



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**THE SENATE**

**PROOF**

**BILLS**

**Health Insurance (Dental  
Services) Bill 2012 [No. 2]**

**Second Reading**

**SPEECH**

**Thursday, 21 June 2012**

BY AUTHORITY OF THE SENATE

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## SPEECH

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**Questioner**  
**Speaker** Urquhart, Sen Anne

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**Question No.**

**Senator URQUHART** (Tasmania) (10:50): I rise to speak on the Health Insurance (Dental Services) Bill 2012 [No. 2]. This is a bill that is just another private member's bill from the opposition that is nothing more than opportunistic grandstanding. This is all while the Gillard Labor government is seeking to provide targeted, means tested support to Australians who need oral health treatment. The Gillard Labor Government is making a targeted \$515 million investment in oral health for Australians who are least able to afford dental care. The new spending will see a blitz on public dental waiting lists, oral health promotion, a boost to the dental workforce and improved dental facilities in rural and remote areas.

Let us compare that to the scheme we are debating today that was launched in the last days of the Howard government. The chronic disease dental scheme is not means tested, which means those who can afford to pay can get \$4,250 worth of free dental care. It is not targeted, which means patients can get caps, crowns and other often cosmetic work at the taxpayers' expense. All the while, people in rural and remote communities have trouble seeing a dentist at all. The Gillard Labor government's package will cover off on the important foundational work needed to make significant improvements to the dental system. Our package represents a major down payment on a new national dental system, a system Labor people have been lobbying for for many years. This package will include funding of \$350 million for a public dental waiting list blitz. According to the national dental advisory council, this will assist the current 400,000 people on waiting lists around the country. The funds will be delivered through a national partnership agreement with the states and territories. In addition, states and territories will be required to maintain their existing effort. This work includes treatment of children and targets for dental services provided to Indigenous Australians. Ten million dollars will be utilised for oral health promotion. This will see the development of a national oral health promotion plan to promote dental services for better oral health. While it is vital that we provide adequate oral health treatment, the best solution is to prevent problems in the first place. With oral health, it can be as simple as everyone brushing their teeth at night and in the morning or as simple as someone going straight to the dentist or GP to be examined as soon as they feel something ajar in their

mouth. Treating things early and preventing them in the first place are the best ways to keep healthy. But in order to create a social norm—and we cannot monitor teeth brushing like we can the wearing of seat belts—we need to educate Australians about the best practice.

The package also includes funding of \$35 million for the expansion of the Voluntary Dental Graduate Year Program. This will offer 100 additional places per annum to increase the dental workforce. More dentists, more dental nurses and more hygienists will see more dental services delivered through our national system. We are providing \$45 million to fund a graduate year program for oral health therapists. This will support 50 placements per annum to increase service delivery capacity and create a more flexible dental workforce. Importantly, Labor is providing up to 100 infrastructure grants and up to 100 relocation grants through funding of \$77 million, which will support up to 300 dentists to set up practices in rural areas to meet the current shortage of dental services in rural and remote areas, and \$450,000 will be provided to non-government organisations to coordinate further pro bono work by dentists for the most disadvantaged Australians across the country.

While the Gillard Labor government is committed to providing this package to Australians in need of oral health care, those opposite want to continue with their scheme, a scheme which is not targeted or means tested and which has not serviced Australians in need. They demonstrate this support for their failed scheme through this bill—a bill which will do nothing to help Australians get better access to quality care; a bill which merely continues the attitude of those opposite of all show and no delivery; a bill which is not about providing better dental services to the thousands of people who need them; a bill which is just a stunt and proves what a poorly designed scheme this was in the first place. It is a bill which seeks to establish a dangerous precedent—that ignorance is an excuse for not complying with the law. It says to the Australian community that it is okay for dentists not to follow the legislated processes when claiming moneys from the Commonwealth. It says to the Australian community that for one group of professionals—a group with tertiary education—the excuse 'I didn't know' is okay. It is like saying that if a person on the Newstart allowance found work, and did not report that to Centrelink because they had

not checked the requirements of claiming Newstart, they should not have to pay back any overpayments. It is like saying that if non-government organisations managing training for the government—for example, for a responsible service of alcohol certificate—do not make their students sit the required test but then put in a claim for funding they should still be paid for the service they performed, even though it is prescribed that students sit a test. Rules are set which are communicated to people and organisations making claims, and it is up to the individual or the organisation to ensure that they comply.

The bill seeks to direct the Minister for Health to carry out functions outside her area of responsibility. Under clause 6 of the bill, the health minister must do one or more specific things in order to 'redress the inequity' that the bill is intended to address. Under clause 6(1)(b), the health minister could provide for the Commonwealth to waive its right to payment of debts arising under section 129AC of the Health Insurance Act 1973 in relation to the dental services. However, under section 34 of the Financial Management and Accountability Act 1997, only the finance minister, not any other minister—neither the health minister nor any other minister—can waive debts. It is not clear how this clause would work in practice, and no amendments have been moved. One can therefore deduce that those opposite are obviously not interested in seeing this bill implemented, they are not interested in seeking a solution for dentists and they are just playing schoolyard politics, time after time after time. One of the specific things the Minister for Health can do under clause 6 of the bill is 'provide for act of grace payments to be made in relation to the dental services'. However, by definition, an act of grace payment is a payment that would not otherwise be authorised by law or is required by statutory command or is required to meet a legal liability from section 33 of the Financial Management and Accountability Act. That is, if a payment is specifically authorised or required by law, it will not be an act of grace payment.

Once again, those opposite have made mistakes in the drafting of the bill, and with no amendments to rectify the mistakes they obviously do not want this bill to be implemented. As this bill raised a number of finance and public administration concerns, it has been considered by the Senate Finance and Public Administration Legislation Committee. The committee recommended that the bill not be supported. The policy of the Gillard Labor government is not to amend this scheme; we want to close it. Since its inception in 2007 under the Howard government, it has been bad policy. It has been insufficiently targeted, which has led to overservicing for some Australians and no servicing for others. As it is not targeted, patients can get caps, crowns and other, often cosmetic, work

at the taxpayers' expense, while people in remote communities have trouble seeing a dentist at all. The scheme is not means tested, which means that those who can afford to pay have the opportunity to get the \$4,250 worth of free dental care. Added to that, there have been more than a thousand complaints lodged about the scheme, a scheme which comprises only a minor part of Medicare's core function and was so poorly designed that it has seen more complaints than any other area of Medicare. There were more complaints about the dental scheme than in the whole ambit of general practitioners, and they were not just any old complaints. The complaints about the scheme are more harrowing than normal, including some relating to the mistreatment of elderly Australians. For example, Minister Kim Carr told the recent estimates hearings of one dental health practitioner who is alleged to have provided unnecessary treatment, including preparations for crowns, for an elderly patient without the permission of that patient or their representative. This is significant dental treatment, encouraged under the scheme, which was allegedly provided without permission to an elderly patient. And those opposite are proposing that the scheme continue!

They have the nerve to come in here and lecture this chamber day after day after day about compliance with government schemes. The government has a responsibility to ensure that taxpayer dollars are spent appropriately. We have done this with means testing the private health insurance rebate and we are doing it here with our new dental care system. Anyone claiming funds from the Australian taxpayer has an obligation to do so according to the law, and dentists are no exception. The government has provided all known dentists with information about the requirements of the scheme on nine separate occasions. The requirements of the scheme are not onerous. It is not onerous for dentists to tell a patient and their patient's doctor what work they are doing and it is not onerous to tell their patient up-front what the cost will be. Officers in Medicare Australia and now the Department of Human Services have been attempting to come to grips with a scheme that is fundamentally flawed. I commend these officers for their hard work.

As at the end of January 2012, around \$2.3 billion dollars had been claimed under the scheme since it commenced under the Howard government in 2007. Of that, \$21½ million dollars was found to be in non-compliant claims—that is, the Department of Human Services has identified fewer than one per cent of claims to be noncompliant. Officers from Medicare have been blamed by many for 'not providing sufficient advice'. This is despite the government providing all known dentists with information about the requirements of the Chronic Disease Dental Scheme on nine separate occasions.

On 29 May this year, Minister Kim Carr announced that the government's next steps were to work through the noncompliance of some dentists. The government's view is that we need a retrospective change to the dental services determination within the near future. This change will need to create greater flexibility about the compliance arrangements, while still protecting important principles of public policy. This retrospective change to the determination would bring the compliance arrangements more closely into line with other parts of Medicare. All these changes will allow Medicare to take a more educative approach when dealing with dentists.

The new changes will not excuse everyone who has fallen foul of the current arrangements. Some practitioners have charged the government for services that were never provided. Some practitioners have flagrantly and repeatedly breached their administrative and patient care obligations. This is unacceptable. The Minister for Health and the Minister for Human Services will ensure that obvious cases of fraud or causing harm will be pursued. The ministers will convene a professional services review process to separate the obvious cases of fraud from the accidental administrative errors. There will be a continuing focus on protecting the interests of patients relating to informed financial consent and on an appropriate exchange of information between the practitioners servicing patients with chronic disease.

Finally, new arrangements are comparable with the equivalent compliance arrangements in other parts of Medicare. In practical terms, the amended determination will trigger a reassessment of all audit activity by the department. To date, almost 100 audits have been concluded, with a high number of practitioners being found to be non-compliant. The noncompliance was due to administrative breaches. Examples of these breaches include not completing appropriate paperwork or not providing patients with quotations before conducting dental health treatment. Remarkably, 12 dentists have been found to be noncompliant due to a failure to actually provide a service. Each of these cases will be worked through again on the basis of a new determination, and in some a new conclusion may be reached.

In addition, there are another 534 audits currently underway, and further consideration will be given to each of these. These will be worked through by the department as speedily as possible. General practitioners are, of course, responsible for following the compliance arrangements in place at any given time, including during times of change. Any failure to follow those arrangements will expose patients to harm and expose practitioners to possible recovery action. The department will continue to investigate

complaints from members of the public as they arise and will assess claims of inappropriate dental practice and nonprovision of service.

The government's intention is to close down the scheme as soon as possible. The government will make retrospective changes to the determination to establish more appropriate compliance arrangements. Instead of trying to write off all the debts of non-compliant dentists and amend a flawed scheme, the Gillard Labor government is working with dentists to identify those whose noncompliance was an accidental administrative error.

The Gillard government is making meaningful investments in dental health services, while those opposite are proposing stunt bills that do not work and will create dangerous precedents. I urge all senators to vote against this bill and to support the government's move to address the issue through a retrospective change to the determination.