisonment or $10,000 or both;
- provides for the recovery of wrongfully paid Medicare benefits from the person responsible for making the false or misleading claim; and
- establishes a new independent Medicare Participation Review Committee which will consider whether any action including partial or full disqualification should be taken against practitioners who have been found guilty of offences related to unlawfully obtained Medicare benefits.

3.65 See Response to Recommendation 20 regarding excessive pathology services.

RECOMMENDATION 22

> The procedure for revision and monitoring of the Medicare Benefits Schedule be regularly reviewed to ensure that changes to the Medicare Benefits Schedule are timely and responsive to allegations of widespread abuse, and reflect cost reductions which stem from the development of technology which underlies many Medicare Benefits Schedule items.

Response

3.66 This recommendation is accepted.

3.67 Part 7 (Pathology) has been removed from the existing Medicare Benefits Schedule and placed in a separate Pathology Schedule. The items covered in this new Schedule are contained in Schedule 1 to the Act and will come into operation on 1 August 1986.

3.68 Section 21, Division 2A provides for the establishment of a new Pathology Services Advisory Committee whose functions will be to review pathology items and fee levels (in relation to the new Pathology Schedule), consider related matters and make recommendations to the Minister for Health.

RECOMMENDATION 23

> Certain minor procedures, such as collecting blood for pathology testing (Medicare Benefits Schedule items 907, 955) and carrying out certain simple pathology tests (eg Medicare Benefits Schedule items 987, 989, 2334 to 2342 and 2352 to 2392 inclusive) should not attract Medicare Benefits Schedule benefits when they are performed in association with attendances for which Medicare Benefits Schedule benefits are payable. These procedures should be incorporated in the general attendance items.

Response

3.69 The Government has accepted that Item 955 (venepuncture and the collection of blood) be deleted from the Medicare Benefits Schedule. This will be effected by a Regulation to the Health Insurance Act and will come into force on 1 August 1986.

3.70 The Government has not accepted that the 13 simple pathology tests should be deleted from the Schedule. However, it is intended that the Pathology Services Advisory Committee will, as one of its first tasks, review the level of all pathology fees and the appropriateness of pathology items (see also response to Recommendation 22).

RECOMMENDATION 24

The Health Insurance Commission continue development of its review systems to ensure that the use of pathology tests for health screening is blocked and no Medicare benefits are paid in these instances.

Response

3.71 This recommendation has been accepted in principle.

RECOMMENDATION 25

Consideration should be given to the introduction of specific penal provisions in the Health Insurance Act stating that an offence is committed when services have been incorrectly itemised at the SP (specialist pathology) rate instead of the OP (other pathology) rate.

Response

3.72 This recommendation has been accepted.

3.73 Sub-sections 128A(1) and 128B(1) of the Health Insurance Act, which came into operation on 22 February 1986, allow for prosecution in the circumstances called for in this recommendation.

RECOMMENDATION 26

Relevant legislative amendments should be introduced to clarify and limit the application of the term 'supervision' in respect of tests billed at the SP (specialist pathology) rate.

Response

3.74 This recommendation has been accepted. Section 5 provides that pathology tests must be rendered under the personal supervision of an APP.

RECOMMENDATION 27

SP (specialist pathology) Medicare Benefits Schedule fees should only be payable for pathology tests done at branch laboratories of a pathology group (or at central/other laboratories) where a recognised and accredited specialist pathologist is in resident attendance and personally supervising testing.

Response

3.75 Section 5 provides that pathology tests must be rendered under the personal supervision of the APP; section 15 sets out the conditions for the payment of Medicare benefits; and section 19, Division 4 provides for the accreditation of pathology laboratories. These provisions in combination achieve in principle the major thrust of this recommendation.

RECOMMENDATION 28

**The Health Insurance Act should be amended to prohibit the discounting of Medicare benefits.**

Response

3.76 This recommendation has been accepted and implemented by section 5 which provides for the personal supervision of the APP in the performance of tests; section 15 which sets out the conditions for the payment of Medicare benefits; section 18 which covers the assignment of Medicare benefits; and section 19, Division 4 which provides for the accreditation of pathology laboratories.

RECOMMENDATION 29

**Both the Medicare bills and relevant test results should be required to state clearly which services were 'self determined', bringing this to the attention of both originating practitioners and their patients, and also facilitating any follow-up enquiries that may be judged necessary by the Health Insurance Commission.**

Response

3.77 This recommendation has been accepted.

3.78 Pathologists determinable tests (self-determined tests) will be restricted to those approved by the Minister for Health in consultation with the RCPA. Such tests will be required to be clearly indicated on accounts, receipts and other accountable forms.

RECOMMENDATION 30

**A sampling system for routine auditing of 'self determination' should be introduced by the Health Insurance Commission. This could be based upon matching original requests (that are currently required to be held by pathologists) for pathology reviews with the consequent reports of results and bills.**

Response

3.79 This recommendation has been accepted.

3.80 Currently the matching of original requests against tests performed and charged for by pathology laboratories are an important part of the Health Insurance Commission's review and audit procedures in situations where there are apparent problems.

3.81 This process will be assisted by section 19, Division 2 which provides that a request form must be produced within 24 hours (currently 14 days) on request from an officer of the Health Insurance Commission and by section 10 which restricts self-determined tests to those approved by the Minister for Health.

RECOMMENDATION 31

**'Self-determination' should be restricted to individual case by case decisions or authorisations by the responsible specialist pathologists. This should eliminate the common current arrangements whereby generic instructions are given to technical staff so that whenever a particular investigation is requested by an originating clinical practitioner other (usually additional) tests are performed at extra cost.**

Response

3.82 This recommendation has been accepted.

3.83 See response to Recommendation 29.

RECOMMENDATION 32

**Sufficient resources should be made available to the Health Insurance Commission to permit it to complement the Medicare claims information provided by its systems with details derived from field surveys. Such surveys should encompass -**

- **searches of company records to determine the ownership of pathology companies;**
- **research to establish the ownership and relationship of relevant subsidiary companies to their main corporate bodies;**
- **precise identification of those providers, together with their qualifications, in whose names services are being billed; and**
- **research to establish if a specialist pathologist is actively engaged in the provision or supervision of those services billed under his/her provider number, or has 'lent' his/her name for specialist billing purposes only.**

Response

3.84 This recommendation has been accepted in principle.

3.85 Applications for APA Undertakings will require the applicant on the approved form to show information such as full details of the corporate structure including all natural persons who have a financial or other material interest and details of interests held by such persons with any medical practice/practitioners who may request pathology services. Details about the operation of the business such as staff numbers, qualifications etc will also have to be stated.

3.86 The Minister for Health, in considering such applications, is required to have regard to whether or not a person is the subject of a determination by the Medicare Participation Review Committee or is seeking to assist a disqualified medical practitioner in avoiding the financial consequences of disqualification.

3.87 Unless the Minister considers that the applicant is a fit and proper person having regard to these matters, the Undertaking will not be accepted.

RECOMMENDATION 33

> The Health Insurance Commission place a special emphasis on reviewing the claims of new (active) Approved Pathology Practitioners.

Response

3.88 This recommendation has been accepted.

3.89 The Health Insurance Commission will continue to monitor the billing patterns of all APPs; special emphasis will be given to reviewing new APPs.

3.90 In addition the Commission will also monitor the activities of APAs approved under the new arrangements for laboratory proprietors - section 19, Divisions 2 and 3.

RECOMMENDATION 34

> The Australian Institute of Health conduct a detailed industry study of the provision of pathology in Australia to assess and report various industry-wide economic characteristics.

Response

3.91 It is agreed that studies such as those proposed in Recommendations 34, 35 and 36 are desirable. However, in January 1986 the Minister for Health received a Report from Professor Kerr White on an 'Independent Review of Research and Educational Requirements for Public Health and Tropical Health in Australia'.

3.92 The Report's recommendations impact on the establishment and role of the Australian Institute of Health (AIH). The Government will consider the implications of the Report and its recommendations. Recommendations 34, 35 and 36 of the Committee which affect the AIH will be taken into account when the Government considers the Kerr White Report.

RECOMMENDATION 35

The Australian Institute of Health survey and document systems of pathology accreditation and the provision of pathology services in other countries.

Response

3.93 See Response to Recommendation 34.

RECOMMENDATION 36

The Australian Institute of Health develop and undertake a comprehensive research program to analyse specific aspects of current changes in the Australian industry.

Response

3.94 See Response to Recommendation 34.

RECOMMENDATION 37

The National Pathology Accreditation Advisory Council, in conjunction with the Department of Health, the Health Insurance Commission, the National Association of Testing Authorities and the Director of Public Prosecutions completely revise and strengthen the Approved Pathology Practitioner Code of Conduct in light of recent 'pathology entrepreneurial' moves.

Response

3.95 See Response to Recommendation 5.

RECOMMENDATION 38

The Department of Health, in conjunction with the National Pathology Accreditation Advisory Council, the Health Insurance Commission and the Director of Public Prosecutions research options and implement measures to strengthen the applicability of the Approved Pathology Practitioner Code of Conduct to legal actions concerning 'pathology entrepreneurs'.

Response

3.96 See Response to Recommendations 5 and 37.

RECOMMENDATION 39

Where new clinical laboratory test procedures in pathology are advanced to the Medicare Benefits Schedule Review Committee, the developers and manufacturers of such tests should provide the following cost-effectiveness data before consideration is given to granting a Medicare benefit for the test -

- information needed to calculate the costs of performing the test;
- clinical sensitivity and specificity calculations based upon a patient population sufficiently large to enable reliable conclusions to be drawn about the efficacy of the test; and
- cost and efficacy comparisons with existing tests used for the same or similar purpose.

Response

3.97 See Response to Recommendation 22.

RECOMMENDATION 40

A continuous feedback of educative cost/benefit information about pathology be organised for all medical students in their clinical years and all clinical medical practitioners throughout their subsequent professional careers.

Response

3.98 The Department of Health and the Health Insurance Commission will consult with the Australian Medical Association and the RCPA to develop education programs for medical interns and medical practitioners to assist in reducing the inappropriate ordering of pathology tests.

3.99 The Government has made available an amount of $100,000 per annum for three years for this program.

RECOMMENDATION 41

**The introduction of regulations requiring referring practitioners to itemise all pathology requests with Medicare Benefits Schedule benefits, together with an appropriate brief description of the pathology service(s), and to, by law, provide a copy to the patient before the tests are actually formally requested.**

Response

4.00 This recommendation has not been accepted.

4.01 The Government does not consider it practicable to expect treating practitioners to itemise the pathology tests to be rendered.

4.02 It is considered that the proposal under which the Health Insurance Commission has access to referring doctors' request forms within 24 hours is a more acceptable approach (see Response to Recommendation 30).

Michael Keating

M S KEATING
SECRETARY
Department of Finance

APPENDIX A

EXTRACT FROM THE ROSS INQUIRY - GOVERNMENT ENDORSED RECOMMENDATIONS

G47 (i) All Commonwealth laboratories whose principal function is to provide testing services, whether to Government agencies (including its own departments) or to outside bodies, be required to secure and maintain accreditation by the National Association of Testing Authorities.

G48 (i) The Commonwealth require that non-Commonwealth laboratories to which it contracts the delivery of scientific services be accredited by the National Association of Testing Authorities.

G49 Pending the review recommended at G65, or a decision on the proposal by the Minister for Health to establish a legislation based national accreditation system for pathology laboratories, private sector pathology laboratories for whose services the Commonwealth meets the greater part of costs, be accredited by the National Association of Testing Authorities.

G65 The Department of Industry, Technology and Commerce in consultation with industry, State and Commonwealth Governments and bodies concerned with standards and accreditation and quality improvement initiate an independent review of the national system of standards, accreditation and quality control and assurance. The review should take note of the importance of standards, accreditation and the assurance of quality in the domestic and export markets. The review committee should report within six months of its establishment.

## CHAPTER 4

## OTHER RESPONSES TO THE 236TH REPORT

- The Royal College of Pathologists of Australasia (RCPA)
- The Australian Medical Association (AMA)
- Other Organisations and Individuals

### The Royal College of Pathologists of Australasia (RCPA)

4.1 The contribution of the Royal College of Pathologists of Australasia and its members to the PAC medical fraud and overservicing inquiry was significant and most appreciated by the Committee. Evidence was taken from the executive of the College and the many specialist pathologists who came before the Committee to give evidence, and/or forwarded submissions to the inquiry, were all Fellows of the College.

4.2 In responding to the Committee's 236th Report the RCPA stated that it :

> ... wished to congratulate the Joint Parliamentary Committee of Public Accounts for the amount of work and effort that went into the production of PAC Report No. 236 (and to) ... commend the Public Accounts Committee on the main tenor of its Report.

4.3 The College, which has as its main aims the 'fostering of the highest standards in the education, research and practice of pathology' and which insists on a strict code of ethics for its Fellows, agreed that many of the Committee's recommendations would help to eliminate medical fraud and overservicing problems.

4.4 The RCPA agreed that uniform NATA/RCPA based accreditation should be compulsory for all pathology laboratories performing diagnostic tests and wishing to obtain benefit payments under the Medicare system. It also believed that such accreditation should be regularly reviewed. Unlike the Government's recently announced initiatives, the College suggested that this accreditation scheme should replace (rather than supplement) the APP scheme and include legislation clearly stating prohibited practices as well as an acceptable code of ethics.

4.5 The College expressed the view that :

> Where State legislation exists for purposes of laboratory accreditation this should be approved and accepted by the Commonwealth provided it also meets Commonwealth legislative requirements. When State accreditation is accepted the Commonwealth may need to specify prohibited practices before approving a natural person to receive medical benefits for pathology services.

4.6 The RCPA strongly supported the Committee's recommendation that Commonwealth benefits for pathology services should be paid only to a restricted number of approved natural persons. It argued that, as a rule, these persons should be specialist pathologists as recognised by the National Specialist Qualification Advisory Committee. The College also recognised that limited provision may be needed for other individuals who either run highly specialised laboratories or who work in geographically remote areas.

4.7 In reference to the Committee's several recommendations concerning resident specialist pathologists and the personal supervision of tests billed at the SP rate by specialist pathologists the RCPA pointed out that :

> ... 'resident' would need to be clearly defined. The College sees the responsibility of a pathologist as providing safe and reliable methods of testing with strict quality control for every test performed with adequate personal involvement at all laboratory sites under his control. The National Association of Testing Authorities can be asked to assess the laboratory standards, but cannot accredit the 'resident' pathology practitioner.

4.8 The RCPA agreed that pathology service company arrangements should be fully documented and that such documentation be available and open for inspection at the granting and annual renewal of accreditation by the relevant authority. It stated that :

> Such service companies should not allow participation by persons requesting pathology services except in the case of recognised public hospitals or university departments. Consideration should be given to allowing incorporated medical practice limited to the provision of professional services only as is permitted in other branches of medical practice.

4.9 The College also acknowledged the Committee's findings on self-determined tests. It expressed the belief that :

> ... the self-determined provisions, although useful, may well have been the source of abuse by non-ethical laboratories or persons and for this reason (the College) suggests that the self-determined fee be abolished except for a few selected procedures where common practice and common sense dictate, eg where a blood film examination indicates that a reticulocyte count is necessary or where a special stain such as an immunoperoxidese stain is indicated. Such tests could be itemised after consultation between officers of the College and the Commonwealth Health Department.

4.10 In line with the recent legislative amendments detailed in the Finance Minute the RCPA agreed that the Health Insurance Act should clearly outline fraudulent practices and include provisions for recovery of Medicare benefits and disqualification of practitioners. The College also believed that :

> ... provision should be made for honest mistakes or minor administrative errors made in good faith.

4.11 The RCPA strongly argued that the Medicare Benefits Schedule should not be used as an instrument to curb abuses or as an instrument to limit the availability of pathology services. It was of the view that such actions could disadvantage the ethical laboratories to a point where they may be unable to maintain services because of financial stringency. The College stated that :

> The unethical laboratories of course if allowed to remain would cut corners even further to indulge their profit making motives.

4.12 In discussing the Committee's findings on SP/OP Medicare benefits (chapter 3 of Report 236) the RCPA cautioned against SP fee reductions. It stated :

> The SP rate remains the rate as advised by the Medical Benefits Schedule Revision Committee. It takes into account all the cost factors faced by legitimate and ethical practices providing a comprehensive twenty four hour service. In general the SP fee is a fair fee and any changes are generally determined by arbitration. Significant indiscriminate reductions in this fee could

seriously affect the viability of most of the ethical private practices in Australia. Such reductions could seriously restrict quality control and the ability to provide emergency and often life saving services on a twenty four hour basis. There could well be a major reduction in the skilled and qualified work force employed by pathology with attempts by some laboratories to reduce costs by employing unqualified less costly staff as has already been indicated to the PAC in the case of some commercial laboratories.

4.13 The Committee agrees with the College's view that significant indiscriminate reductions in the SP fee may be counter productive to current initiatives to improve the provision of pathology services.

4.14 The Committee welcomes the College's agreement with the Report's findings on 'medical entrepreneurs'. The RCPA stated that :

> ... most of the problems engendered by deliberate attempts to overservice without regard to the quality of the service could be eliminated if the provision of pathology services was controlled by an accreditation system with a restriction to specialist pathologists as the main providers of pathology except in special circumstanceas.

4.15 While the Committee acknowledges this position of the RCPA it reiterates its view that other measures in addition to accreditation are needed to combat the activities of those 'medical entrepreneurs' who rank the pursuit of profit, market control and accountability to shareholders over and above patient care.

4.16 The College also strongly supported the Committee's 32nd and 33rd recommendations that :

> Sufficient resources should be made available to the Health Insurance Commission to permit it to complement the Medicare claims information provided by its systems with details derived from field surveys. Such surveys should encompass -
>
> - searches of company records to determine the ownership of pathology companies;
> - research to establish the ownership and relationship of relevant subsidiary companies to their main corporate bodies;

- precise identification of those providers, together with their qualifications, in whose names services are being billed; and

- research to establish if a specialist pathologist is actively engaged in the provision or supervision of those services billed under his/her provider number, or has 'lent' his/her name for specialist billing purposes only.

The Health Insurance Commission place a special emphasis on reviewing the claims of new (active) approved pathology practitioners.

4.17 In line with the above recommendations the RCPA suggested that a declaration of ownership should be included as a requirement before accreditation and approval by the Commonwealth for the payment of benefits is granted.

4.18 The College did not agree with the Committee's last recommendation in Report 236 that regulations be introduced requiring referring practitioners to itemise all pathology requests with Medicare Benefits Schedule benefits, together with an appropriate brief description of the pathology service(s), and to, by law, provide a copy to the patient before the tests are actually formally requested.

4.19 The College saw this as :

> ... cumbersome to the extreme and could well lead to mistakes and confusion. Its implementation would be difficult to police and would constitute an unnecessary burden for the refering practitioner. Currently all doctors are supplied with a copy of the Medical Benefits Schedule.
>
> It is a requirement to provide patients with a copy of the request form if benefits are to be assigned. In addition a copy of the request form with the claim form for assigned benefits is sent to the Health Insurance Commission by pathologists. Presently all accounts given to patients carry a description of the service as authorised by the Health Insurance Commission, the relevant item number and the fee charged.

The Australian Medical Association (AMA)

4.20 Another important non-government response to the Committee's 236th Report has come from the Australian Medical Association. *The Committee welcomes this detailed critical* analysis of its Report by the AMA and acknowledges the extensive and valuable input the Association has made to the inquiry into medical fraud and overservicing since 1982.

4.21 Notwithstanding this, the Committee is disappointed to note that the AMA's response to the 236th Report is constructed and written in a style that masks its true position on the Report. Careful scrutiny of the response reveals that the Association is in agreement with the greater majority of the Committee's recommendations and is supportive of the Committee's inquiry.

4.22 The AMA's response is misleading in stressing unwarranted adverse comments about the Committee -

- not providing an historical narrative to various administrative schemes covered by the Report,
- not assigning quantitative parameters to the Reports conclusions and recommendations, and
- using extracts of sworn evidence from medical practitioners.

4.23 However, interspersed between these comments are remarks indicating -

- direct support of and agreement to the Committee's findings,
- agreement in principle to the Report's recommendations contingent upon further information being provided or certain other actions are taken, and
- general support for the overall direction of the Committee's inquiry.

4.24 A fundamental problem with the AMA's response is that it has failed to recognise that the Report stems from a public inquiry conducted by a bipartisan joint parliamentary committee. As the Committee stated in its second report on medical fraud and overservicing (PAC Report 212):

> ...it should be emphasised that the Committee cannot and does not question the adequacy of policies laid down by the Government but is concerned with their administrative implementation.

4.25 The extent of the AMA's support for the Committee's Report can be gauged from the following table:

| PAC Recommendation | Extract from AMA Response (paragraph no.) |
|---|---|
| 1 | '....the APP scheme should be abolished....' (3.78) |
| 2 | 'The AMA agrees in principle....' (3.81) |
| 3 | 'The Association therefore does not agree....' (3.83 |
| 4 | '....the AMA would require further explanation....before it comments further....' (3.84 |
| 5 | '....it is appropriate that the Code of Conduct be revised....' (3.87) |
| 6 | '....it would be appropriate, in the AMA's view, to have a small fee....' (3.88) |
| 7 | 'The AMA agrees that all pathology laboratories should be accredited....' (3.91) |
| 8 | 'The AMA agrees that the inspection process....should be adopted.' (3.93) |
| 9 | 'If this recommendation referred to 'pathology laboratory accreditation arrangements' rather then 'APP accreditation arrangements', the AMA would be in agreement.' (3.95) |
| 10 | 'The AMA agrees with this recommendation.' (3.96) |
| 11 | '....the AMA is in accord with the recommendation....' (3.98) |
| 12 | 'The AMA agrees with this recommendation.' (3.99) |
| 13 | '....the AMA agrees that consideration needs to be given to the question of paying for the service....' (3.101) |
| 14 | 'The AMA is in agreement with this intent.' (3.103) |
| 15 | 'The AMA would support a recommendation that the Health Insurance Act be amended specifically to prohibit secret commissions.' (3.107) |

| PAC Recommendation | Extract from AMA Response (paragraph no.) |
|---|---|
| 16 | '....while supported by the AMA (it) would not change the status quo.' (3.108) |
| 17 | '....OP benefits should be available....in accredited laboratories' (3.110) |
| 18 | 'The AMA notes that this recommendation is in accordance with the views of the Medicare Benefits Review Committee.' (3.111) |
| 19 | '....a recommendation that sufficient funds be provided to accredited laboratories would be endorsed.' (3.112) |
| 20 | '....the Association....did not support the overall approach proposed....'(3.113) |
| 21 | 'As noted previously, the AMA is in agreement with substantial amendments recently made to the sections of the Health Insurance Act dealing with fraud.' (3.115) |
| 22 | '.... extraordinary' suggestion....one-sided.' (4.59, 4.60) |
| 23 | 'The AMA rejects this recommendation.' (4.62) |
| 24 | 'The views expressed....(by the Medicare Benefits Review Committee....on health screening)....are endorsed by the AMA.' (4.65) |
| 25 | '....recent amendments to the Health Insurance Act should resolve any such problems.' (4.66) |
| 26 | 'The AMA has commented in previous paragraphs on the circumstances in which it believes it is appropriate that services be billed at the SP rate.' (4.67) |
| 27 | 'The AMA supports this view....(of the RCPA not favouring branch laboratories) but 'has three objections to this section (concerning supervising pathologists) of the recommendation.' |
| 28 | 'Neither the intent nor the rationale of this recommendation is made clear....' (4.73) |
| 29, 30, 31 | 'The AMA notes the following views about self determined tests....' (4.74) |

| PAC Recommendation | Extract from AMA Response (paragraph no.) |
|---|---|
| 32 | 'The AMA supports this recommendation.' (5.12) |
| 33 | 'The AMA believes that the APP scheme should be abolished.' (5.13) |
| 34 | 'This recommendation is acceptable provided....' (5.14) |
| 35 | 'The recommendation is acceptable, however, provided....' (5.16) |
| 36 | 'This recommendation is acceptable, provided....' (5.17) |
| 37 | '....it is appropriate that the Code of Conduct be revised....' (5.18) |
| 38 | '....pathology entrepreneurs should be dealt with by appropriate amendments to the .... Health Insurance Act....' (5.19) |
| 39 | 'In order to comment on this recommendation....some understanding of the functioning of the (MBS Revision Committee) Pathology Sub-Committee is necessary....' (5.22) |
| 40 | 'The AMA is basically in agreement with Recommendation 40.' (5.29) |
| 41 | 'The AMA is opposed to this recommendation...' (5.30) |

4.26 The Committee acknowledges that the AMA has consistently voiced its opposition to medical fraud and overservicing. At the Committee's hearing on 23 October 1985 the Vice-President of the Association, Dr FBM Phillips stated that:

> The Australian Medical Association has always taken a very serious view of either fraud or provision of excessive services by medical practitioners. I remind the Members of the Sub-Committee that in announcing this inquiry on May 25 1982, the then Chairman of the Committee, Mr. David Connolly, acknowledged in his press statement that the inquiry followed public concerns expressed earlier in 1982 by the AMA.

4.27 Similarly the AMA's response to Report 236 commences with the statement that:

> The Australian Medical Association is firmly committed to the elimination of improper, inappropriate or illegal practices in the provision of pathology services.

4.28 While the attitude of the Association is commendable the execution of the AMA's commitment against medical fraud and overservicing appears to be severely restricted because of an number of factors.

4.29 The Association does not have complete membership coverage of the doctor population. Thus the potential application of it's code of ethics is limited. As Dr AL Passmore stated at the Committee's 23 October 1985 hearing:

> There was some talk earlier here about sanctions - why the (AMA) code of ethics is not effective. There was a time when it was accepted that to practice medicine you would be a member of the AMA although it was not compulsory. The (AMA) code of ethics then had much more force than it has now because it was regarded that part of being a doctor was to be part of the AMA.

4.30 Complaints about individual practitioners are addressed at a State level by the AMA. Thus the Association's application of its code of ethics depends very much on having an effective system of State based procedures.

4.31 The AMA's Vice-President Dr FBM Phillips commented on this at the Committee's 23 October 1985 hearing, as follows:

> Dr Phillips : Nationally, it is unlikely that we will have an individual ethical complaint about anyone, because each State is autonomous in the application of the ethics of the Association.
>
> PAC Member : Your Association, when it meets nationally, gets reports from the State bodies, does it not?
>
> Dr Phillips : It does not quite work like that. It is a bit like Federal and State parliaments and some of the difficulties of communication which you find there.

PAC Member : If, as seems likely, we have very large medical practices crossing State lines and this becomes the norm rather than the exception, which it is now, then I take it that the Federal council of the AMA will become very much more able to look at the ethical practices of those sorts of practices.

Dr Phillips : It would become able to look at them; it would be no more interested than we are at the moment - we are very interested indeed, inasmuch as we are aware of things.

4.32 However at the State level, at least in New South Wales, the effectiveness of the Association's code of ethics appears to be limited. For example the Medical Secretary of the NSW Branch of the AMA, Dr RH Cable, and the Legal Officer of that Branch, Dr AE Dix, stated the following at the Committee's 23 October 1985 hearing:

PAC Member : Does that mean that there is no mechanism unless the Medical Board of New South Wales is prepared to act? Is there no mechanism for discipline or for enforcing that code of ethics?

Dr Cable : That is right, leaving aside, of course, the provisions of the Health Insurance Act and those things.

Mr Dix : There is a mechanism of internal sanctions but they are applied carefully and in the most recent incident where we did apply a sanction, and which was just a please-explain letter, concerning the doctor whom we were speaking about this morning, we were challenged to retract a statement or be faced with further action. That was not followed up. The problem is that the sanctions apply to those who wish to see them applied and those who do not wish to be bound by them will not be bound by them.

4.33 This view has reinforced by the Federal AMA's Vice-President, Dr FBM Phillips, at the same hearing as follows:

Dr Phillips : The other element that is relevant I believe, and it was alluded to earlier, was that at a time when more practitioners were members of the Australian Medical Association or its historial antecedents, the medical boards of the country, inasmuch as they enforced the medical Acts in those States and Territories, paid very, very careful heed and almost total respect to that code of ethics, so that if someone transgressed that code of ethics he would find himself exposed to the legislative sanctions of boards.

PAC Member : That has changed.

Dr Phillips : It does not necessarily happen and certainly as the evidence in New South Wales suggests, there has been a divergence of view. It is a difficult problem in the 1980s - I am sorry to take up the Committee's time on a philosophical matter - but it is a time when consumerism is regarded as becoming more important, and therefore things like advertising and having a circumscribed base to your activities, or a base that is not as exposed to the public, is not regarded as acceptable. We seem to have had more of these problems grow for us.

PAC Member : How long have you been aware of this problem in relation to the kind of issues raised in that article ('Pathology : A Disgusting State of Affairs in New South Wales')?

Dr Phillips : We have been aware, I suppose, over the last few years, in an anecodotal sense, that there are people whose practices have been more directed towards the profit to be gained rather than towards care for patients.

4.34 As well, as the above example demonstrates, it appears that the Association's awareness of transgressions of its Code of Ethics may be often based on anecdotes and that this is not confined to the Federal level. For example Dr RH Cable, the Medical Secretary of the NSW Branch of the AMA stated at the Committee's 23 October 1985:

> PAC Member : Dr Cable, what you are saying is that your Association has been concerned for some time with this problem of doctors having in fact what is a kind of sub-contract arrangement with pathology laboratories, whereby they get part of the fee.
>
> Dr Cable : We have known of the existence of these arrangements as reported to us. You would understand that we are hardly in a position to have, if you like 'hard copy' of these events but we certainly get a great deal of anecdote.

4.35 Three 'specific weaknesses of the 236th Report' are listed by the AMA in its response - the 'use of statistics, anecdotal evidence and assertion'. The Committee believes that these 'weaknesses' are neither apparent nor material. The Committee notes that these allegations of 'weaknesses' sit at odds with the Association's agreement with the majority of the Report's conclusions and recommendations and the AMA's concluding comment that:

> The AMA acknowledges the important work done by the PAC in scrutinising the provision of pathology services in Australia. It also acknowledges that the 236th Report identifies various instances and forms of abuse of the health insurance arangements as they relate to pathology.

4.36 The Committee's conclusions drawn from its statistics reflect the events that occurred in the period under analysis. The insight given by these statistics has been widely acknowledged as a valuable adjunct to considerations concerning administrative and policy changes.

4.37 The Committee's use of 'anecdotal evidence' reflects the Committee's desire to provide accurate examples, from sworn expert witnesses in different areas of the profession, to illustrate an aspect of concern. Such evidence supplements the general discussion in the Report with factual examples of the problems the industry faces.

4.38 The Committee believes that conclusions in Report 236 are not asserted 'without any substantiation'. An accurate reading of the Report will show that the Committee's conclusions and recommendations stem directly from the evidence taken by the Committee. Such evidence has been taken in public and in camera, received in writing, stemmed from Committee inspections and discussions in the field and been received from private discussions.

4.39 The AMA suggests that the Committee's conclusion at paragraph 3.56 of the Report (that 'it appears that many of the tests done at SP fee levels by large commercial laboratories may not be necessary') is not supported by evidence. However throughout Chapter 3 of the Report the apparent dearth of specialists at large commercial laboratories and the high throughput of tests billed at SP rates in such laboratories is analysed in detail. As well examples of returns being optimised using SP billing because of 'judicial 'for-profit' interpretation of the MBS' are given.

4.40 The Association's analysis of the tables in Chapter 1 of Report 236 are welcomed by the Committee. It is acknowledged that, in some circumstances, several interpretations can be placed on statistics. However in this case the Committee has sought only to summarise the actual events and changes in the statistics listed when commenting on the tables. For this reason the Committee did not form any recommendations from these tables and stated, at paragraph 1.53 of Report 236, that it:

> does not wish to reach detailed conclusions based on the information above (Tables 1-13B) prior to discussion in the following chapters of associated administrative systems and other issues.

4.41 The Committee does, however, believe that the AMA's arguments about Table 7 of Report 236 (which shows the number of specialist pathologists professionally associated with the top 25 groups) are at odds with what these laboratories reported to the Committee about their staffing levels and staffing responsibilities.

4.42 Similarly, the Association's response does not concede that there appears to be a noticeable lack of effective competition in several regions in Australia. It is apparent that often the market place appears to be 'carved up' amongst very few large laboratories in some regions with competition only at the margins of such regions.

4.43 The Committee welcomes the AMA's summary of the history and recommendations of the Pathology Services Working Party and historical background to the Approved Pathology Scheme. The Committee was of the view, when compiling Report 236, that so many of the areas covered by the Report had long detailed histories (e.g. the changing Commonwealth administrative arrangements in the area of health) that it was not possible to present a reasonably concise, succinct report including this background.

4.44 The AMA's responses to, and general support of, the recommendations of Chapters 2 and 3 of Report 236 are noted.

4.45 The Committee welcomes the statement in the 1 August 1986 update of the *MBS books 'Notes for the Guidance of* Medical Practitioners' that:

> A nexus will be established as between the approved pathology practitioner/approved pathology authority undertakings and the accreditation standards to ensure that the appropriate levels of supervision are adequate.

4.46 The Committee acknowledges and welcomes the AMA's condemnation 'without reservation (of) any medical practitioner who ranks the pursuit of profit and market control over and above patient care'.

4.47 The Committee notes however that, to date, little concrete action appears to have been set in train by the AMA actively combatting the operations of 'medical entrepreneurs'.

4.48 The Assocation's criticism that the Committee's Report uses the term 'peer review' in connection with suggested moves by the profession to self regulate 'medical entrepreneurs' appears to be pedantic. The Committee believes that the narrow specialised definition adopted by the AMA for the term 'peer review' unnecessarily limits this valuable concept in this context. Judgements about medical overservicing appear to be inextricably linked to judgements about the quality of care when an holistic view is adopted. A narrow assessment of clinical performance without regard to the wider ramifications of practice style and associated community effects is of limited value.

**Responses by Other Organisations and Individuals**

4.49 The 'other' organisations and individuals who responded to the Committee's 236th Report generally can be categorised as follows :

- principles or executive officers of the major specialist pathology practices,
- medical scientists, technicians and other staff employed by the major specialist pathology groups,
- individual specialist pathologists,
- other medical practitioners, and
- lay persons.

4.50 The Committee appreciates this 'feedback' and believes that the level of interest in, and support for, the Committee's Report and inquiry expressed in these 'other' responses augurs well for future PAC inquiries.

4.51 As most of these responses echoed the discussion detailed elsewhere in this Report this section only contains a brief review of some responses. Because of the Committee's charter, matters pertaining to government policy raised by respondents have not been commented on herein.

4.52 The risk of overservicing associated with self-determined tests was commented on by many specialist pathologists. For example one practice stated :

> ... we should not be able to charge for additional tests we consider necessary. It is simply open to abuse and it is interesting to note the tremendous variation in percentage of self referred tests. We are giving a consultant service and, if occasionally that means doing an extra test as a result of a written history, or one of our abnormal findings, that should be part of our work on that patient and should not attract a fee.
>
> If, however, a practitioner asks say for a haemoglobin only and puts on the form 'exclude thyroid and liver disease' it would be up to us to ring him and say that the test requested is not adequate and ask for an additional request form. Other tests done as an addition to clarify a situation should not be charged for. I suspect that if 'deemed necessary' tests did not attract a fee the number done in some practices would reduce considerably, as did the urine sensitivities in the mid-seventies.

4.53 Several specialist pathologists also expressed support for some move towards a pathology system similar to that commented on by the RCPA President, Professor PB Herdson. One pathologist stressed the following points :

- payments to be only made to new laboratories where a need for that new laboratory can be demonstrated,
- laboratories should be owned and operated by qualified specialist pathologists and they should only do work referred to them by clinicians, and
- the referring clinicians should in no way financially benefit by referring pathology.

4.54 The potential dangers associated with the Australian pathology industry exhibiting oligopolistic characteristics were rebutted by many specialists associated with the major domestic pathology groups. A senior partner in one of Australia's largest pathology practices responded on this point saying :

> We acknowledge that there are some 'oligopolistic' characteristics of the pathology industry, but we do not agree with the inference that this is necessarily undesirable, or that 'big is bad', as the media would seem to suggest.
>
> In the case of Queensland, the two big pathology practices have resulted from a number of factors including amalgamation of several practices, the lack of right of private practice in public hospitals with the pathology of 'intermediate' patients being done by private pathologists, and the absence of pathology laboratories in the private hospitals in Queensland.
>
> There are advantages to the Government, the medical community and the patients in an oligopolistic service. These include :-
>
> (1) fewer pathology practices for the Government to deal with, allowing closer monitoring;
>
> (2) the ability of these large practices to provide superspecialists at both a medical and technical level in the various subdisciplines of pathology such as dermatopathology, neuropathology, steriod chemistry, radioimmunoassay etc., with consequent advantages to the patient and doctor.
>
> Our size has enabled us to offer a service equal to, or superior to the large teaching hospitals. In fact, we perform at no charge hundreds of consultations each year in various areas of pathology (particularly skin pathology) for public hospitals, Commonwealth pathology laboratories and private pathologists.
>
> Our size also allows us to provide a first class pathology service in uneconomic country areas.

4.55 In addition other respondents drew comparisons with the situation in New Zealand :

> ... in the private system in New Zealand it is recognised that large laboratories are necessary. There are only eleven private laboratories in New Zealand, three of which service 60% of the population. These laboratories each undertake about 1,750 patient episodes a day. Very few Australian private laboratories are as large. It is therefore recognised in New Zealand that 'big is not bad', it is in fact necessary.

4.56 The issue of specialist pathologists 'supervising' tests billed at the SP benefit rate attracted much attention in responses. Many felt that the Committee's report did not elaborate on the history surrounding the determination of the SP rate's 25% premium over the OP rate nor did it adequately describe the other daily professional tasks of specialist pathologists. One response described such tasks as follows :

> Rather than direct supervision of tests the pathologist 'sets the scene' within the laboratory, institutes quality control, is involved on a day to day basis with his heads of departments and watches both result patterns and quality control performance.
>
> He then spends time looking in more detail only in areas where it is apparent that is required. In other words if the slide preparation or staining is poor in histology or cytology he becomes more directly involved until it is put right. If the blood urea quality control is poor he becomes involved with his biochemistry staff to help solve the problem which may either be of a minor nature right through to a decision to buy a new piece of equipment.
>
> He also, of course, reports all histology, abnormal cytology, bone marrows etc., reviews abnormal blood films and most abnormal test results. He is also involved in considerable administration as would executives of any large organisation.

4.57 The Committee's recommendation that practitioners itemise and briefly describe all pathology requests and provide a copy to the patient before the tests are actually ordered was criticised by some specialists, not so much on the grounds that the process was too difficult or cumbersome to manage, but because the practitioners felt that either -

- the knowledge of tests for some medical conditions might not be in patients best interests, eg tests for cancer, and/or
- most patients would not question their doctor's pathology requests.

4.58 One specialist summed up this latter aspect as follows :

> I know that to some groups it is part of the current orthodoxy to assume fraud would not occur if patients received a bill and/or had to pay a moiety. In truth that is very unlikely, patients accept their doctor's advice when he suggests courses of action, be they treatments, pathology tests or X-rays.
>
> Whilst press comment makes people feel that many doctors are crooks, they mostly feel that their own doctor is not a crook. Indeed they need to feel that and if they felt otherwise they would have no faith in him or their own judgement and would not go to him.
>
> It is much more likely that if they were going to audit the pathology request before it is sent, that they would either accept it or quibble about the highest cost item. (Not conducive to a good relationship with their doctor, quite unrealistic and, indeed, that item may be the most necessary for their problem) Patients rightly expect their doctor to order only necessary tests and rely on his professional judgement when ordering pathology.

4.59 However, there was indirect support for the Committee's recommendation from some quarters. One major practice suggested that :

> ... it would be administratively simple to oblige the providers of pathology services to send to each patient a statement corresponding to each claim. This statement would detail :-
>
> (a) the requesting doctor,
> (b) the tests performed,
> (c) the amount billed,
>
> and would declare that no direct or indirect relationship exists or payment has occurred between the requester and the provider.
>
> I feel that at least some persons involved with overservicing would be inhibited by the declaration of cost and cautious about the possibility of adverse reaction.
>
> Even if behavioural changes were minimnal, the community awareness of cost would create an environment in which change would have public acceptance.

4.60 The Committee was pleased to note that, without exception, all respondees agree that regular mandatory pathology laboratory accreditation was much needed. However, several specialist pathologists also reflected the Committee's concern that other measures in addition to accreditation are needed to combat unscrupulous 'medical entrepreneurs'. For example, one stated :

> While I agree that mandatory strict accreditation procedures will help the current situation and strongly support accreditation I consider that commercially orientated pathology practices will become accredited and will continue to offer kickbacks. Accreditation alone will not stop kickbacks and the linch-pin to remove the abuses must be strict State and federal legislation to absolutely prohibit kickbacks with severe penalties for those who break these proposed laws.

4.61 Similarly another specialist pathologist stressed the inability of accreditation to address overservicing, as follows :

> Laboratory accreditation has been proposed as a panacea. Practices operating illegally or which flourish by promoting overservicing are quite capable of reaching the standards required by the strictest accreditation guidelines. Whilst accreditation is essential for 'licensing' laboratories, it will make no contribution to the solution of the problems raised. Adequately performed tests may still be unnecessary. The current problem is one of inducements to overservice, rather than the quality of the service itself.

4.62 The impact of the widespread application of advance technology in reducing the cost of many pathology investigations was also commented on by representatives of large pathology practices. For example, one group stated :

> ... we agree that the widespread use of advanced technology has significantly reduced the cost of many pathology investigations and the Medicare benefits do not appear to have been proportionately reduced. However with the very large amount of data now available to clinicians from these tests the interpretation of this large amount of data poses significant problems for the clinician particulary the busy GP. It is difficult for clinicians, particulary busy GPs, to keep up with the explosion of knowledge in pathology and therefore there is an increasing need for private specialist pathologists to spend a considerable amount of time discussing the interpretation of test results in the context of the clinical setting with the clinician. This consultative role of pathologists is increasing rapidly and must be taken into account in any revision of the Medical Benefits Schedule.

# A P P E N D I X 1

## List of Hearings for the Inquiry*

* This list has been updated since its publication in PAC Report 236 and, where applicable, cross referenced to volumes of minutes of evidence.

Tuesday 23 March 1982, Canberra

in camera hearing

Thursday 25 March 1982, Canberra

in camera hearing

Thursday 20 May 1982, Canberra

in camera hearing

Thursday 8 June 1982, Melbourne

in camera hearing

Thursday 1 July 1982, Canberra

(Volume 1, pp. 1-482 Minutes of Evidence)

| | |
|---|---|
| Commonwealth Department of Health | Dr H C Anderson<br>Mr J G Burt<br>Mr N M Hill<br>Dr G Howells<br>Mr A J Kelly<br>Mr J S McCauley<br>Dr C Selby Smith |
| Observers | Mr J P Chandler<br>Mr A Chapple<br>Mr P J Hinchy |
| Advisor | The Hon Mr Justice P B Toose, QC CBE |

Friday 2 July 1982, Canberra

in camera hearing

Tuesday 13 July 1982, Canberra

in camera hearing

Wednesday 14 July 1982, Canberra

(Volume 2, pp. 483-672 Minutes of Evidence)

| | |
|---|---|
| Commonwealth Department of Health | Dr H C Anderson<br>Mr J G Burt<br>Dr C P V Evans<br>Mr N M Hill<br>Mr A J Kelly<br>Mr J S McCauley<br>Dr L J O'Keffe<br>Dr C Selby Smith |
| Observers | Mr A Chapple<br>Mr P J Hinchy<br>Mr C J Louttit |
| Advisor | The Hon Mr Justice PB Toose, QC CBE |

Monday 26 July 1982, Canberra

in camera hearing

Tuesday 27 July 1982, Canberra

(Volume 2, pp. 673-902 Minutes of Evidence)

| | |
|---|---|
| Commonwealth Department of Health | Dr H C Anderson<br>Mr J G Burt<br>Dr C P V Evans<br>Mr N M Hill<br>Dr G Howells<br>Mr A J Kelly<br>Mr J S McCauley<br>Dr L J O'Keefe<br>Dr C Selby Smith |
| Medibank Private | Mr M J Brennan<br>Mr J M Evered<br>Mr G M Lewis<br>Mr C R Wilcox |
| Observers | Mr A A Chapple<br>Mr P J Hinchy<br>Mr C J Louttit |

Wednesday 4 August 1982, Sydney

(Volume 3, pp. 903-1345 Minutes of Evidence)

| | |
|---|---|
| Commonwealth Department of Health | Dr R R Bull<br>Dr K H S Cooke<br>Mr D A Devenish-Meares<br>Dr W H Howell<br>Mr A B McDonald<br>Mr E R Morton<br>Mr M J O'Brien |
| Doctors' Reform Society | Dr A M Liebhold<br>Dr A J Refshauge |
| Hospitals Contribution Fund of Australia | Mr D L Gadiel<br>Mr M G Longhurst |
| Observers | Mr A A Chapple<br>Mr P J Hinchy<br>Nr C J Louttit |

Thursday 5 August 1982, Melbourne

(Volume 4, pp. 1346-1554 and Volume 9, pp. 3331-3399 Minutes of Evidence)

in camera hearing

| | |
|---|---|
| Commonwealth Department of Health | Mr K C Amery<br>Dr C B Eccles-Smith<br>Mr P J Hede<br>Mr P D Tratt<br>Dr I M Tullock<br>Dr R C Webb |
| Dr D G Legge | |
| Professor L J Opit | |
| Observers | Ms S Geddes<br>Mr P J Hinchy<br>Mr C J Louttit |

Friday 6 August 1982, Adelaide

(Volume 4, pp. 1555-1622 and Volume 9, pp. 3401-3459 Minutes of Evidence)

in camera hearing

| | |
|---|---|
| Commonwealth Department of Health | Mr R C Cain<br>Dr J Y Hancock<br>Mr J L May<br>Dr A J O'Donnell<br>Mr J P Toohey |
| Observers | Mr P Foster<br>Mr P J Hinchy<br>Mr C J Louttit |

Thursday 19 August 1982, Canberra

in camera hearing

Tuesday 24 August 1982, Canberra

(Volume 5, pp. 1623-2084 Minutes of Evidence)

| | |
|---|---|
| Medibank Private | Mr J Brennan<br>Mr J M Evered<br>Dr P E Gunton<br>Mr G M Lewis |
| Observers | Ms S Geddes<br>Mr P J Hinchy<br>Mr K Jones<br>Mr C J Louttit |

Tuesday 7 September 1982, Canberra

(Volume 9, pp. 3461-3530 Minutes of Evidence)

in camera hearing

| | |
|---|---|
| Commonwealth Department of Health | Dr C B Eccles-Smith |

Tuesday 14 September 1982, Canberra

(Volume 6, pp. 2085-2295 Minutes of Evidence)

| | |
|---|---|
| Mr D R Harvey | |
| Observers | Ms S Geddes<br>Mr P J Hinchy<br>Mr C J Louttit |

Tuesday 21 September 1982, Canberra

(Volume 6, pp. 2297-2531 Minutes of Evidence)

| | |
|---|---|
| Australian Medical Association | Dr F B M Phillips<br>Dr G D Repin |
| Observers | Ms S Geddes<br>Mr P J Hinchy<br>Mr C J Louttit |

Wednesday 29 September 1982, Brisbane

(Volume 6, pp. 2533-2627 Minutes of Evidence)

in camera hearing

| | |
|---|---|
| Commonwealth Department of Health | Dr J A McDougall<br>Mr R D Price<br>Dr P E R Ubrich<br>Mr R A Vendrell<br>Mr R J Walsh<br>Dr D P Wilkinson |
| Observers | Ms S Geddes<br>Mr P J Hinchy<br>Mr C J Louttit |

Tuesday 12 October 1982, Canberra

(Volume 7, pp. 2628-2756 Minutes of Evidence)

| | |
|---|---|
| Department of Administrative Services | Mr M F Domney<br>Mr H D Logue |
| Australian Federal Police | Mr R Farmer<br>Mr J C Johnson<br>Mr C S Winchester |
| Observers | Ms S Geddes<br>Mr P J Hinchy<br>Mr C J Louttit |
| Advisors | The Hon Mr Justice PB Toose, QC CBE<br>Mr M Johnson<br>Dr P E Gunton<br>Mr S Rares<br>Dr H Stock |

Tuesday 19 October 1982 Canberra

(Volume 7, pp. 2757-2913 Minutes of Evidence)

| | |
|---|---|
| Attorney-General's Department | Mr J H Broome<br>Mr P F McDonald<br>Mr B J O'Donovan<br>Mr H F Woltring |
| Royal Australian and New Zealand College of Psychiatrists | Dr W A Barcley<br>Dr C Degotardi<br>Dr J McG Grigor<br>Professor B Raphael |
| National Association of Medical Specialists | Mr J P Gibson<br>Dr T D Orban |
| Observers | Ms S Geddes<br>Mr P J Hinchy<br>Mr C J Louttit |
| Advisor | The Hon Mr Justice PB Toose, QC CBE |

Thursday 21 October 1982, Canberra

in camera hearing

Tuesday 26 October 1982, Canberra

(Volume 8, pp. 2914-3114 Minutes of Evidence)

| | |
|---|---|
| Commonwealth Department of Health | Dr H C Anderson<br>Mr J G Burt<br>Dr C P V Evans<br>Mr N M Hill<br>Dr G Howells<br>Mr A J Kelly<br>Mr J S McCauley<br>Dr L J O'Keefe<br>Dr C Selby Smith |
| Attorney-General's Department | Mr J H Broome<br>Mr L J Curtis<br>Mr P F McDonald<br>Mr B J O'Donovan<br>Mr H F Woltring |
| Observers | Mr A Agafonoff<br>Mr J Chandler<br>Ms S Geddes<br>Mr P J Hinchy |
| Advisor | The Hon Mr Justice PB Toose, QC CBE |

Wednesday 27 October 1982, Canberra

(Volume 8, pp. 3115-3220 Minutes of Evidence)

| | |
|---|---|
| Commonwealth Department of Health | Dr H C Anderson<br>Mr J G Burt<br>Dr C P V Evans<br>Mr N M Hill<br>Dr G Howells<br>Mr A J Kelly<br>Mr J S McCauley<br>Dr L J O'Keefe<br>Dr C Selby Smith |
| Observers | Mr A Agafonoff<br>Ms S Geddes<br>Mr P J Hinchy |
| Advisor | The Hon Mr Justice PB Toose, QC CBE |

Thursday 11 November 1982, Canberra

(Volume 9, pp. 3221-3330 Minutes of Evidence)

| | |
|---|---|
| Mr C A Nettle | |
| The Hon M J R Mackellar, MP | |
| Observers | Ms S Geddes<br>Mr P J Hinchy<br>Mr C J Louttit |
| Advisor | The Hon Mr Justice PB Toose, QC CBE |

Tuesday 31 May 1983, Canberra

in camera hearing

Monday 11 July 1983, Canberra

(Volume 10, pp. 3531-3702 Minutes of Evidence)

| | |
|---|---|
| Australian Medical Association | Dr F B M Phillips<br>Dr G D Repin |
| Observers | Mr A Agafonoff<br>Ms S Geddes<br>Mr P J Hinchy |

Wednesday 13 July 1983, Canberra

in camera hearings

Monday 1 August 1983, Canberra

in camera hearings

Wednesday 3 August 1983, Canberra

in camera hearings

**Monday 2 April 1984, Canberra**

(Volume 10, pp. 3703-3833 Minutes of Evidence)

| | |
|---|---|
| Commonwealth Department of Health | Dr H C Anderson |
| | Mr G M James |
| | Mr J W Kilpatrick |
| | Mr J S McCauley |
| | Mr K M Riordan |
| | Dr C Selby Smith |
| | Mr W T L Taylor |
| | Mr W G Turk |
| | Dr R H C Wells |
| | Mr L J Willett |
| | Mr P R Wright |
| Observers | Mr J Chantler |
| | Mr A Chapple |
| | Mr A B McNevin |

**Thursday 19 April 1984, Sydney**

(Volume 10, pp. 3834-4214 Minutes of Evidence)

| | |
|---|---|
| The Hospitals Association of NSW | Mr C R James |
| Capital Territory Health Commission | Mrs Y M Blake |
| | Dr K McG Doust |
| | Mr P N Guild |
| | Mr D J Lambart |
| | Dr P M Tatchell |
| Australian Council on Hospital Standards | Dr B R Catchlove |
| | Ms A T Porcino |

**Monday 30 April 1984, Canberra**

(Volume 11, pp. 4215-4269 Minutes of Evidence)

| | |
|---|---|
| Health Insurance Commission | Mr M J Brennan |
| | Mr J M Evered |
| | Dr P E Gunton |
| | Mr G M Lewis |
| Observers | Mr J Chantler |
| | Mr A Chapple |
| | Mr A B McNevin |

Monday 21 May 1984, Sydney

(Volume 11, pp. 4271-4551 Minutes of Evidence)

| | |
|---|---|
| Professor D McNeil | |
| Royal Australasian College of Surgeons | Dr B P Morgan<br>Professor T S Reeve |
| Royal Australasian College of Physicians | Professor J B Hickie<br>Dr P P Laird |
| Royal College of Pathologists of Australasia | Dr W E L Davies<br>Dr N J Nicolaides<br>Dr E Raik |
| Royal Australasian College of Radiologists | Dr R J Glasson<br>Dr P C Wilson |
| Observers | Dr H C Anderson<br>Mr I Buttsworth<br>Mr J Kilpatrick |

Monday 4 June 1984, Canberra

(Volume 11, pp. 4552-4682 Minutes of Evidence)

| | |
|---|---|
| Department of Veterans' Affairs | Dr G E Brooks<br>Mr J G Cosgrove<br>Mr J A Costello<br>Mr G E Fitzgerald<br>Dr M M Kehoe<br>Dr J Mould<br>Mr B E O'Shannassy<br>Dr B E Todd<br>Mr D Volker |
| Observers | Mr B Falconer<br>Mr A B McNevin<br>Mr C J Louttit |

Wednesday 4 July 1984, Canberra

(Volume 12, pp. 4683-4762 Minutes of Evidence)

in camera hearing

| | |
|---|---|
| Macquarie Pathology Services | Dr R Sutton<br>Dr T R Wenkart |

Thursday 5 July 1984, Canberra

(Volume 12, pp 4763-5111 Minutes of Evidence)

in camera hearings

| | |
|---|---|
| Commonwealth Department of Health | Dr H C Anderson<br>Dr D M Hailey<br>Mr J S McCauley<br>Mr A M Mackey<br>Dr L J O'Keefe<br>Mr W T L Taylor<br>Dr R H C Wells<br>Mr P R Wright |
| Observers | Mr B Falconer<br>Mr A B McNevin<br>Mr C J Louttit |

Monday 3 September 1984, Canberra

(Volume 13, pp. 5112-5212 Minutes of Evidence)

in camera hearing

| | |
|---|---|
| Royal College of Pathologists of Australasia | Dr W E L Davies<br>Professor P B Herdson<br>Dr E Raik |
| Doctors Reform Society | Dr J L Daniels<br>Dr B M Learoyd<br>Dr P G Lynch |

Monday 10 September 1984, Canberra

in camera hearing

Thursday 4 October 1984, Canberra

(Volume 14, pp. 5213-5642 Minutes of Evidence)

| | |
|---|---|
| Commonwealth Department of Health | Mr M A Burgess<br>Mr R Hackett<br>Mr L Ion<br>Mr J W Kilpatrick<br>Mr A M Mackay<br>Mr J S McCauley<br>Mr B V McKay<br>Mr W G Turk<br>Dr R H C Wells |
| Health Insurance Commission | Mr J M Evered<br>Mr G M Lewis |
| Observers | Mr K Brigden<br>Mr R Chantler<br>Mr B Kimball<br>Mr J C Louttit<br>Mr A B McNevin<br>Mr M Owens<br>Mr J Ruffin |

Monday 8 October 1984, Canberra

(Volume 14, pp. 5643-5685 Minutes of Evidence)

| | |
|---|---|
| Royal Australian College of General Practitioners | Dr D P Finnegan<br>Dr A E Fisher<br>Dr P W H Grieve |
| Observers | Mr J S McCauley<br>Mr C J Louttit<br>Mr A B McNevin<br>Dr R H C Wells |

Wednesday 27 March 1985, Canberra

(Volume 15, pp. 5686-5901 Minutes of Evidence)

| | |
|---|---|
| The Honourable N Blewett, MP | |
| Commonwealth Department of Health | Mr B V McKay |
| Health Insurance Commission | Mr J M Evered<br>Mr C R Wilcox |
| Observers | Mr R Alfredson<br>Mr R Chantler<br>Mr C J Louttit<br>Mr N Levings<br>Mr J Van Beurden |

Thursday 26 September 1985, Canberra

(Volume 15, pp. 5902-6001 Minutes of Evidence)

| | |
|---|---|
| Dr G W Edelsten | |
| Observer | Mr P L Lidbetter |
| Advisor | The Hon Mr Justice P B Toose, QC CBE |

Wednesday 23 October 1985, Canberra

(Volume 16, pp. 6002-6153 Minutes of Evidence)

| | |
|---|---|
| Health Insurance Commission | Mr K A Acton<br>Mr J M Evered<br>Mr G M Lewis |
| Dr R Newman | |
| Australian Medical Association NSW Branch | Dr D Adler<br>Dr R H Cable<br>Mr A E Dix |

| | |
|---|---|
| Australian Medical Association | Dr A L Passmore<br>Dr F B M Phillips |
| Dr M M Barratt<br>Dr T J McCarthy<br>Dr D E Smith | |
| Dr J Grace | |
| Observers | Mr R Chantler<br>Mr C J Louttit<br>Ms A Roberts |

Wednesday 27 November 1985, Canberra

(Volume 16, pp. 6154-6232 Minutes of Evidence)

| | |
|---|---|
| Dr G W Edelsten | |
| Health Insurance Commission | Mr K A Acton<br>Mr G M Lewis |

# A P P E N D I X 2

## List of Submissions*

* This list has been updated since its publication in PAC Report 236.

Government Organisations*

Attorney-General's Department
Australian Audit Office
Australian Federal Police
Capital Territory Health Commission
Commonwealth Auditor-General
Commonwealth Department of Health
Commonwealth Ombudsman
Commonwealth Tertiary Education Commission
Department of Administrative Services
Department of Veterans' Affairs
Director of Public Prosecutions
Health Commission of NSW
Health Insurance Commission
Law Reform Commission of Australia
Public Service Board
South Australian Health Commission
Tasmanian Department of Health Services
Victorian Department of Health

Medical Associations*

Australian Institute of Medical Laboratory Scientists
Australian Medical Association
Australian Postgraduate Federation in Medicine, The
Australian Society of Anaethetists
Australian Society of Orthopaedic Surgeons, The
Doctors Reform Society
General Practitioners Society in Australia
Hunter Medical Association
Hunter Postgraduate Medical Institute, The
Medical Board of the ACT
Medical Scientists Association of Victoria
National Association of Medical Specialists
New South Wales Medical Board
Northern Territory Medical Board
Royal Australasian College of Physicians
Royal Australasian College of Radiologists
Royal Australasian College of Surgeons
Royal Australian and New Zealand College of Psychiatrists
Royal Australian College of General Practitioners
Royal Australian College of Opthalmologists
Royal College of Pathologists of Australia
University of NSW Committee of Postgraduate Medical Education
University of Queensland Postgraduate Medical Education Committee
University of Western Australia Postgraduate Medical Education Committee
Victorian Medical Postgraduate Foundation

Other Organisations*

Acupuncture Association of Australia
Administrative and Clerical Officers Association
Association of Medical Superintendants of NSW and the ACT
Australian and New Zealand College of Medical Education
Australian Chiropractor's Association
Australian College of Health Service Administrators
Australian College of Rehabilitation Medicine
Australian Council on Hospital Standards
Australian Dental Association
Australian Federation of Consumer Organisations
Australian Federation of Festival of Light, The
Australian Hospitals Association
Australian Humanists
Australian Medical Acupuncture Society
AMA/ACHS Peer Review Resource Centre
Australian Medical Students Association
Australian Natural Therapists Association
Australian Optometrical Association
Australian Psychological Society
Australian Society for Advancement of Anaesthesia Sedation in Dentistry
Australian Thalassaemia Association
Citizenes' Committee on Human Rights (Psychiatric Violations)
Committee on Human Rights
Community Health Association Co-operative Ltd.
Darwin Private Medical Society Inc.
D.J. Moran Managements Pty Ltd.
Export and Commercial Research Services Ltd.
Hospital Benefit Fund of Western Australia
Hospital Benefits Association
Hospital Contribution Fund
Hospitals Association of NSW
Institute of Health Economics and Technology Assessment
Macquarie Pathology Services Ltd.
Medtech Services Pty Ltd
Mutual Health
National Association of Medical Specialists
National Association of Testing Authorities
Pharmaceutical Society of Australia
Pharmacy Guild of Australia, The
Queensland Policy Union of Employees
Right to Life Association, NSW Branch
Royal Australasian College of Medical Administrators
Rupert Public Interest Movement
Thoracic Society in Australia
United Chiropractors Association of Australasia Ltd.
Urological Society of Australia
Victorian Academy for General Practice
Victorian Hospitals Association
Voluntary Health Insurance Association of Australia
Young Doctors Assistance Society

Individuals*

Agnew, Dr W V
Arnold, Dr P G
Ashton, Mr C
Babbage, Mr N F
Baddeley, Professor J
Baker, Mr W
Barratt, Dr MM
Bates, Mr P
Bayliss, Dr P
Bell, Mr A
Bell, Dr D S
Biggs, Professor J S G
Boquest, Mr A L
Bowyer, Dr R C
Bridges-Webb, Professor C
Brotherton, Dr J
Brotherton, Dr M
Browne, Dr D
Byrne, Dr J W
Cairns, Ms B
Carroll, Mr V
Carter, Mrs M
Cloher, Dr T P
Coglin, Dr M A
Cooper, Dr B D
Corbett, Dr P
Cox, Professor K R
Daly, Dr M
Donnelly, Mr R P
Dorevitch, Dr A P
Douglas, Dr B
Doust, Dr K
Duckett, Dr S J
Duncan, Ms A J
Eccles-Smith, Dr C
Edelsten, Dr G W
Ellard, Dr J
Ellis, Ms J
Elson, Dr N D
Ewan, Mr N
Eyers, Fr L
Farnsworth, Dr J
Fearnside, Dr M R
Finch, Ms H
Finlay, Mr C N
Fisher, Mr G E
Flaherty, Dr G N
Fohler, Mr A E
Foster, Dr J L
Fraenkel, Professor G J
Ganderton, Mr P
Giblett, Mr H A
Goldrick, Dr V
Goodrick, Ms B
Grace, Dr J
Gunton, Dr P G

Haddock, Mr K
Halliday, Dr B
Hammond, Mr W F
Hartup, Mr K
Harvey, Mr R
Hempton, Dr D B
Hewson, Mr P
Hoffman, Mr T D
Holgate, Mr R
Hunt, Ms E
Hunt, The Hon R J, MP
Hunter, Dr W F
Ireland, Mr B J
Ivil, Dr S J
Jackson, Mrs L
Jones, Dr B P
Jones, Dr G
Jones, Miss M
Jones, Mr J M
Jones, Ms M
Johnston, Mr M
Joske, Professor R A
Kenos, Mr A
King, Mr C F
Kolby, Ms R
Kramer, Dr H
La Nauze, Dr J
Le Breton, Dr E G
Legge, Dr D
Lyall, Ms C F
Mackenzie, Mr W J
Macpherson, Dr A
McCarthy, Dr T S
McLean, Dr A J
McNeil, Professor D
McNiven, Mr K
McCaffrey, Mr J
Mackay, Dr D
Mackeller, Dr J D
Mann, Dr A
Mathews, Dr R N
Meers, Mr N J
Moraitis, Dr S, OBE
Morris, Mr A A
Munro, Professor, J G C
Munster, Mr C H
Murnain, Mr J
Murphy, Mr P J
Musgrave, Dr J
Newman, Dr R
O'Brien, Mr J P
O'Brien, Mr T
O'Callaghen, Ms A
Opit, Professor L J
Orban, Dr T D
Overfield, Mr W G

Pacy, Dr J R
Palmer, Professor G R
Pendrey, Mr A A E
Penington, Professor D
Pitney, Professor W R
Power, Ms L
Quinn, Dr D
Raik, Dr E
Rares, Mr S
Reid, Dr B
Reid-Smith, Ms L
Roach, Mr C M
Rodgers, Mrs P
Sauer, Dr T
Schoch, Dr H
Scott, Dr W N
Sender, Dr D
Shaw, Mr J
Slater, Dr F
Smith, Dr D E
Smith, Dr M B
Smith, Ms S
Speilman, Dr R
Stoutjesdijk, Dr A D J
Strauss, Dr S
Strnad, Ms H
Sullivan, Dr M
Taylor, Dr H R
Thomas, Mr N
Thompson, Dr G
Toomer, Mr W F
Toose, The Hon Mr Justice PB, QC OBE
Traile, Dr M A
Tullock, Dr I
Wallace, Mrs C
Wardman, Dr W
Warneke, Mr E H
Weedon, Dr D
Wells, Dr R H C
Whyte, Dr G C
Williams, Mr L
Wilson, Dr P R
Wolfenden, Dr W H
Woodward, Ms L
Yau, Dr R M
Zetler, Dr I

*

Many of the above government organisations, medical associations, other organisations and individuals have forwarded a number of submissions to the Committee during the inquiry.

In addition, many confidential submissions have been considered by the Committee. Parts of some of the submissions listed above have been supplied on a confidential basis.

# A P P E N D I X  3

## PAC Membership During the Inquiry

Thirteenth Committee (appointed 26 November 1980)

D M Connolly, MP (Chairman)
Senator G Georges (Vice-Chairman)

Senator M E Lajovic
Senator J O W Watson

J M Bradfield, MP
K C Beazley, MP
A G Cadman, MP
M J Duffy, MP
R J Kelly, MP
S A Lusher, MP*
P D Shack, MP
G E J Tambling, MP
Dr A C Theophanous, MP

Fourteenth Committee (appointed 4 May 1983, Senate, and 5 May 1983, House of Representatives)

Senator G Georges (Chairman)
A G Cadman, MP (Vice-Chairman)

Senator the Hon. Dame Margaret Guilfoyle, DBE
Senator G R Maguire
Senator M Reynolds
Senator J O W Watson

R J Kelly, MP
L Kent, MP
Dr R E Klugman, MP
P J McGauran, MP
H Mayer, MP
L B McLeay, MP*
F L Punch, MP
G F Punch, MP
Dr A C Theophansus, MP
P N D White, MC, MP

## Fifteenth Committee (appointed 26 February 1985, Senate, 28 February 1985, House of Representatives)

Senator G Georges (Chairman)
Senator J O W Watson (Vice-Chairman) (elected 19 February 1986)
A G Cadman, MP (Vice-Chairman) (until 29 November 1985)

Senator the Hon. Dame Margaret Guilfoyle, DBE
Senator B Cooney
Senator G R Maguire

B J Conquest, MP (from 15 April 1986)
A J G Downer, MP (from 23 May 1986)
R J Kelly, MP
H Mayer, MP
L B McLeay, MP* (until 14 February 1986)
J G Mountford, MP* (from 14 February 1986)
G B Nehl, MP
L R S Price, MP
G F Punch, MP (until 23 March 1986)
A C Rocher, MP (until 23 September 1986)
P M Ruddock, MP (from 29 November 1985)
J R Sharp, MP (until 15 April 1986)
Dr A C Theophanous, MP
R E Tickner, MP
Dr D J H Watson, MP (from 23 September 1986)

*Ex-officio member being Chairman, House of Representatives Standing Committee on Expenditure

# A P P E N D I X 4

Section 129 of the Health Insurance Act 1973

**129.** (1) A person shall not make a statement, either orally or in writing, or issue or present a document, that is false or misleading in a material particular and is capable of being used in, in connexion with or in support of, an application for approval for the purposes of this Act or for payment of an amount under this Act. False statements, &c.

Penalty $10,000 or imprisonment for 5 years

(1A) Where—

(a) a person makes a statement, either orally or in writing, or issues or presents a document, that is false or misleading in a material particular;

(b) the statement or document is capable of being used in, in connection with, or in support of, an application for payment of an amount under this Act;

(c) the material particular in respect of which the statement or document is false or misleading is substantially based upon a statement made, either orally or in writing, or a document issued or presented, to the person or to an agent of the person by another person who is an employee or agent of the first-mentioned person;

(d) the last-mentioned statement or document is false or misleading in a material particular; and

(e) that other person knew, or had reasonable grounds to suspect, that the last-mentioned statement or document would be used in the preparation of a statement or document of the kind referred to in paragraph (b),

that other person is guilty of an offence punishable on conviction by a fine not exceeding $10,000 or imprisonment for a period not exceeding 5 years.

(1B) In sub-section (1A), a reference to an employee of a person shall, in a case where that person is a corporation, be read as a reference to—

(a) a director, secretary or employee of the corporation;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or

(c) a liquidator of the corporation appointed in a voluntary winding up.

(2) A person shall not furnish, in pursuance of this Act or of the regulations, a return or information that is false or misleading in a material particular.

Penalty: $10,000 or imprisonment for 5 years.

(2A) A person shall not make a statement, either orally or in writing, or issue or present a document, that is false or misleading in a material particular and is capable of being used in, in connection with or in support of—

(a) an application under section 5 or 5B;

(b) a statement or report under section 130A; or

(c) a notification under section 130B.

Penalty: $500 or imprisonment for 6 months.

(3) In a prosecution of a person for an offence against this section, it is a defence if the person proves that he did not know, and had no reason to suspect, that the statement, document, return or information, made, issued, presented or furnished by him was false or misleading, as the case may be.

(4) Nothing in sub-section (1A) affects the application to any person of sub-section (1) or (2).

# APPENDIX 5

Sections 49 and 50 of the
Health Legislation Amendment (No. 2) Act 1985

49. After section 128 of the Principal Act the following sections are inserted:

**False statements relating to medicare benefits, &c.**

"128A. (1) A person shall not make, or authorise the making of, a statement (whether oral or in writing) that is—

(a) false or misleading in a material particular; and

(b) capable of being used in connection with a claim for a benefit or payment under this Act.

Penalty: $2,000.

"(2) Where—

(a) a person makes a statement (whether oral or in writing) that is false or misleading in a material particular;

(b) the statement is capable of being used in connection with a benefit or payment under this Act;

(c) the material particular in respect of which the statement is false or misleading is substantially based upon a statement made, either orally or in writing, to the person or to an agent of the person by another person who is an employee or agent of the first-mentioned person; and

(d) the last-mentioned statement is false or misleading in a material particular,

that other person is guilty of an offence punishable on conviction by a fine not exceeding $2,000.

"(3) In sub-section (2), a reference to an employee of a person shall, in a case where that person is a corporation, be read as a reference to—

(a) a director, secretary or employee of the corporation;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or

(c) a liquidator of the corporation appointed in a voluntary winding up.

"(4) Notwithstanding section 21 of the *Crimes Act 1914*, a prosecution for an offence under this section may be commenced at any time within 3 years after the commission of the offence.

"(5) It is a defence if a person charged with an offence under this section in relation to a statement made by the person did not know, and could not reasonably be expected to have known, that the statement was—

(a) false or misleading in a material particular; or

(b) capable of being used in connection with a claim for a benefit or payment under this Act.

"(6) In this section, a reference to making a statement includes a reference to issuing or presenting a document, and a reference to a statement shall be construed accordingly.

**Knowingly making false statements relating to medicare benefits, &c.**

"128B. (1) A person shall not make, or authorise the making of, a statement (whether oral or in writing) if the person knows that the statement is—

(a) false or misleading in a material particular; and

(b) capable of being used in connection with a claim for a benefit or payment under this Act.

Penalty: $10,000 or imprisonment for 5 years, or both.

"(2) Where—

(a) a person makes a statement (whether oral or in writing) that is false or misleading in a material particular;

(b) the statement is capable of being used in connection with a benefit or payment under this Act;

(c) the material particular in respect of which the statement is false or misleading is substantially based upon a statement made, either orally or in writing, to the person or to an agent of the person by another person who is an employee or agent of the first-mentioned person;

(d) that other person knew that the last-mentioned statement was false or misleading in a material particular; and

(e) that other person knew, or had reasonable grounds to suspect, that the last-mentioned statement would be used in the preparation of a statement of the kind referred to in paragraph (b),

that other person is guilty of an offence punishable on conviction by a fine not exceeding $10,000 or imprisonment for a period not exceeding 5 years, or both.

"(3) In sub-section (2), a reference to an employee of a person shall, in a case where that person is a corporation, be read as a reference to—

(a) a director, secretary or employee of the corporation;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or

(c) a liquidator of the corporation appointed in a voluntary winding up.

"(4) Where, on the trial of a person for an offence against sub-section (1) or (2), the jury is not satisfied that the person is guilty of that offence

but is satisfied that the person is guilty of an offence against sub-section 128A (1) or (2), it may find the person not guilty of the offence charged but guilty of an offence against sub-section 128A (1) or (2), as the case may be.

"(5) In this section, a reference to making a statement includes a reference to issuing or presenting a document, and a reference to a statement shall be construed accordingly.

**False statements, &c.**

**50.** Section 129 of the Principal Act is amended by omitting sub-sections (1), (1A), (1B) and (4).

# A P P E N D I X 6

Section 19 of the

Health Legislation Amendment Act 1986

19. (1) After Part II of the Principal Act the following Part is inserted:

## "PART IIA—SPECIAL PROVISIONS RELATING TO PATHOLOGY

### *"Division 1—Preliminary*

**Interpretation**

"23DA. (1) In this Part, unless the contrary intention appears—

'officer', in relation to a body corporate, means a director, secretary, manager or employee of the body corporate;

'relevant offence' means—

(a) a relevant offence within the meaning of Part VB;

(b) an offence against sub-section 23DP (1), (2) or (3); or

(c) an offence against—

(i) section 6, 7 or 7A of the *Crimes Act 1914*; or

(ii) sub-section 86 (1) of that Act by virtue of paragraph (a) of that sub-section,

being an offence that relates to an offence against sub-section 23DP (1), (2) or (3);

'relevant person' means a person—

(a) to whom notice has been given under sub-section 23DL (1) or 23DM (1) or in relation to whom notice has been given to a Chairperson of a Medicare Participation Review Committee under sub-section 23DL (4), 23DM (4) or 124D (2);

(b) to whom notice has been given under sub-section 124FA (3) or 124FE (3);

(c) in relation to whom a Medicare Participation Review Committee has made a determination under section 124F, 124FB, 124FC or 124FF;

(d) to whom notice has been given under sub-section 95 (1);

(e) in relation to whom a Medical Services Committee of Inquiry has made a recommendation under section 105;

(f) who has been convicted of a relevant offence; or

(g) who the Minister has reasonable grounds to believe may have committed a relevant offence.

"(2) A reference in this Part to a conviction of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence.

"(3) In this Part, 'prescribed person' means a person—

(a) in relation to whom a determination under paragraph 124F (2) (d) or (e) or sub-paragraph 124FB (1) (e) (iv), (v) or (vi) or 124FC (1) (e) (iv) or (v) is in force;

(b) who the Minister has reasonable grounds to believe may have committed a relevant offence, being a relevant offence in relation to which a determination has not been made under sub-section 124F (2);

(c) who is a convicted practitioner within the meaning of section 19B as in force before the commencement of Part VB; or

(d) who the Minister has reasonable grounds to believe may have committed a relevant offence within the meaning of section 19B as in force before the commencement of Part VB.

"(4) A reference in this Part to disqualification, in relation to a prescribed person is a reference to—

(a) a determination under paragraph 124F (2) (d) or (e) or sub-paragraph 124FB (1) (e) (iv), (v) or (vi) or 124FC (1) (e) (iv) or (v) in relation to the person; or

(b) a disqualification of the person within the meaning of section 19B as in force before the commencement of Part VB.

*Forms of undertaking*

"23DB. (1) The Minister may approve, in writing, forms of undertaking to be given by persons who wish to become approved pathology practitioners or approved pathology authorities.

"(2) The Minister may vary, in writing, a form of undertaking approved under sub-section (1).

"(3) A form of undertaking shall make provision for and in relation to such matters as the Minister considers appropriate.

"(4) Without limiting the generality of sub-section (3), a form of undertaking to be given by persons who wish to become approved pathology practitioners may make provision for—

(a) an undertaking by the person that pathology services in respect of which medicare benefits may become payable that are rendered on behalf of the person shall be carried out under the person's personal supervision;

(b) an undertaking by the person not to render excessive pathology services; and

(c) an undertaking by the person that pathology services in respect of which medicare benefits may become payable that are rendered by or on behalf of the person in an accredited pathology laboratory of which the person is not the proprietor or a proprietor shall not be rendered pursuant to agreements or arrangements of a kind specified in the undertaking.

"(5) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to approvals under sub-section (1) and variations under sub-section (2) as if in those provisions references to regulations were references to approvals or variations, references to a regulation were references to a provision of an approval or variation and references to repeal were references to revocation.

"(6) Approvals under sub-section (1) and variations under sub-section (2) shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to approvals and variations as they apply to statutory rules.

"(7) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (6) of this section, the reference in the first-mentioned sub-section to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering this Act.

"(8) Section 5 of the *Evidence Act 1905* applies to approvals and variations as that section applies to an order made by the Minister.

***"Division 2—Approved pathology practitioners and approved pathology authorities***

**Giving and acceptance of approved pathology practitioner undertaking**

"23DC. (1) Where a person who is a medical practitioner—

(a) signs an undertaking in writing for the purposes of this section, in accordance with the appropriate approved form; and

(b) gives the undertaking to the Minister together with—

(i) an application for the Minister's acceptance of the undertaking; and

(ii) a fee of $100 or such higher amount as is prescribed,

the Minister may, subject to sub-sections (3), (4) and (5)—

(c) accept the undertaking on behalf of the Commonwealth and determine the period (being a period ending not later than 12 months after the day on which the undertaking comes into force) for which the undertaking is to have effect; or

(d) refuse to accept the undertaking.

"(2) An application under sub-section (1) shall—

(a) be in writing;

(b) be in accordance with the approved form; and

(c) contain such particulars as are determined by the Minister, in writing, for the purposes of this sub-section.

"(3) The Minister shall not accept an undertaking given by a person for the purposes of this section if a determination of the kind referred to in sub-paragraph 124FB (1) (e) (v) is in force in respect of the person.

"(4) The Minister shall not accept an undertaking given by a person for the purposes of this section if the Minister is satisfied that—

(a) if the undertaking were accepted, the person who gave the undertaking would be likely to carry on the whole or a part of the practice or business of a prescribed person; and

(b) the acceptance of the undertaking would be likely to have the effect of allowing a person to avoid, in whole or in part, the financial consequences of the disqualification, or the likely disqualification, of that prescribed person.

"(5) The Minister shall not accept an undertaking given by a person for the purposes of this section unless the Minister is satisfied that the person is a fit and proper person to be an approved pathology practitioner.

"(6) In determining, for the purposes of sub-section (5), whether a person is a fit and proper person to be an approved pathology practitioner, the Minister shall have regard to—

(a) the person's formal qualifications and experience;

(b) whether the person is a relevant person;

(c) where a Medicare Participation Review Committee has made a determination in relation to the person under section 124F, 124FB, 124FC or 124FF—the terms of that determination;

(d) where a Medical Services Committee of Inquiry has made a recommendation in relation to the person under section 105—the terms of that recommendation;

(e) in a case where the person conducts, or intends to conduct, a practice or business of rendering pathology services—

(i) the persons who derive, or can reasonably be expected to derive, whether directly or indirectly, financial benefit from the conduct of that practice or business; and

(ii) whether any of those persons is a relevant person;

(f) in a case where the person renders, or intends to render, pathology services as the employee of another person—whether that other person is a relevant person;

(g) whether the person is or has been—

(i) associated with a relevant person; or

(ii) in a position to control the operations of a body corporate that—

(A) is, or has been, an approved pathology authority; and

(B) is a relevant person;

(h) such matters as are prescribed for the purposes of this paragraph; and

(j) such other matters as the Minister considers relevant.

"(7) Where a person gives an undertaking under sub-section (1), the Minister may, by notice in writing given to the person, require the person to give the Minister, within such period (being a period ending not earlier than 28 days after the day on which the notice is given) as is specified in the notice, such information in relation to the undertaking, or the application that accompanied the undertaking, as is specified in the notice.

"(8) Without limiting the generality of sub-section (1), where—

(a) the Minister gives a person notice under sub-section (7) in relation to an undertaking given by the person under sub-section (1); and

(b) the person does not give the Minister the information specified in the notice before the end of the period specified in the notice,

the Minister may refuse to accept the undertaking.

"(9) Where the Minister accepts or refuses to accept an undertaking given under sub-section (1), the Minister shall give notice in writing of the acceptance or refusal to the person who gave the undertaking.

"(10) Where the Minister accepts an undertaking given by a person under sub-section (1), the notice given to the person under sub-section (9) shall—

(a) specify the period determined by the Minister, pursuant to paragraph (1) (c), as the period for which the undertaking is to have effect; and

(b) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision of the Minister determining the period for which the undertaking is to have effect by or on behalf of a person whose interests are affected by the decision.

"(11) Where the Minister refuses to accept an undertaking given by a person under sub-section (1), the notice given to the person under sub-section (9) shall include—

(a) a statement to the effect that the person may apply to the Minister under sub-section 23DO (1) for reconsideration of the decision of the Minister refusing to accept the undertaking; and

(b) a statement to the effect that if a person whose interests are affected by the decision of the Minister on the reconsideration is dissatisfied with that decision, that person may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of that decision.

"(12) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to determinations made under sub-section (2) as if in those provisions references to regulations were references to determinations, references to a regulation were references to a provision of a determination and references to repeal were references to revocation.

"(13) Determinations shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to determinations as they apply to statutory rules.

"(14) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (13) of this section, the reference in the first-mentioned sub-section to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering this Act.

"(15) Section 5 of the *Evidence Act 1905* applies to determinations as that section applies to an order made by the Minister.

"(16) Any failure to comply with the requirements of sub-section (10) or (11) in relation to a decision does not affect the validity of the decision.

"(17) In sub-section (1), 'medical practitioner' includes a person (other than a medical practitioner) who, immediately before 1 August 1977, was carrying on the business of rendering pathology services at the request of medical practitioners, where—

(a) in accordance with an approval granted by the Secretary to the Department, that person issued to the person who incurred the medical expenses in respect of a pathology service so rendered (not being the practitioner who requested the rendering of the service) an account or receipt of his or her fees in respect of the service; and

(b) medical benefit was paid before that day in respect of the service.

**Period of effect of approved pathology practitioner undertaking**

"23DD. (1) Where a person gives an undertaking under sub-section 23DC (1) and the Minister accepts the undertaking, the undertaking—

(a) subject to sub-section (2), comes into force—

(i) on the day on which the undertaking is accepted by the Minister; or

(ii) on such earlier day (not being a day earlier than the day on which the undertaking was signed) as is specified by the Minister in the notice given under sub-section 23DC (9) in relation to the undertaking; and

(b) subject to sub-section (3), ceases to be in force upon—

(i) the termination of the undertaking under section 23DE;

(ii) the revocation of the Minister's acceptance of the undertaking in accordance with a determination by a Medicare Participation Review Committee under section 124FB;

(iii) in a case where the person was a medical practitioner at the time when the Minister accepted the undertaking—a person's ceasing to be a medical practitioner; or

(iv) the expiration of the period determined by the Minister, pursuant to paragraph 23DC (1) (c) or 23DO (2) (b), as the period for which the undertaking is to have effect,

whichever first occurs.

"(2) Where—

(a) a person gives an undertaking (in this sub-section referred to as the 'second undertaking') under sub-section 23DC (1) and the second undertaking is accepted by the Minister; and

(b) at the time when the second undertaking is accepted by the Minister, another undertaking (in this sub-section referred to as the 'first underaking') given by the person for the purposes of section 23DC and accepted by the Minister under that section is in force,

the second undertaking comes into force immediately after the first undertaking ceases to be in force.

"(3) Where—

(a) a person gives an undertaking (in this sub-section referred to as the 'first undertaking') under sub-section 23DC (1) and the first undertaking is accepted by the Minister;

(b) while the first undertaking is in force, the person gives another undertaking (in this sub-section referred to as the 'second undertaking') under sub-section 23DC (1); and

(c) the period referred to in sub-paragraph (1) (b) (iv) in relation to the first undertaking expires without the Minister having given the person notice under sub-section 23DC (9) in relation to the second undertaking,

sub-section (1) applies in relation to the first undertaking as if the period referred to in sub-paragraph (1) (b) (iv) were the period commencing on the day on which the first undertaking comes into force and ending on the day on which the Minister gives notice to the person under sub-section 23DC (9) in relation to the second undertaking.

**Approved pathology practitioner may terminate undertaking**

"23DE. An approved pathology practitioner may, at any time, terminate an undertaking given by the practitioner for the purposes of section 23DC by giving, as prescribed, a notice of termination specifying a date of termination not earlier than 30 days after the day on which the notice is given.

***Giving and acceptance of approved pathology authority undertaking***

"23DF. (1) Where—

(a) an undertaking for the purposes of this section, in accordance with the appropriate approved form, is signed by or on behalf of a person (including a State, the Northern Territory or a public authority); and

(b) the person gives the undertaking to the Minister together with—

(i) an application for the Minister's acceptance of the undertaking; and

(ii) a fee of $100 or such higher amount as is prescribed,

the Minister may, subject to sub-sections (4), (5) and (6)—

(c) accept the undertaking on behalf of the Commonwealth and determine the period (being a period ending not later than 12 months after the day on which the undertaking comes into force) for which the undertaking is to have effect; or

(d) refuse to accept the undertaking.

"(2) An application under sub-section (1) shall—

(a) be in writing;

(b) be in accordance with the approved form; and

(c) contain such particulars as are determined by the Minister, in writing, for the purposes of this sub-section.

"(3) Without limiting the generality of sub-section (2), a determination prescribing the particulars to be contained in an application for the purposes of that sub-section may, in the case of an application by a body corporate, prescribe particulars of the directors, shareholders and officers of the body corporate.

"(4) The Minister shall not accept an undertaking given by a person for the purposes of this section if a determination by a Medicare Participation Review Committee of the kind referred to in sub-paragraph 124FC (1) (e) (v) is in force in respect of the person.

"(5) The Minister shall not accept an undertaking given by a person for the purposes of this section if the Minister is satisfied that—

(a) if the undertaking were accepted, the person who gave the undertaking would be likely to carry on the whole or a part of the practice or business of a prescribed person; and

(b) the acceptance of the undertaking would be likely to have the effect of allowing a person to avoid, in whole or in part, the financial consequences of the disqualification, or the likely disqualification, of that prescribed person.

"(6) The Minister shall not accept an undertaking given by a person for the purposes of this section unless the Minister is satisfied that the person is a fit and proper person to be an approved pathology authority.

"(7) In determining, for the purposes of sub-section (6), whether a person is a fit and proper person to be an approved pathology authority, the Minister shall have regard to—

(a) whether the person is a relevant person;

(b) where a Medicare Participation Review Committee has made a determination in relation to the person under section 124F, 124FB, 124FC or 124FF—the terms of that determination;

(c) where a Medical Services Committee of Inquiry has made a recommendation in relation to the person under section 105—the terms of that recommendation;

(d) in a case where the person conducts, or intends to conduct, a business of rendering pathology services—

(i) the persons who derive, or who can reasonably be expected to derive, whether directly or indirectly, financial benefit from the conduct of that business; and

(ii) whether any of those persons is a relevant person;

(e) whether the person is or has been—

(i) associated with a relevant person; or

(ii) in a position to control the operations of a body corporate that—

(A) is, or has been, an approved pathology authority; and

(B) is a relevant person;

(f) in a case where the person is a body corporate—whether any officer of the body corporate, or any person who is in a position to control the body corporate, is or has been—

(i) associated with a relevant person; or

(ii) in a position to control the operations of a body corporate that—

(A) is, or has been, an approved pathology authority; and

(B) is a relevant person;

(g) such matters as are prescribed for the purposes of this paragraph; and

(h) such other matters as the Minister considers relevant.

"(8) Where a person gives an undertaking under sub-section (1), the Minister may, by notice in writing given to the person, require the person to give the Minister, within such period (being a period ending not earlier than 28 days after the day on which the notice is given) as is specified in the notice, such information in relation to the undertaking, or the application that accompanied the undertaking, as is specified in the notice.

"(9) Without limiting the generality of sub-section (1), where—

(a) the Minister gives a person notice under sub-section (8) in relation to an undertaking given by the person under sub-section (1); and

(b) the person does not give the Minister the information specified in the notice before the end of the period specified in the notice,

the Minister may refuse to accept the undertaking.

"(10) Where the Minister accepts or refuses to accept an undertaking given under sub-section (1), the Minister shall give notice in writing of the acceptance or refusal to the person who gave the undertaking.

"(11) Where the Minister accepts an undertaking given by a person under sub-section (1), the notice given to the person under sub-section (10) shall—

(a) specify the period determined by the Minister, pursuant to paragraph (1) (c), as the period for which the undertaking is to have effect; and

(b) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision of the Minister determining the period for which the undertaking is to have effect by or on behalf of a person whose interests are affected by the decision.

"(12) Where the Minister refuses to accept an undertaking given by a person under sub-section (1), the notice given to the person under sub-section (10) shall include—

(a) a statement to the effect that the person may apply to the Minister under sub-section 23DO (1) for reconsideration of the decision of the Minister refusing to accept the undertaking; and

(b) a statement to the effect that if a person whose interests are affected by the decision of the Minister on the reconsideration is dissatisfied with that decision, that person may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of that decision.

"(13) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to determinations made under sub-section (2) as if in those provisions references to regulations were references to determinations, references to a regulation were references to a provision of a determination and references to repeal were references to revocation.

"(14) Determinations shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to determinations as they apply to statutory rules.

"(15) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (14) of this section, the reference in the first-mentioned sub-section to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering this Act.

"(16) Section 5 of the *Evidence Act 1905* applies to determinations as that section applies to an order made by the Minister.

"(17) Any failure to comply with the requirements of sub-section (11) or (12) in relation to a decision does not affect the validity of the decision.

"(18) In this section, 'public authority' means an authority (being a corporation) established by a law of the Commonwealth, of a State or of an internal Territory.

**Period of effect of approved pathology authority undertaking**

"23DG. (1) Where a person gives an undertaking under sub-section 23DF (1) and the Minister accepts the undertaking, the undertaking—

(a) subject to sub-section (2), comes into force—

(i) on the day on which the undertaking is accepted by the Minister; or

(ii) on such earlier day (not being a day earlier than the day on which the undertaking was signed) as is specified by the Minister in the notice given under sub-section 23DF (10) in relation to the undertaking; and

(b) subject to sub-section (3), ceases to be in force upon—

(i) the termination of the undertaking by the person under section 23DH;

(ii) the revocation of the Minister's acceptance of the undertaking in accordance with a determination by a Medicare Participation Review Committee under section 124FC; or

(iii) the expiration of the period determined by the Minister, pursuant to paragraph 23DF (1) (c) or 23DO (2) (b), as the period for which the undertaking is to have effect,

whichever first occurs.

"(2) Where—

(a) a person gives an undertaking (in this sub-section referred to as the 'second undertaking') under sub-section 23DF (1) and the second undertaking is accepted by the Minister; and

(b) at the time when the second undertaking is accepted by the Minister, another undertaking (in this sub-section referred to as the 'first undertaking') given by the person for the purposes of section 23DF and accepted by the Minister under that section is in force,

the second undertaking comes into force immediately after the first undertaking ceases to be in force.

"(3) Where—

(a) a person gives an undertaking (in this sub-section referred to as the 'first undertaking') under sub-section 23DF (1) and the first undertaking is accepted by the Minister;

(b) while the first undertaking is in force, the person gives another undertaking (in this sub-section referred to as the 'second undertaking') under sub-section 23DF (1); and

(c) the period referred to in sub-paragraph (1) (b) (iii) in relation to the first undertaking expires without the Minister having given the person notice under sub-section 23DF (10) in relation to the second undertaking,

sub-section (1) applies in relation to the first undertaking as if the period referred to in sub-paragraph (1) (b) (iii) were the period commencing on the day on which the first undertaking comes into force and ending on the

day on which the Minister gives notice to the person under sub-section 23DF (10) in relation to the second undertaking.

**Approved pathology authority may terminate undertaking**

"23DH. An approved pathology authority may, at any time, terminate an undertaking given by the authority for the purposes of section 23DF by giving, as prescribed, a notice of termination specifying a date of termination not earlier than 30 days after the day on which the notice is given.

**Repayment of fee**

"23DJ. Where a person gives an undertaking under sub-section 23DC (1) or 23DF (1) together with a fee and the undertaking is not accepted, the fee shall be repaid to the person in accordance with the regulations.

**Request forms and confirmation forms**

"23DK. (1) Where a pathology service has been rendered by or on behalf of an approved pathology practitioner pursuant to a request made or confirmed in accordance with section 16A, the approved pathology practitioner shall retain the written request or the written confirmation of the request for the period of 18 months commencing on the day on which the service was rendered.

"(2) Where—

(a) a request is made to an approved pathology practitioner (in this sub-section referred to as the 'relevant pathologist') for a pathology service or pathology services in relation to a person by the practitioner who is the treating practitioner in relation to the person for the purposes of section 16A;

(b) the request is in writing or is confirmed in writing; and

(c) the relevant pathologist makes a request to another approved pathology practitioner for that service, or for a service included in those services, in relation to that person,

the relevant pathologist shall retain the written request or the written confirmation of the request for the period of 18 months commencing on the day on which the request referred to in paragraph (a) is made.

"(3) An approved pathology practitioner shall, if requested to do so by an officer of the Commission, produce to the officer, as soon as practicable and in any case before the end of the day next following the day on which the request is made by the officer, a written request or a written confirmation of a kind required to be retained by the approved pathology practitioner under sub-section (1) or (2).

"(4) An officer may make and retain copies of or take and retain extracts from, any request or confirmation produced to the officer pursuant to sub-section (3).

"(5) Where—

(a) a practitioner makes a request for a pathology service to an approved pathology practitioner;

(b) medicare benefit may become payable in respect of the service; and

(c) the request is made otherwise than in writing,

the practitioner shall confirm the request in writing within the period of 14 days commencing on the day on which the request is made.

"(6) Where—

(a) an approved pathology practitioner (in this sub-section referred to as the 'referring pathologist') makes a request for a pathology service to another approved pathology practitioner;

(b) medicare benefit may become payable in respect of the service; and

(c) the request is made otherwise than in writing,

the referring pathologist shall confirm the request in writing within the period of 14 days commencing on the day on which the request is made.

"(7) For the purposes of this section, where—

(a) a written request or a written confirmation of a request has been recorded on film or on any other medium approved, in writing, by the Minister from time to time; or

(b) in accordance with an approval, in writing, of the Minister, a request or confirmation (other than a written request or a written confirmation) has been recorded on a tape, disc, film or other medium,

for the purposes of storage and subsequent retrieval when required—

(c) the retention of the record so made shall be deemed to be a retention of the request or the confirmation, as the case may be; and

(d) the production, or the reproduction, of the record so made shall be deemed to be a production of the request or the confirmation, as the case may be.

"(8) Where the Minister gives an approval for the purposes of paragraph (7) (b), the Minister may set out in the instrument of approval any conditions to which the approval is subject, and any recording that is not in accordance with such a condition shall be deemed to be not in accordance with the approval.

"(9) A reference in this section to a request made or confirmed in accordance with section 16A includes a reference to a request made or confirmed in accordance with section 16A of this Act as in force at any time before the commencement of this section.

"(10) A reference in this section to an approved pathology practitioner includes a reference to a person who has been an approved pathology practitioner within the meaning of this Act as in force before the commencement of this section.

"(11) A reference in this section to a request made to an approved pathology practitioner includes a reference to a request that is deemed, for the purposes of section 16A, to have been made to that approved pathology practitioner.

*"Division 3—Breaches of undertakings and initiation of excessive pathology services*

**Breaches of undertakings by approved pathology practitioners and approved pathology authorities**

"23DL. (1) Where the Minister has reasonable grounds for believing that a person who is or was an approved pathology practitioner or an approved pathology authority has breached an undertaking given by the person for the purposes of section 23DC or 23DF, the Minister shall give notice in writing to the person setting out particulars of those grounds and inviting the person to make submissions to the Minister, in accordance with sub-section (2), showing cause why the Minister should not take further action in relation to the person under this section.

"(2) A person who is given notice under sub-section (1) may, within the period of 28 days commencing on the day on which the notice is given, make submissions to the Minister showing cause why the Minister should not take further action in relation to the person under this section.

"(3) Where a person makes a submission to the Minister in accordance with sub-section (2), the Minister shall have regard to that submission in determining whether to take any further action in relation to the person under this section.

"(4) Where the Minister gives notice to a person under sub-section (1), the Minister shall—

(a) if, at the end of the period referred to in sub-section (2), the person has not made submissions to the Minister in accordance with that sub-section—give notice in writing to a Chairperson of a Medicare Participation Review Committee setting out particulars of the grounds referred to in sub-section (1);

(b) if the person makes submissions to the Minister within the period referred to in sub-section (2) and the Minister is satisfied that there has been no breach of the undertaking—determine that no further action be taken in relation to the person under this section pursuant to the notice referred to in sub-section (1); or

(c) if the person makes submissions to the Minister within the period referred to in sub-section (2) and the Minister is satisfied that there are reasonable grounds (being grounds that were specified in the notice referred to in sub-section (1)) for believing that there has been a breach of the undertaking—give notice in writing to a Chairperson of a Medicare Participation Review Committee setting out particulars of those grounds.

the Minister shall give notice in writing to the person setting out particulars of those grounds and inviting the person to make submissions to the Minister, in accordance with sub-section (2), showing cause why the Minister should not take further action in relation to the person under this section.

"(2) A person who is given notice under sub-section (1) may, within a period of 28 days commencing on the day on which the notice is given, make submissions to the Minister showing cause why the Minister should not take further action in relation to the person under this section.

"(3) Where a person makes a submission to the Minister in accordance with sub-section (2), the Minister shall have regard to that submission in determining whether to take any further action in relation to the person under this section.

"(4) Where the Minister gives notice to a person under sub-section (1), the Minister shall—

(a) if, at the end of the period referred to in sub-section (2), the person has not made submissions to the Minister pursuant to that sub-section—give notice in writing to a Chairperson of a Medicare Participation Review Committee setting out particulars of the grounds referred to in sub-section (1);

(b) if the person makes submissions to the Minister within the period referred to in sub-section (2) and the Minister is satisfied that there are no reasonable grounds for believing that the person has initiated excessive pathology services, or caused or permitted excessive pathology services to be initiated as referred to in the notice under sub-section (1), as the case requires—determine that no further action be taken in relation to the person under this section in relation to the notice referred to in sub-section (1); or

(c) if the person makes submissions to the Minister within the period referred to in sub-section (2) and the Minister is satisfied that there are reasonable grounds (being grounds that were specified in the notice referred to in sub-section (1)) for believing that the person has initiated excessive pathology services, or caused or permitted excessive pathology services to be initiated as referred to in that notice, as the case requires—give notice in writing to a Chairperson of a Medicare Participation Review Committee setting out particulars of those grounds.

"(5) Where the Minister makes a decision pursuant to sub-section (4) in relation to a person, the Minister shall give the person notice in writing of the decision.

"*Division 4—Accredited pathology laboratories*

**Accredited pathology laboratories**

"23DN. (1) Where a person—

(a) makes an application, in writing, in accordance with the approved form, to the Minister for the approval of premises as an accredited pathology laboratory; and

"(5) Where the Minister makes a decision pursuant to sub-section (4) in relation to a person, the Minister shall give the person notice in writing of the decision.

"(6) Where the Minister gives notice pursuant to paragraph (4) (a) or (c) to the Chairperson of a Medicare Participation Review Committee, the Minister may determine, in writing, that the undertaking in respect of which the notice is given be suspended pending the outcome of the proceedings before the Committee.

"(7) Where the Minister makes a determination under sub-section (6) in relation to an undertaking, the undertaking ceases to be in force until—

(a) the determination is revoked by the Minister; or

(b) a Medicare Participation Review Committee makes a determination under section 124FB or 124FC pursuant to the notice referred to in sub-section (6).

"(8) Where the Minister makes a determination under sub-section (6) in relation to an undertaking given by a person, the Minister shall give the person notice in writing of the determination.

"(9) A notice under sub-section (8) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.

"(10) Where the Minister makes a determination under sub-section (6) the Minister may, if the Minister thinks fit, publish notice of the determination in the *Gazette*.

"(11) An action or proceeding, civil or criminal, does not lie against a person for publishing in good faith a copy of, a fair extract from or a fair abstract of a publication made in accordance with sub-section (10).

"(12) For the purposes of sub-section (11), a publication shall be deemed to be made in good faith if the person by whom it is made is not actuated by ill will to the person affected by the publication or by any other improper motive.

**Initiation of excessive pathology services**

"23DM. (1) Where the Minister has reasonable grounds for believing that—

(a) a person who is or was a practitioner has initiated excessive pathology services;

(b) a person has caused or permitted a practitioner employed by the person to initiate excessive pathology services; or

(c) a person, being an officer of a body corporate, has caused or permitted a practitioner employed by the body corporate to initiate excessive pathology services,

(b) pays the prescribed fee,

the Minister may, in writing, approve the premises, for the purposes of this Act, as an accredited pathology laboratory and, where the Minister gives such approval, the Minister shall specify in the approval—

(c) the kind of pathology services in respect of which the premises are approved for the purposes of this Act; and

(d) the period (being a period ending not later than 3 years after the day on which the approval takes effect) for which the approval is to have effect.

"(2) The Minister may, in writing, determine principles to be applied by the Minister in the exercise of the Minister's powers under sub-section (1).

"(3) The Minister shall, in exercising the Minister's powers under sub-section (1) at a particular time, apply the principles determined under sub-section (2) that are in force at that time.

"(4) An approval under sub-section (1)—

(a) takes effect on the day on which the approval is given or on such later day as is specified in the approval; and

(b) ceases to have effect upon—

(i) the revocation of the approval; or

(ii) the expiration of the period specified in the approval as the period for which the approval is to have effect,

whichever first occurs,

"(5) Where the Minister makes a decision under sub-section (1) approving or refusing to approve premises as an accredited pathology laboratory, the Minister shall give notice in writing of the decision to the person who applied for the approval.

"(6) Where the Minister varies or revokes an approval given under sub-section (1) in relation to premises, the Minister shall give notice in writing of the variation or revocation to the proprietor of the premises.

"(7) A notice under sub-section (5) or (6) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.

"(8) Where a person gives an application under sub-section (1) together with a fee and the application is not granted, the fee shall be repaid to the person in accordance with the regulations.

"(9) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to determinations made under sub-section (2) as if in those provisions references to regulations were references to determinations, references to a

regulation were references to a provision of a determination and references to repeal were references to revocation.

"(10) Determinations shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to determinations as they apply to statutory rules.

"(11) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (10) of this section, the reference in the first-mentioned sub-section to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering this Act.

"(12) Section 5 of the *Evidence Act 1905* applies to determinations as that section applies to an order made by the Minister.

"*Division 5—Miscellaneous*

**Review of decisions**

"23DO. (1) Where a person gives an undertaking under sub-section 23DC (1) or 23DF (1) and the Minister refuses to accept the undertaking, the person may, within the period of 28 days commencing on the day on which the person is given notice, under sub-section 23DC (9) or 23DF (10), as the case requires, of the Minister's decision, apply to the Minister for reconsideration by the Minister of the decision.

"(2) Where a person applies to the Minister under sub-section (1) for reconsideration of a decision by the Minister refusing to accept an undertaking given by the person, the Minister may—

(a) affirm the decision; or

(b) accept the undertaking on behalf of the Commonwealth and determine the period (being a period ending not later than 12 months after the day on which the undertaking comes into force) for which the undertaking is to have effect.

"(3) Where the Minister makes a decision under sub-section (2) in relation to an application by a person under sub-section (1), the Minister shall give notice in writing of the decision to the person who applied for the review.

"(4) A notice under sub-section (3) of a decision by the Minister shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision by or on behalf of a person whose interests are affected by the decision.

"(5) Applications may be made to the Administrative Appeals Tribunal for review of—

(a) a decision by the Minister, under sub-section 23DN (1), approving or refusing to approve premises as an accredited pathology laboratory for the purposes of this Act;

(b) a decision by the Minister varying or revoking an approval given under sub-section 23DN (1);

(c) a decision by the Minister under sub-section (2) of this section;

(d) a decision by the Minister, pursuant to paragraph 23DC (1) (c) or 23DF (1) (c), determining the period for which an undertaking is to have effect; or

(e) a decision by the Minister under sub-section 23DL (6) determining that an undertaking be suspended.

"(6) In this section, 'decision' has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

**Offences in relation to request forms and confirmation forms**

"23DP. (1) An approved pathology practitioner who, without reasonable excuse, contravenes sub-section 23DK (1), (2), (3) or (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding $1,000.

"(2) A practitioner who, without reasonable excuse, contravenes sub-section 23DK (5) is guilty of an offence punishable, upon conviction, by a fine not exceeding $1,000.

"(3) An approved pathology practitioner or an approved pathology authority shall not, without reasonable excuse, provide (whether directly or indirectly) to a practitioner a pathology request form that is not in accordance with the approved form.

Penalty: $1,000.

"(4) In this section—

(a) a reference to an approved pathology practitioner includes a reference to a person who has been an approved pathology practitioner;

(b) a reference to an approved pathology authority includes a reference to a person who has been an approved pathology authority; and

(c) a reference to a practitioner includes a reference to a person who has been a practitioner.

"(5) In this section, 'pathology request form' means a document for use by a practitioner in requesting pathology services.".

(2) A person may give an undertaking for the purposes of section 23DC or 23DF of the Principal Act as amended by sub-section (1), and the Minister may accept such an undertaking, as if that sub-section had come into operation on the day on which this sub-section comes into force but any undertaking so given and accepted before the day on which sub-section (1) comes into operation does not come into force until the day on which sub-section (1) comes into operation.

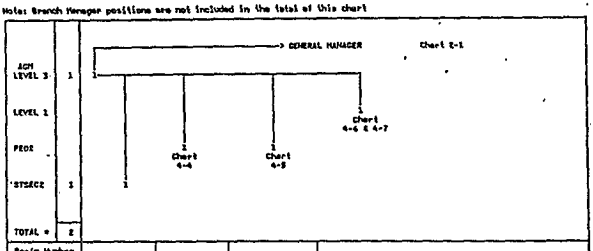
# A P P E N D I X 7

## Establishment Charts of the Health Insurance Commission Audit and Investigations Division and Medical Division

CO AUDIT AND INVESTIGATIONS

Management

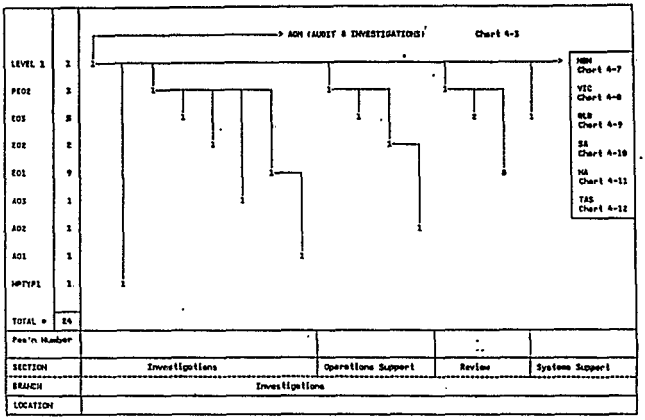
Note: Branch Manager positions are not included in the total of this chart




(chart 4-3)

CO AUDIT AND INVESTIGATIONS

Investigations - Central Office

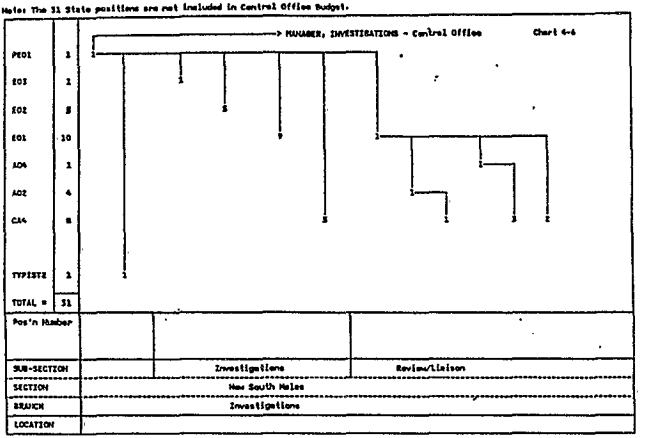



(chart 4-6)

CO AUDIT AND INVESTIGATIONS

Investigations - New South Wales

Note: The 31 State positions are not included in Central Office Budget.

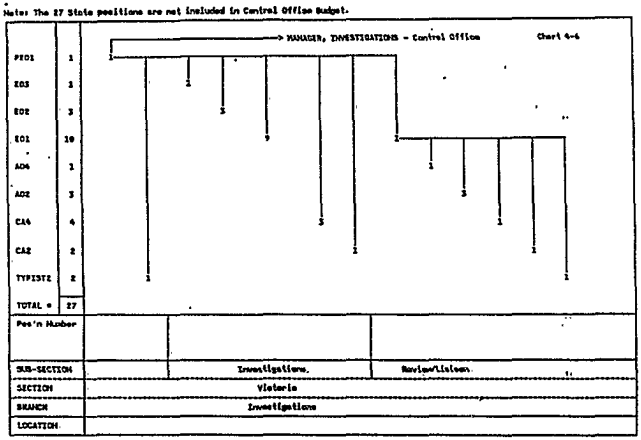



(chart 4-7)

CD AUDIT AND INVESTIGATIONS

Investigations - Victoria

Note: The 27 State positions are not included in Central Office Budget.

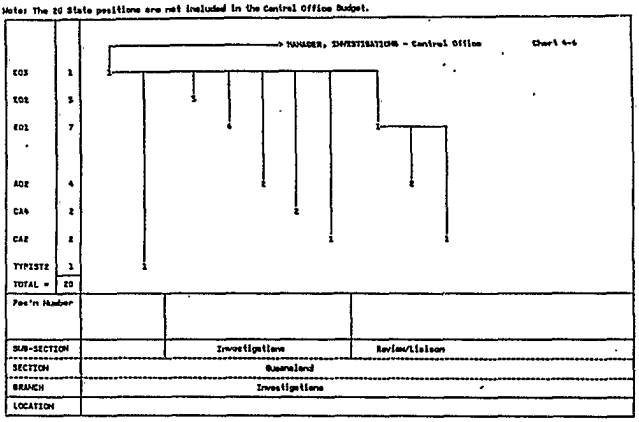



(chart 4-8)

CO AUDIT AND INVESTIGATIONS

Investigations - Queensland

Note: The 20 State positions are not included in the Central Office Budget.

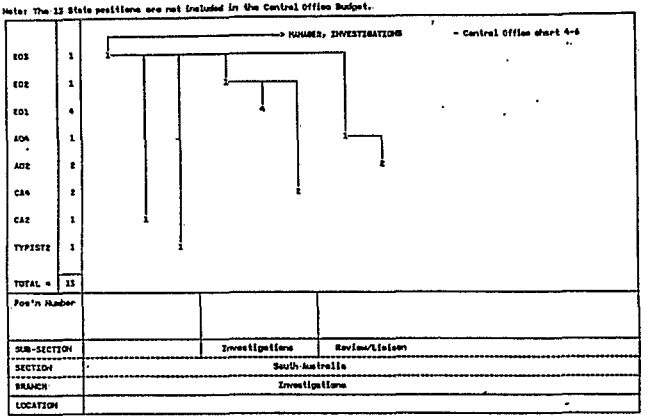



(chart 4-9)

CO AUDIT AND INVESTIGATIONS

Investigations - South Australia

Note: The 13 State positions are not included in the Central Office Budget.

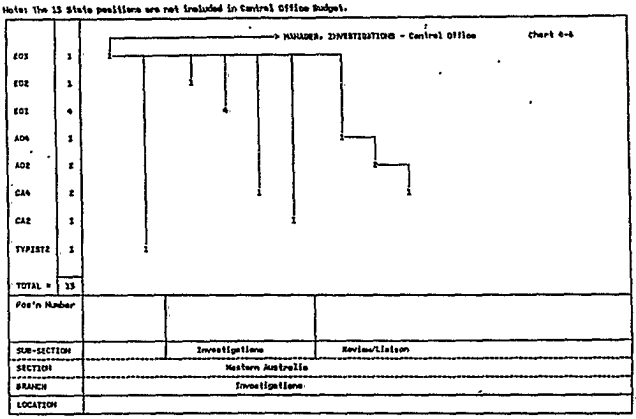



(chart 4-10)

CO AUDIT AND INVESTIGATIONS

Investigations - Western Australia

Note: The 13 State positions are not included in Central Office Budget.

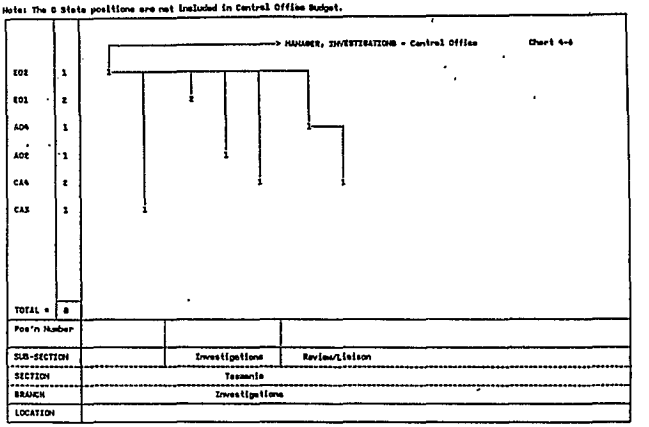



(chart 4-11)

CO AUDIT AND INVESTIGATIONS

Investigations - Tasmania

Note: The 8 State positions are not included in Central Office Budget.

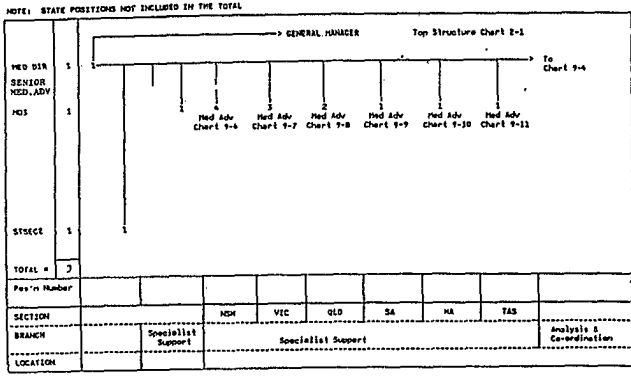



(chart 4-12)

CO MEDICAL

Management

NOTE: STATE POSITIONS NOT INCLUDED IN THE TOTAL



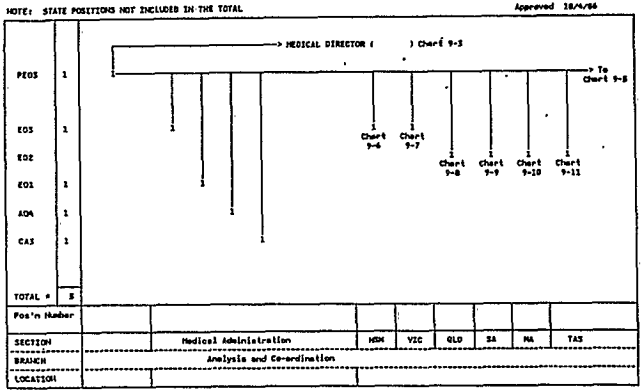

(chart 9-3)

MEDICAL

Analysis & Co-ordination

NOTE: STATE POSITIONS NOT INCLUDED IN THE TOTAL

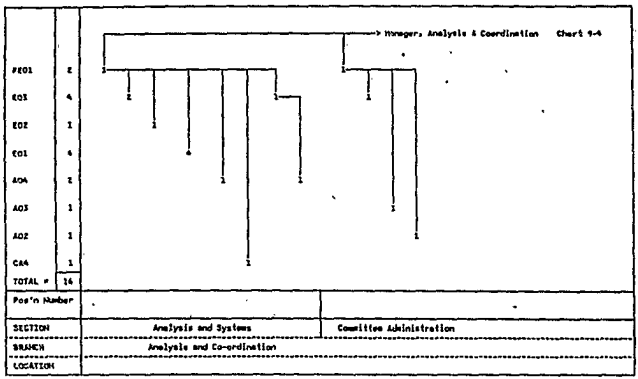
Approved 28/4/86




(chart 9-4)

CO MEDICAL

Analysis and Co-ordination (Cnt'd)

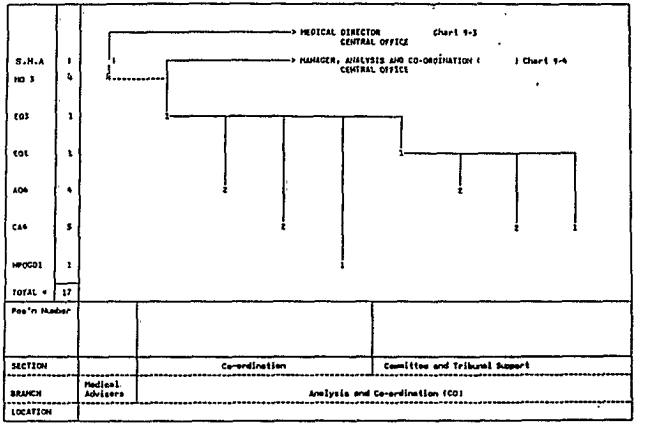



(chart 9-5)

CO MEDICAL

New South Wales

NOTE: POSITIONS ON THIS CHART NOT INCLUDED IN C.O. BUDGET. Approved 18/4/86

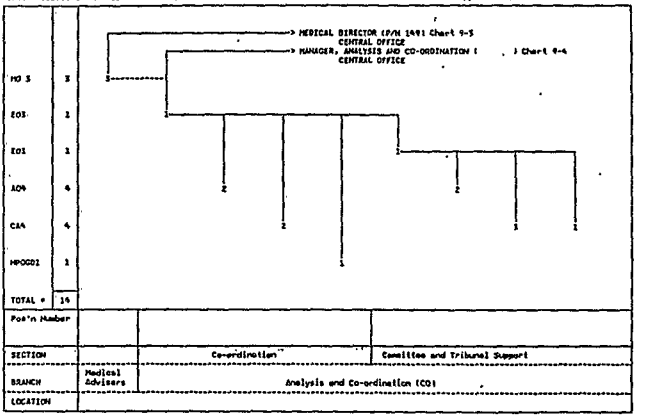



(chart 9-6)

CO MEDICAL

Victoria

NOTE: POSITIONS ON THIS CHART NOT INCLUDED IN C.O. BUDGET. Approved 18/4/84



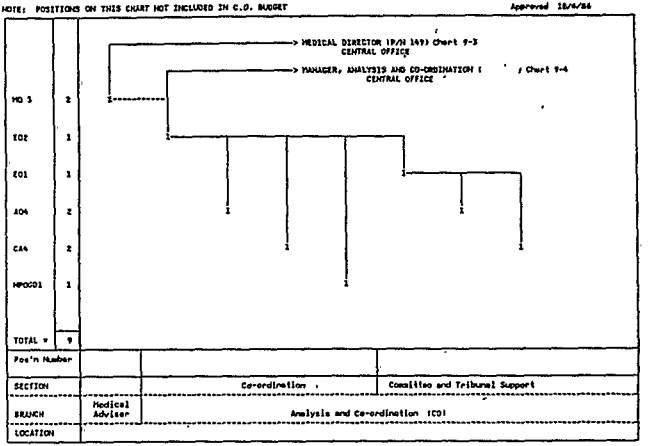

(chart 9-7)

CO MEDICAL

Queensland

NOTE: POSITIONS ON THIS CHART NOT INCLUDED IN C.O. BUDGET

Approved 18/6/86



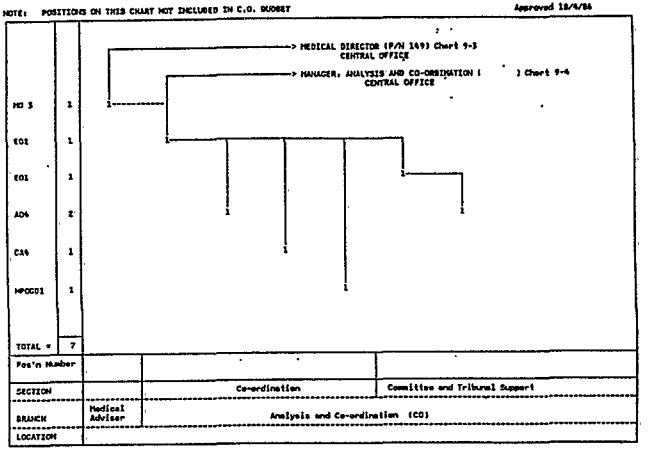

(chart 9-8)

CO MEDICAL

South Australia

NOTE: POSITIONS ON THIS CHART NOT INCLUDED IN C.O. BUDGET

Approved 18/4/86



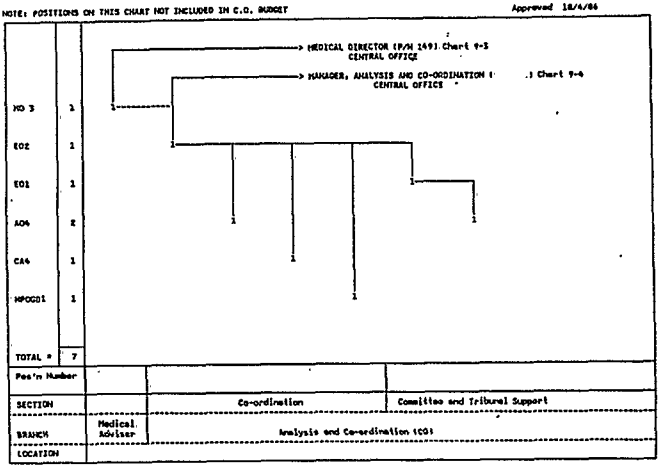

(chart 9-9)

CO MEDICAL

Western Australia

NOTE: POSITIONS ON THIS CHART NOT INCLUDED IN C.O. BUDGET

Approved 18/4/86



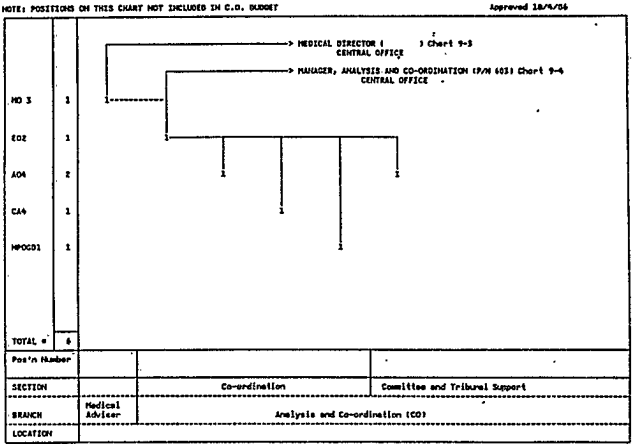

(chart 9-10)

CO MEDICAL

Tasmania

NOTE: POSITIONS ON THIS CHART NOT INCLUDED IN C.O. BUDGET

Approved 18/6/86




(chart 9-11)

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