Review of the efficiency and effectiveness of the regulatory framework for hearing services

July 2012

Report prepared for the Office of Hearing Services by mpconsulting

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ACRONYMS AND TERMS USED IN THIS REPORT

For the purposes of this report, the words and terms detailed below have the following meanings:

clients – In hearing services scheme documents, the clients of the scheme are variously referred to as: voucher holders, participants in the voucher system and clients. For the purposes of this report, they are referred to as clients.

contracts – This word is used to refer collectively to the service provider contract and the Deed of Standing Offer with device manufacturers.

Deed – This refers to the Deed of Standing Offer between the Australian Government and hearing device suppliers.

HCIA - The Hearing Care Industry Association (HCIA) represents hearing healthcare retailers including AudioClinic, Bay Audio, Connect Hearing, HearingLife Australia, National Hearing Care, The Neurosensory Unit and Widex Australia.

hearing services scheme (the scheme) – The hearing services scheme is sometimes referred to as the voucher program or the hearing services program. For the purposes of this report, the term 'hearing services scheme' is used to describe the entire system which enables the delivery of hearing services (including the legislative and contractual framework and the administrative practice).

legislation – This refers to primary legislation (Acts) and also delegated legislation. In this case, delegated legislation includes a 'scheme', 'rules' and 'determinations'.

OHS – Office of Hearing Services. In general, OHS is used to describe the organisation responsible for administering the scheme on behalf of the Australian Government.

regulation - The Office of Best Practice Regulation within the Department of Finance and Deregulation defines regulation to be "the broad range of legally enforceable instruments which impose mandatory requirements upon businesses or individuals" and "government voluntary codes and advisory instruments for which there is a reasonable expectation of compliance". Consistent with this definition, the term 'regulation' is used in this report to describe all of the instruments which impose requirements on industry including legislation, contracts and guidelines which are expected to be complied with.

service provider – The providers of hearing services are referred to in different documents as: contracted service providers, accredited service providers and accredited providers. In this report, service provider refers to an accredited and contracted provider of hearing services through the scheme.

***service provider contract* –** This refers to the agreement between the Commonwealth and accredited service providers for the delivery of hearing services.

'top-up' - The hearing scheme provides clients with a hearing aid that provides a satisfactory rehabilitation outcome. However, the scheme also allows for 'top-up' arrangements where clients can choose to be fitted with a hearing aid with additional features beyond those necessary to achieve a satisfactory rehabilitation outcome. Under the 'top-up' arrangements the client pays the difference in cost to the service provider.

EXECUTIVE SUMMARY

This report details the findings of mpconsulting in relation to the review of the ongoing efficiency and effectiveness of the regulatory framework for hearing services, as requested by the Department of Health and Ageing.

The review focused on examining the legislative, contractual and quasi-regulatory documents that comprise the hearing services regulatory scheme. The documents were assessed against the principles of good regulation to determine if there were any areas for improvement.

In particular, consideration was given to:

- whether the scheme is achieving its objectives and the regulatory framework is supporting the achievement of these objectives

- whether the regulatory requirements are clear, matched to risk, appropriately outcomes focused and conducive to consistent and transparent decision making

- whether the regulation includes examples of any inconsistencies, overlapping regulation, redundancies or excessive regulatory coverage

- whether the regulatory scheme achieves the policy objectives in an efficient and effective manner that minimises direct and indirect costs to government, clients of the scheme and industry.

A more detailed description of the assessment criteria is included in Chapter 4.

As a result of the assessment (and limited consultation with stakeholders) mpconsulting has found that:

- while a number of improvements to the scheme will take effect from 1 July 2012, there is significant further scope for improvements to the hearing services regulatory scheme

- particular areas of concern are:

  - the unnecessarily complex nature of the scheme which relies on 10 different regulatory documents – contracts, deeds, legislation and quasi-regulatory documents

  - the lack of clarity regarding the risk that the regulation is attempting to mitigate. There are numerous examples where regulation is applied and it is not clear what the risk is that the regulation is attempting to mitigate or whether the cost of complying with, and administering the regulation, is warranted given the risk.

For example, all service providers are required to undergo a process of accreditation by the OHS before being offered a contract to provide services.

The accreditation process involves, among other things, assessment of the provider's financial affairs and staff suitability. However, it is not clear what risk this process is intended to mitigate or how the process usefully supplements the pre-contractual warranties the provider is required to commit to when they enter the contract. Further, many of the accreditation requirements are not followed up or re-checked once the provider commences providing services so it is difficult to determine their value in the first instance. This example is described in more detail in Chapter 5.

– the scheme includes numerous examples of overlapping, redundant and excessive regulation.

For example, there are over 100 ongoing obligations (i.e. conditions) imposed on service providers along with 30 discrete prohibitions. These obligations and prohibitions are spread over 10 different regulatory documents and most of them can be amended 'from time to time'. The obligations are variously described as conditions, standards, requirements, terms of the contract, terms of the Deed, and outcomes. mpconsulting considers that it would be quite a challenge for all 215 service providers and 1660 practitioners to fully understand all of their ongoing obligations and the consequences of non-compliance with these obligations.

The limitations of the scheme are discussed in more detail in Chapter 5.

By reforming the scheme, it is likely that the policy objectives could continue to be achieved while:

- improving clarity
- reducing costs to clients, service providers, device suppliers and government
- ensuring the regulation meets principles of good practice regulation.

mpconsulting considers that before significant structural reform is undertaken (to achieve the desired efficiencies) the following further work should be considered:

- First - undertake consultation on: the issues identified in this report in order to validate (or otherwise) the observations made; and the risks that stakeholders consider must be managed through the regulatory scheme.

As the review was undertaken within short timeframes and only involved limited consultation with stakeholders, it is possible that other areas for attention may be identified through further consultation.

- Second – document all of the processes and conditions that exist in the different regulatory documents. For each process or condition, clearly describe:
  - what harm (or risk) the process or condition is designed to address
  - in relation to processes:
    - identify what pre-market assessment processes are critical for managing risk and what processes can be eliminated with reliance instead on post market audit and monitoring
    - identify those post market processes that require notification to, or approval by, OHS and those that could be eliminated without significantly increasing risk
    - identify the most streamlined way to implement necessary processes (minimising reliance on manual processes)
  - in relation to conditions (i.e. ongoing obligations/prohibitions)
    - consider the necessity of each of the obligations – eliminate overlapping, duplicating and redundant obligations
    - if a condition is necessary to manage risk, consider whether it can be described as an outcome or whether it needs to be described as a prescriptive requirement in order to have the necessary level of regulatory certainty
  - in relation to each process and obligation, consider what enforcement options best match the processes and conditions (again, the focus should be on eliminating unnecessary provisions).

- Third – in parallel with the above, review the schedule of service items and schedule of fees with a view to simplifying the claiming criteria and ensuring that the fees are appropriate.

- Fourth – undertake consultation on the documentation described above and ensure that there is a common understanding regarding the purpose of all processes and obligations.

Once this preliminary work has been undertaken, government will be better placed to determine the most appropriate reform options. Four options have been identified in this report:

- Option A – Retention of the status quo. This is not recommended as it does not improve the system or address any of the deficiencies detailed in this report.

- Option B – The existing regulation could continue to be revised and improved within the existing framework. Following completion of the policy development work detailed above:

  – all instruments relating to vouchers, eligibility and participants could be consolidated into one document. This means that, other than the Act, there would be one main document that describes the relationship between the Commonwealth and the client

  – all instruments describing the obligations of the service provider could be consolidated into two documents – the contract and the Rules of Conduct.

  – if the Deed were retained (which it may not need to be), this could be amended such that it only describes the relationship between the Commonwealth and the device supplier. It would not include any conditions that relate to the service provider.

  This approach builds on the work that has been undertaken by OHS and stakeholders over the past 12 months. The main disadvantage of Option B is that it does not address the more structural and fundamental problems in the system.

- Option C – Fundamentally reform the structure of the scheme. This option would involve repealing the *Hearing Services Administration Act 1997* and related delegated legislation. In order to enable payments to be made to service providers (and describe eligibility requirements), there would need to be a foundation in legislation but this could be achieved simply through the *National Health Act 1953*. The details of the scheme could then either be set out in: one piece of delegated legislation (made under the *National Health Act 1953)*; or a contract with service providers (and if necessary, with device suppliers).

  This option is resource intensive and time consuming to implement but is likely to deliver greater cost savings in the longer term.

- Option D - Mainstreaming hearing services such that they form part of the Medicare Benefits Schedule.

  This option represents a radical change and significant further work would be required to determine the viability of this option.

These options are discussed in more detail in Chapter 7.

CHAPTER 1 – CONTEXT AND PURPOSE OF THIS REPORT

The review

In March 2012, mpconsulting was engaged by the Department of Health and Ageing to undertake a review of the ongoing efficiency and effectiveness of the regulatory framework for hearing services. The purpose of the review was to examine the complex framework of regulation that currently governs the hearing services program and make recommendations for policy options for streamlining the program.

The review is also intended to advance the Department's broader objective, which is to ensure that the hearing services program provides value for money for government, and that regulation is commensurate with risk.

Inputs into the review

Document review

This review has predominantly focused on analysis of the legislation, contracts and administrative guidelines that comprise the regulatory framework for the hearing services scheme. Documents reviewed have included:

- all relevant legislation
- all contracts and Deeds including the service provider contract and the Deed of Standing Offer with device suppliers
- administrative documents
- stakeholder information available on the OHS website such as: information for clients, FAQs, service charter for OHS clients
- reports of parliamentary committees and responses (including the Response to the Senate Community Affairs Reference Committee Report, *Hear Us: Inquiry into Hearing Health in Australia*, May 2011)
- documents provided by the OHS.

Consultations

On the advice of the OHS, mpconsulting has consulted with:

- the Department of Veterans Affairs
- the Hearing Care Industry Association (HCIA) - HCIA represents hearing healthcare retailers including AudioClinic, Bay Audio, Connect Hearing, HearingLife Australia, National Hearing Care, The Neurosensory Unit and Widex Australia.
- professional bodies - Audiological Society of Australia, Australian College of Audiology and Hearing Aid Audiometrist Society of Australia
- Australian Hearing – the Australian Government provider of hearing services (the largest provider of services)
- Deafness Forum of Australia - the peak overarching body for deafness and hearing impairment in Australia.

Advice was sought from all stakeholders about:

- whether they had a clear understanding of the regulation and the extent to which the regulation achieves its objectives. Stakeholders were asked if they viewed regulation as merely establishing a framework for funding service providers or if it was also a framework for: setting minimum standards for the delivery of services; encouraging continuous improvement; ensuring quality services; and prohibiting certain unacceptable conduct
- the risks that the program is intended to mitigate and the likelihood that these risk could be realised
- the strengths of the existing scheme
- the extent to which the legislative framework meets the objectives of good regulation
- any areas for improvement. In particular, whether there are any unnecessary elements of the framework or any processes which stakeholders consider impose unnecessary administrative burden on government, service providers, device suppliers or clients.

Industry groups were also asked about:

- any perceived risks to business posed by the current regulatory framework
- the level of understanding, among service providers, of responsibilities under the legislation.

The representative of Deafness Forum Australia was also asked about:

- whether the voucher program met the needs of clients
- whether the voucher program is easily understood by clients
- the key concerns expressed by clients in relation to the scheme
- the main risks to clients including risks that may arise from any changes to the nature and/or level of regulation of service providers.

The representatives of the professional bodies were also asked about:

- the role that membership bodies play in ensuring that their members provide quality services for clients
- whether professional membership bodies have mechanisms for supporting the integrity of the Commonwealth hearing services program (i.e. do they play a role if members are making inappropriate voucher claims?)
- whether professional bodies will have a monitoring program in place to ensure that practitioners meet their obligations under the hearing services legislation
- any key challenges for practitioners in navigating/administering the scheme.

The results of the stakeholder consultations are reflected in this report.

The report on the outcomes of the review

The purpose of this report is to summarise findings from the review and provide recommendations for reform.

The report provides:

- an overview of the hearing services scheme (Chapter 2)
- a description of the legislative and contractual framework for the scheme (i.e. the legal basis for the establishment and administration of the scheme) (Chapter 3)
- a description of the assessment of the scheme (Chapter 4)
- a description of the assessment findings (Chapter 5)
- the objectives of any reform (Chapter 6)
- a description of four reform options (Chapter 7). For each option, the

following information is included:

- a description of the option
- the advantages and disadvantages of the option (including consideration of: the medium to long-term benefits realisation for government and industry; how the regulatory burden on providers may be reduced under the option; whether the option is likely to achieve enhanced value for money for government)
- the extent of legislative drafting required
- the implementation timeframes
- cost implications.

Please note that this report does not include recommendations regarding Australian Hearing. The Australian Hearing legislation has not been considered as part of the review, nor has the provision of community service obligations.

CHAPTER 2 – OVERVIEW OF THE HEARING SERVICES SCHEME

The hearing services scheme

The aim of the hearing services scheme is to:

> *Assist people with hearing loss to maximize their potential for independent communication and improve their quality of life*[1].

The scheme aims to achieve this by issuing vouchers to eligible clients to enable them to obtain, through presentation of the voucher, services and hearing devices from a national network of private hearing service providers and the Government-owned provider, Australian Hearing.

In order to receive funding from the Commonwealth for the provision of hearing services to clients (voucher holders), service providers must:

- be accredited by the Office of Hearing Services (OHS) and contracted by the Commonwealth
- utilise devices that are provided be a device supplier that has entered into a Deed of Standing Offer with the Commonwealth
- comply with all conditions of contracts, deeds and legislation
- submit a claim for the service provided.

The scheme is administered by the OHS.

OHS

The OHS is responsible for:

- administering the hearing services scheme
- development and monitoring of standards for clinical services
- providing support to clients, practitioners and providers
- coordination of quality assurance measures
- providing advice on policy and strategy for provision of hearing services.

In terms of the administration of the scheme, the OHS manages a range of

[1] *Hearing Rehabilitation Outcomes for Voucher Holders – 1 July 2012*

administrative/regulatory processes including:

- assessment of client applications for hearing services and provision of vouchers to eligible clients
- accreditation of hearing services providers
- registration of device suppliers
- contracting with service providers
- entering a Deed with device suppliers and approving devices for inclusion on the device schedule of the Deed
- monitoring compliance with the regulation
- taking action where non-compliance is identified.

The average number of OHS staff in 2010-11 was 64. OHS staff work in offices in Canberra, Brisbane and Melbourne.

In 2010-11[2]:

- 308,195 applications for vouchers were processed by the OHS, with 303,989 vouchers issued
- 599,581 clients received hearing services
- 140,841 clients were fitted with a device
- voucher services were provided by 215 service providers contracted by the OHS
- 1660 qualified, student and provisional practitioners (audiologists and audiometrists) were registered with the OHS to provide services on behalf of contracted service providers
- $310.3 million was paid to contracted service providers
- 1,111,153 service items were claimed by service providers.

[2] The 2010-11 financial year has been used for all data referenced in this Report.

Eligible clients

In order to access the hearing services scheme, a person must:

- be eligible – a person is eligible if he/she is an Australian citizen or permanent resident, 21 years or older and:
  - in receipt of a Pensioner Concession Card or Sickness Allowance from Centrelink
  - the holder of a Gold or White Repatriation Health Card (DVA) (gold card – all conditions, white card - conditions that include hearing loss)
  - a dependent of a person in one of the above categories
  - a member of the Australian Defence Force
  - registered for an Australian Government funded Disability Employment Service
- apply for a voucher (a doctor can provide an application form or it is available on the OHS website). If the person is applying to the program for the first time, a medical practitioner includes relevant information and signs the referral.

When the OHS receives an application, it checks eligibility and sends the applicant a letter with an attached voucher and a Local Provider Directory. Enclosed with the letter is information explaining how to arrange an appointment with an accredited service provider.

Vouchers for hearing services are valid for three years. The three year hearing services voucher covers the full range of services including: assessment; rehabilitation; hearing aids if clinically required; and aid adjustments.

The scheme provides clients with a hearing aid that provides a satisfactory rehabilitation outcome. However, the scheme also allows for 'top-up' arrangements where clients can choose to be fitted with a hearing aid with additional features beyond those necessary to achieve a satisfactory rehabilitation outcome.

Under the 'top-up' arrangements the client pays the difference in cost to the service provider.

Contracted service providers

In order to receive funding for the provision of hearing services to voucher holders, service providers must:

- be accredited
  - In summary, applicants must provide information to OHS about: the applicant organisation; its staffing profile; its financial viability and its sites.
  - This information is assessed by the OHS and a service is granted accreditation if the delegate of the Minister (an officer within OHS) is satisfied that it is in the best interests of persons receiving hearing services having regard to matters such as the applicant's experience, staff, premises, capacity and financial viability.
  - The process of accreditation is discussed in more detail in Chapter 5.
- enter into a contract with the Commonwealth (as represented by OHS)
  - If the applicant achieves accreditation, the Australian Government offers the organisation a service provider contract. Following execution of the contract, a service provider number and site ID is issued by the OHS and the provider is then able to provide services under the voucher program and claim payments from the government for provision of such services.
- be aware of, and comply with, a range of ongoing obligations. These obligations are described in the contracts (service provider contract and Deed of Standing Offer) and in legislation (the Act and delegated legislation)
  - Once a contracted service provider commences providing services to voucher holders, it must meet a range of obligations.
  - These obligations relate to a wide range of matters including: professional standards; record keeping; referrals; sites from which hearing services may be provided; required policies and procedures; and required outcomes.
  - Some of these obligations are general, outcomes based obligations. For example – 'practitioners must provide a program to clients to better manage their life with hearing loss' (outcome 3 of the *Hearing Rehabilitation Outcomes for Voucher Holders*). Others are very specific and prescriptive. For example: service providers must ensure that any advertisement referring to services or devices provided to voucher holders includes the words 'conditions apply to clients under the

Australian Government Hearing Services Program' (sub-clause 8(3) of the contract).

  - The service provider obligations are described in 10 different regulatory documents (some of which are legislative and some contractual[3]). Overall there are over 100 discrete, positive obligations on the contracted service provider (noting that a number of these overlap).

  - This is discussed in more detail in Chapter 5.

- seek approval from, or notify, the OHS of certain changes to the provider's business structure or operations

  - Once a provider has met the accreditation requirements and entered a contract with the Commonwealth, there are a range of circumstances in which the service provider must notify or seek further approval from the OHS. For example, providers must notify the OHS to commence using a new site or to utilise a remote site.

- submit claims for payment utilising the schedule of service items which forms a schedule to the service provider contract

- participate in the OHS's post market monitoring and compliance regime.

Practitioners

In general, hearing services are delivered by audiologists, audiometrists or provisional audiologists/audiometrists working under the supervision of a qualified practitioner.

The service provider contract requires that service providers ensure that services are only delivered by those qualified to provide such services and that all qualified and provisional audiologists and audiometrists undertake continuing professional development as required by the relevant professional body.

Each qualified practitioner is allocated a unique number. The number is used by the service provider when making claims for payment from the Commonwealth.

A service provider must notify the OHS when a qualified practitioner or provisional audiologist or audiometrist starts or ceases working for the service provider.

[3] This only refers to source documents which impose legal obligations on service providers. This excludes documents that describe or interpret requirements such as administrative guidelines. It also excludes 4 other legislative determinations which establish the scheme but do not impose any obligations directly on the service providers (noting that providers must, however, be familiar with these determinations).

Device suppliers

If a device is to be supplied to a client as part of the scheme:

- the supplier of the device must be registered with the OHS. There are 12 device suppliers (manufacturers) registered with OHS
- the supplier of the device must have entered into a Deed of Standing Offer (the Deed) with the OHS
- the device must meet the specifications detailed in the Deed
- the device supplier must have supplied the device to the service provider in accordance with the conditions set out in the Deed
- the device must be supplied at or below the price set in the Deed (excluding top-up devices in relation to which the supplier and the provider may negotiate a price).

CHAPTER 3 – OVERVIEW OF THE LEGISLATIVE AND CONTRACTUAL FRAMEWORK FOR THE SCHEME

Summary

In summary, the regulatory framework for the hearing services scheme, comprises:

- legislation - an Act and five pieces of delegated legislation
- a standard form contract which the OHS (on behalf of the Commonwealth) enters into with each of the service providers
- a Deed of Standing Offer which the OHS (on behalf of the Commonwealth) enters into with each of the device suppliers
- numerous quasi-regulatory and administrative instruments. Some of these are made under the legislation, some in accordance with the contract and some are purely administrative.

Each of these elements of the scheme is discussed in more detail below.

The legislation

The hearing services scheme is established through the *Hearing Services Administration Act 1997*, which describes: the client eligibility criteria; the way in which vouchers are to be issued; and the means for accrediting and contracting service providers. In essence, the Act sets the broad parameters for the scheme and it then enables delegated legislation to expand on various aspects of the scheme. There are currently five pieces of delegated legislation made under the Act:

- *Hearing Service Providers Accreditation Scheme 1997*
- *Hearing Services Voucher Rules 1997*
- *Hearing Services Rules of Conduct 2012*
- *Hearing Services (Participants in the Voucher System) Determination 1997*
- *Hearing Services (Eligible Persons) Determination 1997*

In addition, the Community Services Obligations component of the Hearing Services Program is managed by Australian Hearing, which is established under the *Australian Hearing Services Act 1991*. Two other pieces of legislation which expand on aspects of Australian Hearing operations are:

- *Declared Hearing Services Determination 1997*
- *Australian Hearing Services Regulations 1992.*

For the purposes of this report, neither the Community Service Obligations component of the Hearing Services Program or the Australian Hearing legislation has been reviewed.

The contract

As part of the scheme, the Commonwealth enters into a contract with each of the service providers. The contract is the same for each provider and is regularly re-negotiated.

A new contract was recently negotiated between the OHS and service providers and will take effect from 1 July 2012.

The contract requires service providers to:

- acknowledge and agree certain matters (for example, that they will comply with the Act and the contract)
- provide services in a certain manner and in accordance with certain standards and rules.

The contract also describes service provider obligations in relation to matters such as clinical records, sites, devices and claims for payment.

Based on discussions with the OHS and stakeholders, it is clear that the contract is the core document that stakeholders perceive as 'setting the rules for the scheme' and describing the Australian Government's expectations. It is also the document that is most relied on by the OHS to take action against non-compliant providers.

The Deed of Standing Offer (the Deed)

The Deed provides that:

- the device supplier must be registered by the OHS in order to provide devices to service providers for the purposes of the hearing services scheme
- the device supplier and the service provider may contract with each other for the provision of devices but the contract must be in accordance with the

conditions detailed in the Deed.

The Deed details:

- the list of 'approved devices' comprising one schedule of devices that are fully funded under the scheme and one list of top-up devices (whereby the provider and the supplier may negotiate a price for the device)

- the maximum price that may be charged for devices on the 'Main Schedule of Approved Devices' (noting that for devices on the 'Top-up Schedule of Approved Devices' the price is as agreed between the supplier and the service provider)

- the conditions of device supply, that is, the mandatory terms of the contract of supply between the service provider and the device supplier

- device specifications. This includes, for example:
  - minimum specifications for earmoulds and shells
  - minimum specifications for free-to-client devices
  - specifications for top-up devices
  - specifications for non-standard devices.

The Deed is valid for the period 1 April 2009 to 31 March 2012 but is being extended until 31 December 2013 to enable review of procurement options.

Quasi regulatory documents

The scheme also includes a number of standards which are referenced in the service provider contract.

These standards include:

- the *Hearing Rehabilitation Outcomes for Voucher Holders*. This document sets out 9 outcomes which must be achieved by service providers along with 20 results that must be demonstrated

- the Schedule of Service items and the Schedule of Fees

- the eligibility criteria for refitting. This is not a schedule to the contract but sets out evidence that is required to be kept on file by service providers if they are making a determination that a device is unsuitable. Again, this is described as a standard in the service provider contract

- any new standard issued by the Commonwealth in accordance with the contract. mpconsulting is not aware of any other standards which have been issued by the OHS.

Other administrative documents which could be considered quasi regulatory

include, for example:

- the accreditation kit which sets out detailed requirements for applications for accreditation

- documents contained on a secure part of the OHS website including, for example, *Guidelines for Audiologists Providing Clinical Advice to Audiometrists.*

CHAPTER 4 – ASSESSMENT OF THE SCHEME

General observations about the scheme

The following general observations about the scheme provide a context for the assessment criteria and the assessment findings.

In summary, the scheme:

- is quite large in terms of its reach – the scheme provides services to approximately 600,000 clients. Streamlined processes are therefore important to minimise unnecessary overhead expenses for government, service providers and device suppliers

- has a relatively significant overall budget. In 2010-11, the administered expenses were $358,138,000[4]

- receives a small number of complaints and the OHS initiates very few actions for non-compliance. It is not clear whether this means that:

  - clients are generally satisfied with the scheme; and/or
  - providers are generally compliant with the scheme

  or:

  - clients are unaware of the opportunity to complain or are disinclined to complain; and/or
  - the OHS does not identify and act on areas of non-compliance.

- deals with subject matter that is non-controversial. In essence, the regulation supports the delivery of free hearing services and devices to clients. As a result the level of Ministerial and Parliamentary oversight expected by stakeholders is not as great as for those types of services that are more controversial (for example, reproductive services or organ and tissue transplantation)

- provides services which present low clinical risk. It is unlikely that serious physical or mental harm will flow to clients as the result of testing, assessment, fitting of devices or provision of rehabilitation. The most obvious risk is that poor service delivery may result in poorer results than would otherwise have been expected (sub-optimal utilisation of Australian Government funding)

- operates in a horizontally and vertically integrated sector. There is increasing

[4] Source: Department of Health and Ageing, *Annual Report 2010-2011,* Commonwealth of Australia, 2011, p.223

consolidation of providers in the market place and also some evidence that device manufacturers and service providers are also consolidating their operations (for example, device manufacturers purchasing service provider companies).

For example, based on advice from the OHS:

- In 2010-11, 189 corporate entities owned the 220 active service providers. The majority market share rests with several service providers.

- In 2010-11 there were 24 takeovers - 13 transfers from one business to another and 11 acquisitions where the original provider is retained but there is a new corporate owner. Of the 24 takeovers, in 10 cases a device supplier (who is also a hearing services provider) bought out another service provider.

- the demand for the scheme is increasing. The Medicare Australia Annual Report 2010-11 notes that in 2010–11 Medicare Australia processed more than 1.1 million services and made payments totalling $310.3 million to hearing services providers. This was an extra 70,211 services in 2010–11, resulting in an additional $16.3 million in payments to hearing services providers.

Criteria for assessment of the Scheme

In order to conduct a thorough review of the effectiveness of the regulatory scheme, mpconsulting developed criteria against which the scheme was assessed. The criteria are a series of questions that explore the extent to which: the scheme meets it objectives; and the legal framework for the scheme accords with the principles of good regulatory practice.

The following questions form the basis of our analysis:

1. Focussing on the objectives of the scheme

A. Are the policy objectives clear?

B. Is the scheme achieving its policy objectives?

C. Is the regulation assisting in the achievement of the policy objectives?

2. Focussing on the regulation

D. Are the regulatory requirements clear?

E. Is the regulation based on risk and is the regulatory effort appropriately matched to the risk?

F. Does the legislation strike an appropriate balance between principles and outcomes-based regulation and prescriptive regulation?

G. Does the regulation include any examples of inconsistencies, overlapping regulation, redundancies, excessive regulatory coverage or excessive reporting/recording requirements?

H. Are there transparent and consistent procedures for making decisions under the legislation and for making any delegated legislation?

3. Focussing on the administration of the regulation

I. Is the scheme being administered efficiently and effectively?

4. Focussing on specific areas of concern

J. Are there any particular areas of concern?

5. Overall

K. Does the regulation achieve the policy objectives in a manner that minimises the cost for government, business and the community?

Principles of good regulation

The development of the assessment questions has been informed by the principles of good regulation.

In summary, good regulation should:

- be drafted in plain English, and be easily understood and readily accessible. Good regulation should allow everybody to easily find and understand his/her obligations. This also means avoiding duplication of responsibilities under other laws and minimising the number of regulatory instruments

- be risked based and proportionate. The Taskforce on Reducing Regulatory Burdens on Business has identified increasing risk aversion in many spheres of life as a major contributor to excessive and costly regulation in Australia. The Office of Best Practice Regulation (OBPR) Handbook gives clear guidance on the importance of a risk analysis to determine the need for regulation and to design a proportionate regulatory response. It notes that the achievement of zero risk is neither an appropriate nor technically feasible goal of government intervention

- avoid unnecessarily prescriptive requirements. Where possible, legislation should be principles based and outcomes focussed. Where legislation is prescriptive, clear justification should be provided

- include transparent and consistent processes for making and implementing legislation. This is fundamental to ensuring confidence in the legislative process and to safeguard opportunities to participate in the formulation of laws

- not impose regulatory burden on business that are not justified.

In relation to compliance burdens on business, the Regulation Taskforce (2006) has identified five features of regulations that should be considered when determining the intent/justification of the regulation.

Each of these features has been considered as part of the review of the hearing services scheme. These include:

- whether the regulation provides 'excessive coverage' or has resulted in 'regulatory creep'. Has the legislation influenced more activity than originally intended or warranted? Is it overly prescriptive?

- whether any parts of the regulation have become redundant. Have regulations become ineffective or unnecessary as circumstances have changed over time?

- whether the regulation includes any excessive reporting or recording requirements. For example, companies may face multiple demands from different arms of government for similar information, as well as information demands that are excessive or unnecessary.

- whether there is unnecessary variation in definitions and reporting requirements (which can generate confusion and extra work for businesses)

- whether there are any inconsistent or overlapping regulatory requirements.

CHAPTER 5 –ASSESSMENT FINDINGS

1. Focusing on the objectives of the scheme

A. Are the policy objectives clear?

On commencement of the project, mpconsulting reviewed all relevant legislation, contracts, administrative forms and statements of intent for the scheme.

The overall objective of the scheme was rarely mentioned in legislation, contracts or quasi-regulatory documents.

For example – none of the following documents included an objects or purpose clause:

- the *Hearing Services Administration Act 1997*
- the *Hearing Service Providers Accreditation Scheme 1997*
- the service provider contract
- the schedule of service items and fees
- the *Hearing Services Rules of Conduct 2012*
- the Deed between OHS and device suppliers.

The only regulatory document that mentions the objective of the scheme is the *Hearing Rehabilitation Outcomes for Voucher Holders* which notes that the aim of the Australian Government's hearing services voucher program is to:

> *Assist people with hearing loss to maximise their potential for independent communication and improve their quality of life.*

By contrast the OHS Service Charter for OHS clients states the goal as:

> *Our goal is to reduce the consequences of hearing loss for eligible clients and the incidence of hearing loss in the broader community.*

Stakeholders consistently described the scheme as providing government funded services and devices to clients who need them with the expectation that it will improve the person's hearing and quality of life.

In relation to the overarching objective, stakeholders noted that clients often have unrealistic expectations about what can be achieved through the scheme and, specifically, the improvement to hearing that can be expected through the use of devices. This is also consistent with the data from the OHS register of

complaints which records that more complaints are received about 'expectations of the device not being met' and 'expectations of the service not being met' than any other topic.

Client education has been identified by the OHS and stakeholders as an important tool for tackling unrealistic expectations.

Clarity regarding objectives, along with client education, is an area for improvement in the future.

B. Is the scheme achieving its policy objectives?

One of the ways to identify whether a regulatory scheme is achieving its objectives is to measure outcomes. In relation to the scheme, health outcomes could be measured by documenting responses to these questions:

- Is the scheme assisting people with hearing loss to maximise their potential for independent communication and improve their quality of life?

- To what extent can this be attributed to the provision of services and devices under the scheme or to the regulation that underpins the scheme?

Another way to measure whether or not the scheme is achieving its policy objectives is to undertake satisfaction surveys to determine whether clients are satisfied with the service being funded by the scheme.

While some limited client satisfaction information is collected by the OHS, there was no robust data available to mpconsulting for analysis in relation to either health outcomes or satisfaction measures.

It should be noted, however, that service providers are required to evaluate the outcomes of client rehabilitation programs (as part of the requirements of the *Hearing Rehabilitation Outcomes for Voucher Holders*). While the intent of this requirement was to drive service provider quality improvement, the information could potentially be collated and used to inform policy development or improve practice across the sector. One of the barriers to such analysis is that service providers are unlikely to undertake assessments in a consistent way, making comparisons across providers difficult.

Despite the lack of substantive data available in relation to health outcomes and client satisfaction, anecdotal information about the effectiveness of the scheme can be gleaned through:

- ***stakeholder feedback –*** From the limited number of stakeholders interviewed, all agreed that the scheme is achieving the objective of providing services and devices to those in need. However, all also acknowledged areas for improvement.
  In a written submission the HCIA noted that:

There is no question that Australians receive good quality hearing care and good quality basic devices that are supplied to those who need them. However, we would see this outcome more as a result of Government's willingness to fund the Hearing Services Program; the opening up of provision of devices to competition; dramatically improved access for consumers due to network expansion and improved professionalism amongst the hearing care Professional bodies. We do not see it as relating to a prescriptive regulatory framework.

- ***complaints*** – All clients of the scheme, providers and other interested parties can lodge a complaint with the OHS about the scheme. The OHS defines a complaint as 'any expression of dissatisfaction or any breach of conditions or standards relating to a product or service offered or provided'.

  The OHS receives only a very small number of complaints compared to the number of active clients receiving services. For example, in 2010-11, the OHS received 1,435 complaints. Given that there were 547,627 active clients of the OHS in 2010-11, this means complaints were made by 0.26% (or less) of clients (noting that some clients may have made more than one complaint).

- ***compliance action*** – Another possible measure of the effectiveness of the scheme is the level of compliance action taken.

  In the past 5 years, the OHS has recovered money from service providers under the contract but compliance action has only been taken on 3 occasions (twice in 2008-2009 and once in 2009-2010).

  In isolation, this information is not a reliable indicator of the effectiveness or otherwise of the legislation. For example, one reason for a low level of compliance action may be a high level of industry compliance. Another reason may be low compliance monitoring by the OHS or the lack of appropriate enforcement actions under the contract or legislation.

  In relation to the level of monitoring by the OHS, it is noted that in 2010-11 only 2 site audits were conducted by the OHS along with 7 audits of new providers. This means that the total percentage of service providers audited was only 4%[5]. In addition, 483 practitioner files were audited against the *Hearing Rehabilitation Outcomes for Voucher Holders*. This represents 31% of practitioners who had one or more client file audited.

  Given the limited data available, it is difficult to draw any conclusions about the level of industry-wide compliance.

In summary while anecdotal information suggests that the scheme is, to some extent, achieving its objectives, the limited data means that it is not possible to confirm this.

[5] OHS had advised that compliance activities were scaled down in 2010-11 for various reasons including competing priorities. Over the past 6 months the OHS has undertaken a great deal of work to develop a risk-based compliance framework.

C. Is the regulation assisting in the achievement of the policy objectives?

The regulatory framework enables the issue of vouchers, the payment of providers and the setting of prices. To some extent it also enables the control of practices. To this end, the regulatory scheme supports the achievement of the policy objectives.

However, to test whether the regulation is effective, it is also necessary to identify the risks the regulation is intending to address and the extent to which the legislation effectively mitigates such risks. In other words, what is the market failure that justifies intervention by government?

When this question was asked of stakeholders, it was generally acknowledged that:

- there is little or no clinical harm as the result of the provision of hearing services

- while the scheme has been used as a quasi registration scheme for practitioners in the past, this is no longer necessary as a number of professional bodies have emerged. The role of professional bodies is now clearer and there is little need for government to directly regulate hearing services practitioners (audiologists and audiometrists). The change in the industry has been reflected in changes to the contract and the Rules of Conduct which took effect on 1 July 2012

- by funding certain services, government can have an expectation that the type and quality of the service delivered meets required standards. Regulation should therefore be directed to describing these standards.

Some stakeholders, but not all, also considered that the regulation should minimise the risk of financial harm to clients. It was suggested that there is a risk of vulnerable clients being influenced to spend money on top-ups when there is little or no clinical need for such devices. Stakeholder opinion varied regarding the likelihood of this risk being realised. Some stakeholders suggested that this was very rare and others suggested that the practice of influencing clients to purchase unnecessary top-ups was 'rife'. This is discussed further below.

Overall, mpconsulting considers that while the program is achieving its objectives (if the objectives are interpreted broadly) the regulation is not well-adapted to the efficient and effective achievement of those objectives. As discussed below, the regulation is not well matched to the risk.

2. Focusing on the regulation

D. Are the regulatory requirements clear?

When asked whether the regulatory requirements are clear, some industry stakeholders advised that the requirements are clear and that service providers have a strong understanding of the requirements. Others commented that providers are aware of the general nature of the requirements but are not aware of the detail. All stakeholders focused on the terms of the contract when discussing the regulatory requirements.

From an external perspective, mpconsulting considers that the regulatory requirements are not clear.

Not only is it difficult to identify all of the legislative and contractual elements of the scheme (as these are not all published or summarised in any single location) but the actual obligations imposed by the regulation are also unclear.

Take, for example, the conditions that apply to service providers when delivering services as part of the hearing services scheme.

In an ideal world:

- these conditions would be described in one, readily accessible, easily understood document. If conditions were described across multiple documents, the conditions would form a hierarchy, would all be described in consistent terms and would cross-reference related conditions in other documents

- any changes to conditions would be made through a transparent process and would be communicated to stakeholders in a consistent manner

- the consequences of non-compliance with the conditions would be clear.

However, in this case:

- there are over 100 ongoing obligations (i.e. conditions) imposed on service providers along with 30 discrete prohibitions

- these obligations and prohibitions are spread over 10 different regulatory documents. Most of these documents can be amended 'from time to time' by the Commonwealth. In some cases this requires approval by the Minister (i.e. the making of delegated legislation) and in other cases these changes can be made by OHS staff and notified to service providers

- the obligations are variously described as conditions, standards, requirements, terms of the contract, terms of the Deed, and outcomes

- there is significant overlap and inconsistency between the obligations and prohibitions (discussed in more detail below)

- non-compliance with the obligations or prohibitions gives rise to different actions under each of the different regulatory documents.

The consequence of this is that, despite the best intentions of stakeholders, it is unlikely that all 215 service providers and 1660 practitioners have a clear understanding of all of the conditions applicable to them and the consequences of non-compliance.

E. Is the regulation based on risk and is the regulatory effort appropriately matched to the risk?

As mentioned previously, the clinical risk associated with hearing services is very low and should not, therefore, be a driver for regulation.

When it comes to other risks that the regulation is addressing, these are not well defined. As a result, the regulatory effort is not well matched to the risk.

For example resources are expended by OHS in examining the financial viability of the service provider as part of the accreditation process. However:

- the risk of financial failure is small

- the risk to the Australian Government as the result of failure is low (because only small amounts are paid in advance)

- the risk to clients is low because if the service provider fails, there are generally alternative providers that can provide the service to the client. This risk also exists if the service provider chooses to stop providing services yet this risk is not one that can be controlled by the Australian Government and this is accepted.

Possibly the most valuable work that could be undertaken following this review is for the OHS to work with stakeholders to clearly articulate the problem or risks that the regulation is attempting to mitigate and whether it is appropriate for government to attempt to manage such risks through regulation. This is discussed in more detail in the following chapter.

F. Does the legislation strike an appropriate balance between principles and outcomes based regulation and prescriptive regulation?

Consistent with the principles of good regulation, regulation should ideally be outcomes focussed. In other words, the Parliament or the regulator sets the outcomes to be achieved and industry determines the most efficient and effective way to achieve those outcomes. The regulator, using a risk-based compliance framework, then audits compliance with the required outcomes.

While this is appropriate in many spheres of regulation, there is also an argument for less outcomes focussed and more prescriptive regulation in domains were the industry is immature and seeks more guidance from government regarding how to meet government's expectations.

In the case of hearing services, the regulation evolved as a response to the involvement of the private sector in the delivery of services that were previously the exclusive domain of the government.

In 1997, when the regulation was first introduced, the risk to government and to clients was higher because the industry was fragmented and its capacity was unknown. At this point in time, more prescriptive legislation was appropriate.

In the 15 years since the commencement of the scheme, the industry has changed significantly and some theoretical risks have not been realised.

As such, the legislation needs to become less prescriptive and more outcomes focused. To some extent, this is already occurring.

For example, changes that took effect on 1 July 2012:

- remove a number of the more prescriptive requirements relating to practitioners and place more reliance on professional bodies to oversee qualifications and continuing professional development

- remove requirements that a service provider seek approval from the OHS for a new site at least 30 working days prior to the provision of services for that site. This has been replaced with a requirement that the service provider notify new sites and site closures to the OHS. This has replaced a more cumbersome approvals process with a simpler notification process.

However, in other areas, outcomes based regulation appears to have been superimposed over existing prescriptive requirements.

For example, the *Hearing Rehabilitation Outcomes for Voucher Holders* details 9 outcomes to be achieved by service providers yet it still includes 29 detailed results that must be documented. Further, the *Hearing Rehabilitation Outcomes for Voucher Holders* document exists in parallel with the service provider contract, the schedule of service items and the Rules of Conduct which continue

to impose a range of prescriptive conditions.

In summary, there is potential to continue the work that has already commenced by the OHS to replace, where possible, prescriptive requirements with more outcomes focused regulation.

G. Does the regulatory scheme include any examples of inconsistencies, overlapping regulation, redundancies or excessive regulatory coverage or excessive reporting requirements?

The hearing services scheme includes a number of examples of overlapping, inconsistent, redundant and excessive regulation.

Two examples are described below.

Example A – Records

A significant focus of the regulation is on record keeping by service providers.

The concern is that:

- it is not always clear why certain records are being required to be created and kept. It is important to understand the reasons for the requirements because many of the records that are required to be kept are for the purposes of the scheme specifically, and would not otherwise form part of the documentation kept by the practitioner in the course of their usual business. Given the administrative burden posed by record keeping requirements, it is therefore important that the purpose and objectives are clear

- there is no hierarchy of requirements relating to record keeping. It is not clear what records are critical to the scheme (and will be audited by the OHS) and which records are desirable, but subject to clinical judgement and discretion of the practitioner

- the legal status of the records is not clear nor is the interaction with health records legislation

- there are varying record keeping requirements characterised in different ways across different pieces of regulation. Some record keeping requirements are expressed as conditions of contract, some are embedded in claiming criteria (in the Schedule Service Items), some form part of the Deed, and some are expressed as 'results that must be documented' for the purposes of the *Hearing Rehabilitation Outcomes for Voucher Holders*.

  In addition to the general requirement to keep records, the Rules of Conduct also contain some specific record keeping requirements. For example, the service provider must keep in its records: written evidence that the client has made an informed decision regarding the choice of hearing device; and a copy of the quote signed by the client

- the contract:
  - defines records as, in summary, any records, information data or documents about clients that is created or maintained for the purposes of the rules of conduct or a contract with the Commonwealth. It is unusual that this identifies records as being created for the purposes of two particular parts of the regulation and not for all of the regulation
  - provides that all intellectual property in the records vests in the Commonwealth. It is not clear why this is necessary or what purpose this serves
  - provides that the service provider must keep all records for 7 years. This is consistent with requirements in relation to health records more broadly but the interaction with health records legislation is unclear.

Overall, there is a complex web of record keeping requirements spread across multiple documents, all of which are subject to change from time to time. There is significant potential to clarify and streamline the record keeping requirements.

Example B – Provision of false and misleading information

One example of overlapping regulation is the requirement that the service provider must not provide false and misleading information to the Commonwealth.

This basic requirement is located (in slightly different terms) in 6 different parts of the regulatory scheme:

- section 23 of the *Hearing Services Administration Act 1997* provides that a payment to a service provider is subject to a condition that a false or misleading statement has not been made by, or on behalf of, the entity in connection with a claim for the payment
- section 6 of the *Hearing Services Providers Accreditation Scheme 1997* provides that a decision to accredit an entity is subject to a condition that the entity must not provide false or misleading information to the Commonwealth in connection with the accreditation scheme or the provision of hearing services to voucher holders.
- clause 8.1 of the service provider contract requires that the service provider warrants that all information that has been, or will be, provided to the Commonwealth is, or will be, correct, complete and not misleading in any respect
- clause 14 of the service provider contract provides that the service provider must not provide the Commonwealth with false and/or misleading

information (and explains this in some detail)

- clause 39.4 of the contract provides that the service provider acknowledges that under section 137.1 of the Schedule to the *Criminal Code Act 1995* giving false or misleading information to the Commonwealth is a serious offence

- the instrument of accreditation provides that it is a specified condition of accreditation that the service provider "does not provide false or misleading information to the Commonwealth in connection with the Accreditation Standards Scheme or the provision of hearing services to voucher holders". This directly duplicates a condition that is imposed through delegated legislation (section 6 of *Hearing Service Providers Accreditation Scheme 1997).*

Further, should a service provider breach the requirement not to provide false and misleading information to the Commonwealth, they would at once be breaching:

- section 6(5) of the *Hearing Service Providers Accreditation Scheme 1997*

- three terms of the contract (clauses 8.1, 14 and a condition of accreditation)

- a condition of accreditation (expressed both directly through the *Hearing Services Administration Act 1997* and as a separate discrete condition imposed through the instrument of accreditation)

- the *Criminal Code Act 1995.*

The consequences of such non-compliance may be:

- the Commonwealth conducting an investigation, if the false or misleading information is relevant in relation to accreditation or entry into the contract (as provided for in clause 12 of the contract)

- the Commonwealth directing the service provider to stop providing services (clause 27 of the contract)

- cancellation of accreditation

- termination of the contract (under clause 30 of the contract)

- reimbursement for any amount paid to the service provider (clause 15 of the contract)

- prosecution for a criminal offence under the *Criminal Code Act 1995*.

While a range of regulatory responses to non-compliance is generally a positive aspect of a regulatory scheme, the concern in this instance is that essentially the same conduct is prohibited in slightly differing terms in 5 different instruments, all with different consequences.

In an ideal regulatory environment the prohibited conduct would be comprehensively addressed in one location (i.e. in one instrument, be it delegated legislation or the contract) and a range of regulatory responses would be available under that one instrument.

A very similar situation exists in relation to:

- professional standards
- advertising
- clinical records.

H. Are there transparent and consistent procedures for making decisions under the legislation and for making any delegated legislation?

An unusual aspect of the scheme is the very wide range of points at which regulation can be applied and adjusted.

For example:

- there is no clear hierarchy of requirements with an associated hierarchy of parliamentary oversight or delegation. The same rule, or ongoing obligation imposed on the provider, could be set through:
  - a delegated instrument that is signed by the Minister and subject to disallowance by Parliament (for example, the Rules of Conduct)
  - included as a condition of accreditation. Conditions of accreditation are at the discretion of the relevant delegate in the OHS and may vary between providers (but in practice do not)
  - included as a condition of the contract or Deed which is developed within OHS in consultation with industry
  - included as a required outcome in the outcomes document (the *Hearing Rehabilitation Outcomes for Voucher Holders*) which is referenced in the contract and described as a standard but appears to be an administrative document
  - included as an element of a service item which is a schedule to the contract and can be amended and updated by OHS staff from time to time
- there is no pattern or logic to the associated reconsideration and review rights.

  For example, a provider may request reconsideration of a condition of accreditation and may also seek review by the Administrative Appeals Tribunal (AAT). However, the very same condition (when it appears in the contracts – which it does) is obviously not subject to reconsideration or review by the AAT.

The *Hearing Services Administration Act 1997* also provides that any decision made by the Minister under the Rules of Conduct is subject to reconsideration by the Minister and review by the AAT (sections 29 and 35). It is not entirely clear which of the Ministerial actions described in the Rules of Conduct are 'decisions' for the purposes of reconsideration and review.

3. Focusing on the administration of the scheme

I. Is the scheme being administered efficiently and effectively?

This review did not include a detailed assessment of OHS processes. As such it is not appropriate to draw conclusions regarding the overall efficiency and effectiveness of the administration of the scheme.

However, the following general observations (based on discussions with stakeholders and a review of the regulatory scheme) may be made:

- While stakeholders were not directly asked about the efficiency and effectiveness of the administration of the scheme or the performance of the OHS, most stakeholders volunteered positive comments about the OHS and the efforts that the OHS has made over the last year to try to improve and streamline the system.

- Consistent with these observations, it is also evident from a comparison of the 2011-12 service provider contract and Rules of Conduct with the 2012-13 service provider contract and Rules of Conduct, that there have been significant improvements which will make some processes more efficient.

- Data published by the OHS suggests that the efficiency of some processes is improving. For example, as reflected in the following tables, the processing time for vouchers has improved over the past year.

Time in Weeks between Date of Application and Date of Vouchers Issued from 01/07/10 to 30/06/11 (Week starting 4 July 2011)

Application Type	Vouchers Issued	Average Weeks
New	106,177	2.7
Return	197,812	2.3
Total	303,989	2.5

Time in Weeks between Date of Application and Date of Vouchers Issued from 01/07/11 to 30/06/12 (Week starting 12 June 2012)

Application Type	Vouchers Issued	Average Weeks
New	98,044	1.5
Return	234,224	1.3
Total	332,268	1.4

In terms of areas for improvement, mpconsulting considers that:

- the structure of the regulatory system, its complexity and lack of clarity is likely to create administrative inefficiencies for the OHS. For example:
  - staff should theoretically be trained in both administrative law decision making and also contract interpretation and administration
  - policies and procedures should exist to support each of the processes required to be undertaken by the OHS
  - auditors should be familiar with all of the service provider obligations and should theoretically audit in accordance with a risk-based hierarchy (but it is unlikely that this is the case given that the regulation does not support this approach)
- there are a large number of processes, many of which are manual. Consideration could be given to automating these systems.
- there are some processes which do not necessarily need to be undertaken by the OHS. For example, clients must apply to the OHS for a voucher in order to access services. This is a manual process which involves the client, a medical practitioner, the service provider and an assessment by the OHS. Given that the eligibility criteria are relatively clearly defined and that there is a high rate of approvals by the OHS, consideration could be given to enabling the service provider to assess eligibility and this being audited by the OHS.

  Further consideration would need to be given to:

  - the cost of administering the voucher scheme (in terms of time and resources) compared to the cost to government should service providers inappropriately assess eligibility
  - the actions that would be available to the Commonwealth in the event that inappropriate assessment of eligibility is made by the service provider.

4. Focusing on specific areas of concern

Given the limitations of this review and the complexity of the legislative and contractual environment it is not possible to identify all instances where the scheme does or does not meet good regulatory practice.

This chapter examines four elements of the scheme of particular note:

- the regulation of top-ups – this was the single biggest issue raised by stakeholders
- the accreditation scheme – this provides a good example of some of the problems with the regulatory scheme.
- the relationship between the OHS and device suppliers
- the schedule of items and fees.

Case study 1 – Top-ups

The service provider contract (effective from 1 July 2012) provides that:

- a service provider must not encourage a client to select a top-up device where an approved hearing device is available to the client free of charge and would reasonably meet the client's rehabilitation needs
- if the service provider is to supply a top-up the provider must have first provided the client with a quote, the quote must be signed and a copy of the signed quote kept by the service provider. The service provider may then charge the client the quoted price
- if a service provider fails to comply with the requirements detailed above and as a result the client chooses a top-up device as a consequence of the failure, the Minister may require the service provider to refund to the client all charges in connection with the top-up

In addition the Deed provides that:

- the device supplier and the service provider may agree a price for a top-up (this is unlike free-to-client devices where the Commonwealth sets the price)
- hearing devices on the top-up schedule of approved devices must have additional features, with demonstrable client benefit. These features:
  - must be over and above those required to achieve an acceptable standard of rehabilitation specified under the terms of the contract between the service provider and the OHS

  - are in addition to those specified for free-to-client devices. They must be identified and the potential client benefit supported by appropriate evidence. The evidence for additional client benefit could, for example, take the form of field trial data, test results or validated research

- the Schedule to the Deed details the minimum specifications for top-up devices. For example, the device must meet the specification for free-to-client devices plus include at least one feature from the list of top-up features listed in the Deed.

Stakeholder feedback

The issue of top-ups was discussed with all stakeholders. Concerns expressed by stakeholders included:

- that there was anecdotal evidence that clients were being inappropriately provided with top-up devices where free-to-client devices were available and would meet the client's need

- that practitioners were subject to pressure from their companies to sell top-up devices

- that some practitioners were being paid performance bonuses that were linked to the number of top-ups sold (with the concern being that top-ups were not always being suggested on the basis of client need)

- that there was inadequate recompense from the government for free-to-client devices and as a result practitioners were relying on top-ups to enable their practice to be profitable

- that the clients of the scheme were a vulnerable community who relied on the advice of practitioners and were less likely than some other groups in the community to question the advice or seek a second opinion. It was therefore suggested that the clients were more susceptible to being influenced by the provider in terms of the need for, or desirability of, a top-up.

Analysis

Top-ups are a perfect example of where the risk that the regulation is trying to mitigate is unclear, the role of government is unclear and as a result an unusual hybrid of regulation has emerged.

On the one hand it could be argued that:

- there is no role for government in the regulation of top-ups because top-ups are a consumer item offered by a service provider

- it is entirely up to the client whether or not they wish to purchase the top-up

- there are consumer protections available through the *Competition and Consumer Act 2010* which protect consumers from misleading and deceptive conduct or false claims.

If this argument is supported, then there is theoretically no need for the hearing services regulation to specifically address top-ups. Rather, the focus could be on educating clients so they can make informed decisions about whether or not to choose a top-up.

On the other hand it could be argued that the fact that the Australian Government is directing clients to certain providers with whom the Government has a contract to provide free-to-client services, means that stronger protections are needed for clients to minimise the risk that they will incur unnecessary expenses as the result of inappropriately being offered top-ups.

If this argument is supported then it would be logical for the hearing services regulation to include additional consumer protections. The extent of these additional protections (taking into account the risk and the regulatory burden) would require consideration. But it should not be necessary to:

- regulate the relationship between the device supplier and the service provider in relation to top-ups (as the regulation currently does)

- describe minimum specifications for top-ups (as the regulation currently does).

A third argument is that government has a role in the regulation of top-ups that goes beyond consumer protection. This role would need to be defined and the regulation matched to the risks identified.

Case study 2 – The accreditation system

All service providers must be accredited by the OHS before being offered a service provider contract. The process of accreditation involves the following stages:

- submission of application

- assessment of application by the OHS

- submission of additional information prior to offer of a contract

- notification of accreditation and accreditation conditions. An offer of a contract occurs at the same time as the notification of accreditation.

The application for accreditation requires the applicant to submit, among other things:

- applicant details including relevant certificates of registration

- a detailed statement of experience in the provision of hearing services from a business management and clinical expertise approach (with claims supported by attaching a current resume complete with references)

- information about the staffing profile, including information regarding all qualified practitioners and support staff arrangements

- information about the site(s) including site suitability: how the safety and general wellbeing of voucher clients will be ensured and details of all equipment that has been acquired or is intended to be acquired for hearing assessments (including details of the type of earphone/cushion or earphone/enclosure combination)

- information about the financial viability of the applicant. The Accreditation Kit Manual provides detailed guidance about the information to be provided to support an application. For example, the Manual encourages applicants to engage a qualified accountant to assist in the preparation of financial information and provide independent verification that the figures used are accurate and financial projections (including assumptions) are sound. It also requires that the applicant provide detailed information such as: a diagram of business structure; audited financial statements including for parent companies; projected profit and loss forecast; and, for newly established entities, a business plan and various accountant and bank declarations

- a declaration re convictions, receivership or liquidation.

The OHS assessment of the application involves: requests for additional information; independent financial analysis by a contractor to the OHS; and an average of 65 OHS staff hours per application.

In order to accredit an organisation, the OHS must be satisfied that it is in the best interests of persons received hearing services under the Act having regard to:

- the provider's experience in providing hearing services

- the proposed staffing profile and qualifications of the staff

- the accessibility of the premises and whether the premises are of a satisfactory standard

- capacity to meet the rules of conduct

- financial viability

- any other matters that might affect the standard of the service.

The accreditation process highlights a number of issues:

- first and foremost the purpose of accreditation is not clear. There is no obvious reason why, for example, the OHS would need to assess the business plans or financial viability of a provider especially when:

  – no significant pre-payments or grants are made to service providers

  – the contract requires the provider to attest to, and also make warranties as to, a number of the matters that are considered as part of the accreditation process (overlapping requirements)

  – there is no follow-up for a number of the matters considered. Having received accreditation, the provider could change its business plan, its loan arrangements, its liquidity and its financial position and this is never again checked by the OHS. Rather than suggesting that such checking needs to occur, the more reasonable conclusion is that the initial assessment is unnecessary

  Similarly, it is unclear what purpose it serves to undertake an assessment of all support staff particularly given that support staff can change over time and no notification of such change needs to be made to the OHS.

- the word 'accreditation' suggests a process in which certification of competency, authority, or credibility has occurred. It suggests that a third party has assessed the performance of the organisation against standards. But this is not the case for accreditation of hearing services providers. Rather the process is more akin to a pre-contract vetting process.

  The use of the term also risks organisations holding themselves out as having a preferred status when the only practical or legal consequence of accreditation is that it is a pre-condition to being able to contract with the Commonwealth

- the process requires providers to expend money and prepare documents that would not otherwise be needed for the establishment or maintenance of their business yet with no clear benefit or purpose to the OHS

- the requested information includes significant amounts of personal information. Once held by the OHS, appropriate mechanisms need to be in place for the protection of such information (this was not explored in detail with the OHS)

- on the advice of the OHS, no organisation has ever been refused accreditation.

As the accreditation requirement is specified in legislation, there is limited capacity for the OHS to streamline or eliminate this process, should it be deemed

unnecessary. This highlights the need for structural reform of the hearing services regulation. This is discussed further in Chapter 7.

Case study 3 – Device suppliers

Under the scheme, device suppliers must

- be registered by the OHS in order to provide devices to service providers for the purposes of the hearing services scheme

- enter into a Deed with the Commonwealth

- enter into a contract with the service provider for the provision of devices. The contract must be in accordance with the conditions detailed in the Deed.

These arrangements are unusual in a number of respects.

- The Deed requires that device suppliers be registered with the OHS. The process of registration is described in the Deed as involving consideration by the OHS of the 'financial viability and ethical standards' of the device supplier. As for accreditation of service providers, it is unclear what purpose registration of device suppliers serves.

- The overall need for the Deed (and the wide range of matters it 'regulates') is not clear. If the main purpose of the Deed is to describe the approved devices, their specifications and the price the Commonwealth will pay for such devices, this could be done without a Deed. The Commonwealth could specify this information in a Schedule to the service provider contract, or in delegated legislation[6]. The effect of this would be that the Commonwealth 'sets the bar' in relation to devices that it will fund, without regulating the relationship between the device supplier and the service provider. It would then be a matter for the service provider and the device supplier as to how they negotiate for supply of the device.

- The Deed provides that devices may be approved under the Act (in which case they are deemed to be added to the device Schedule) yet there is no power under the Act for the Minister to approve devices. Devices are entered on the Device Schedule monthly by the OHS. As has been identified by the OHS, it is important that the device schedule be reviewed as part of a broader procurement plan to ensure that the specified devices are efficacious and represent value for money for the Commonwealth.

- The service provider contract requires that the service provider must comply with the terms and conditions of the Deed. While the Deed is accessible to

[6] It is noted that the Schedule of fees (which is published on the OHS website and is referenced in the service provider contract but is no longer a schedule to that contract) already includes a list of hearing device prices.

service providers through a secure part of the OHS website, it is not clear whether all providers would be familiar with the contents of the Deed, not having been a party to that agreement.

- Based on discussions with OHS it is understood that the Deed has been in place for 10 years, without substantial review or amendment. Possibly as a result of this, the Deed is outdated in a number of respects. For example the definitions of client and device in the Deed are different to the definitions in the service provider contract.

Overall, as has been acknowledged by the OHS, the Deed is in need of review. However, it may also be timely to re-evaluate the purpose of the Deed as part of the broader consideration of scheme reforms.

Case study 4 – Schedule of items and fees

The *Hearing Services Administration Act 1997* provides that the contract between the Commonwealth and the service provider may provide for amounts to be paid by the Commonwealth to a service provider. Such a payment may not be paid unless a claim has been made to Medicare Australia (the claims acceptance body for the Commonwealth).

Schedule 1 of the service provider contract describes the Schedule of Service Items. The fees payable for each of the services is detailed on the OHS website.

In summary, the Schedule of Service Items:

- contains 34 service items

- for each service item, the Schedule contains a description of the service item and the conditions for claiming. The descriptions of many of the service items are complex and include a blend of conditions, claiming information, and record keeping requirements.

  For example, in order to claim a fee of $72.30 for aid adjustment, the service provider must meet the following criteria:

930 Aid Adjustment – Monaural

Description of Service Item

This item covers device adjustment where the Client is experiencing less than optimal benefit or satisfaction with the device and it is more than 12 months from the date of fitting and more than 24 months from the last aid adjustment claim. It can be claimed where the Client has had a monaural fitting without the need for the Client to apply for a new Voucher.

The aims of this item are to give the practitioner greater flexibility in providing appropriate services in a timely and efficient manner and to extend the life of the current fitting. Activities performed as part of this item are separate to those performed as part of a Reassessment. This item is not intended to be used to rectify a poor fitting by the practitioner.

Conditions for Claiming

This item can only be claimed where the service was performed on or after 1 December 2000 and a monaural fitting or refitting has previously been claimed for the Client.

A claim for these services would be indicated where the usual checks to exclude aid malfunctions or external auditory meatus cerumen blockage has been completed and the client is still reporting difficulties.

*In order to claim this item **three** or more of the following activities should be performed with supporting evidence on file:*
i) Hearing screening including an indication of middle ear status
ii) Repetition of real ear insertion or aided threshold measurement
iii) Resetting of hearing aid parameters to accommodate slight changes in hearing thresholds
iv) Checking of real ear insertion or aided thresholds measurements with new settings
v) Fitting of new earmoulds or modification of the current earmould/shell (eg. retubing, replacement of earhook)
vi) Assessment of Loudness Discomfort Levels in relation to MPO settings
vii) A review of negotiated client goals with modification where necessary and/or a review of client's expectations and appropriate use of communication strategies and tactics
viii) A review of the client's aid management with re-instruction.

This item is only available where it is more than 12 months since the date of fitting or in the period between a subsequent monaural Fitting Date and the subsequent monaural fitting Date of Service (i.e. Follow-up date) inclusive, where the readjustment is to the initially fitted aid. It can be claimed once every 24 months where it is clinically necessary. A new Voucher is not required for subsequent claims against this item.

The range of outcomes covered by this item are described in the Hearing Rehabilitation Outcomes; Outcome 7, Aftercare.

By contrast, the MBS is significantly clearer. The schedule of items is available online and is searchable by item number or service description. For each service item:

- the service item is succinctly described with the fee described alongside the service item (in the case of the OHS the service fee is in a separate document to the service item)

- associated notes provide further explanation including information about, for example: eligible patients; related service items; the number of services of that type that may be provided to eligible people; where to obtain further information. This means that it is much easier to distinguish the various requirements.

As an aside, and as discussed in Chapter 7, the MBS includes a number of items relating to audiology. It is unclear how the OHS ensures that parity is maintained between the fees associated with service items under the hearing services scheme and like service items under the MBS.

5. Overall

J. Does the regulation achieve the policy objectives in a manner that minimises the cost for government, business and the community?

mpconsulting does not consider that the regulation achieves the policy objectives in a manner that minimises costs.

While a full impact assessment has not been undertaken as part of this review, it is reasonable to conclude that:

- the lack of regulatory clarity is likely to impose unnecessary costs on industry particularly smaller organisations less equipped to deal with the myriad of requirements

- there are processes and obligations which appear to be unnecessary and in turn impose unnecessary costs (both on service providers and on government)

- there is great potential to clarify the intent of the regulation, streamline the regulatory requirements and address redundancy, duplication and excessive regulatory coverage.

CHAPTER 6 – THE OBJECTIVES OF ANY REFORM

The objectives of any reform are to improve the regulation of hearing services such that:

- the objectives of the regulation are clear
- the regulation is simply and clearly expressed
- the regulation is risk based with regulatory effort matched to risk
- where possible, regulatory requirements are expressed as outcomes to be achieved - with industry responsible for identifying the most efficient and effective means by which to achieve the required outcome. More prescriptive requirements should only be retained where this is necessary and in the interests of clients, industry and government
- administrative costs are minimised for clients, service providers, device suppliers and government
- unnecessary duplication, redundancy and outdated provisions are removed
- the regulation ensures consistency in decision making
- the OHS has a range of options available to identify and address any non-compliance.

Any reforms should also be achieved in a way that minimises cost, disruption and uncertainty for all stakeholders.

CHAPTER 7 – REFORM OPTIONS

Precursor to the selection of a reform option

By reforming the scheme, it is likely that the policy objectives could continue to be achieved while:

- improving clarity
- reducing costs to clients, service providers, device suppliers and government
- ensuring the regulation meets principles of good practice regulation.

mpconsulting considers that before any reform option is recommended, further work needs to be done to:

- validate the observations detailed in this report
- define the risks that need to be managed through regulation
- identify essential processes and conditions and how these might best be implemented.

It is therefore recommended that:

- Further consultation be undertaken on: the issues identified in this report in order to validate (or otherwise) the observations made; and the risks that stakeholders consider must be managed through the regulatory scheme.

  mpconsulting is conscious that the review was undertaken within short timeframes and only involved limited consultation with stakeholders and the OHS. It is likely that further areas of attention (that may not be readily apparent based on a desk-based review of the regulation) would be highlighted through more detailed consultation.

- Having clearly identified the risks intended to be addressed through any regulation, document all of the processes and conditions (i.e. the rules of operation) that exist in the different regulatory documents. For each process or condition, clearly describe:

  – what harm (or risk) the process or condition is designed to address. If it is not clear, the process or condition may not be necessary and requires re-consideration.

  – in relation to processes:

    o identify what pre-market assessment processes are critical for

managing risk and what processes can be eliminated with reliance instead on post market audit and monitoring. In particular, the processes relating to the issue of vouchers and the accreditation of service providers should be closely examined

- identify those post market processes that require notification to, or approval by, the OHS and those that could be eliminated without significantly increasing risk

- identify the most streamlined way to implement necessary processes (minimising reliance on manual processes)

– in relation to ongoing obligations/prohibitions (i.e. conditions)

- consider the necessity of each of the obligations – eliminate overlapping, duplicating and redundant obligations

- if a condition is necessary to manage risk, consider whether it can be described as an outcome or whether it needs to be described as a prescriptive requirement in order to have the necessary level of regulatory certainty

– in relation to each remaining process and obligation, consider the most effective way to monitor and enforce that necessary process or obligation. It is likely that not all of the powers currently available to the OHS (in the legislation and contracts) will need to be retained.

- In parallel with the above, review the schedule of service items and schedule of fees with a view to simplifying the claiming criteria and ensuring that the fees are appropriate.

- Consultation be undertaken on the documentation described above to ensure that there is a common understanding regarding the purpose of all processes and obligations.

Once this preliminary work has been undertaken, government will be better placed to determine the most appropriate reform options. Four options have been identified in this report.

Option A – Maintain the status quo

Description of the option

This option preserves the status quo.

- vouchers – Clients would continue to apply for a voucher from the OHS in order to access government funded hearing services and devices. The OHS would continue to assess eligibility against criteria detailed in the Act and delegated legislation and to manually issue vouchers to clients.

- accreditation - Service providers would continue to be accredited in accordance with delegated legislation (and administrative application requirements).

- contracting – Service providers would continue to be required to enter into a contract with the Commonwealth relating to the provision of hearing services.

- conditions of operation (i.e. ongoing obligations) - These would continue to be described in a range of legislative and contractual documents including the contract, the Deed, the instrument of accreditation, and delegated legislation.

- devices and device specifications – Suppliers would continue to be registered with the OHS and subject to the requirements detailed in the Deed.

The advantages and disadvantages of the option

- This option does not meet the objectives of reform that are detailed in the previous chapter.

- Specifically, the regulation would continue to:
  - be unclear
  - include duplications, overlapping regulation and redundancy
  - not be well matched to the risk
  - be inefficient.

The extent of legislative drafting required

- Nil.

Implementation timeframes

- N/A.

Cost implications

- As noted in the discussion of other options, it is likely that cost savings will be made by reforming the scheme. These savings are unlikely to be realised if the status quo is maintained.

Option B – Incremental changes that continue to utilise the existing legislative and contractual framework

Description of the option

Consistent with the approach adopted over the last year (whereby OHS has worked with the sector to improve the service provider contract and the Rules of Conduct), the regulation could continue to be revised and improved annually within the existing framework.

For example, following completion of the work detailed at the commencement of this Chapter, the following changes could be made:

- all instruments relating to vouchers, eligibility and participants could be consolidated into one document (delegated legislation as required by the Act). This means that, other than the Act, there would be one main document that describes the relationship between the Commonwealth and the client

- all instruments describing the obligations of the service provider could be consolidated into two documents – the contract and the Rules of Conduct. This means that, other than the Act, there would only be two documents that describe the relationship between the Commonwealth and the service provider. This approach would mean:

  - amending the contract to remove all of the obligations that relate to the provision of services including record keeping and site requirements. All of these obligations would be included in the one set of Rules of Conduct

  - the new Rules of Conduct would describe all of the conditions of service that are currently scattered throughout the *Hearing Rehabilitation Outcomes for Voucher Holders*, the eligibility criteria for refitting, the contract, the Deed and the Schedule of service items

  - the contract would only retain the essential contract provisions and would also include the service items as a Schedule. All payment related information would be included in the one schedule to the contract. This would be a revised and combined schedule of items and fees

  - in the absence of amendment to the Act there must continue to be an accreditation scheme, but the written instrument (delegated legislation)

describing the scheme could be amended to make the accreditation process more minimalist.

- if the Deed were retained (which it may not need to be), this could be amended such that it only describes the relationship between the Commonwealth and the device supplier. It would not include any conditions that relate to the service provider.

The advantages and disadvantages of the option

The main advantages of this approach are that:

- it will improve clarity – the roles, responsibilities and obligations of each of the stakeholders will be described in one or two cohesive documents that are applicable to each group

- it is incremental

- it does not require changes to the Act

- it maintains the existing regulatory structure which is familiar to stakeholders

- it addresses some of the significant issues of: lack of clarity, overlap and duplication.

A number of the advantages detailed above are also disadvantages. For example, this option:

- does not address some of the structural problems with the scheme. It continues to mean that the 'rules' of the scheme are described in an Act, delegated legislation, contract and potentially a Deed

- it does not address some of the areas of duplication – for example it continues to require accreditation in addition to warranties being made through the contract.

If this approach is to be effective in addressing some of the problems identified in this report, significant work will need to be done by the OHS and stakeholders to determine the focus of regulation (i.e. the problem to be addressed and the risk to be mitigated) and to streamline and re-work the processes and obligations such that they align with the objects of the regulation and the risks to be addressed. This will be a time consuming process.

Once this is settled the flow-on changes to the regulatory instruments will be relatively straightforward.

The extent of legislative drafting required

- No amendments would be required to the Act but amendments would be required to each piece of delegated legislation and to the contract and Deed.

Implementation timeframes

- In order to minimise the disruption caused by regular changes to regulation, it is recommended that all changes to the instruments take effect at the same time. Ideally, the date of effect would be the commencement of a financial year. The implementation timeframes will be influenced by the outcomes of stakeholder consultation and available resources.

Cost implications

There will be costs to government as a result of undertaking consultation on the incremental changes, ensuring requirements of the Office of Best Practice Regulation are met, drafting new instruments, and ensuring that internal and external stakeholders are educated about the changes. These administrative costs would be greater than the costs associated with option A but are likely to be less than the costs associated with option C.

Each time improvements are made to the regulation there are likely to be small cost savings to government and to industry.

The extent of the cost savings will depend on the extent of changes to processes (e.g. voucher process, accreditation and notifications) and the extent of changes to conditions (e.g. record keeping requirements).

Even a small change to, for example, record keeping can have a large impact across 215 providers and 1660 practitioners.

Similarly, if voucher requirements were removed (and practitioners could assess eligibility) this would shift some cost to industry but would reduce costs to government and also positively impact clients.

Option C – Fundamentally reform the framework for the scheme

Description of the option

This option would involve repealing the *Hearing Services Administration Act 1997* and related delegated legislation.

In order to enable payments to be made to service providers (and describe eligibility requirements), there would need to be a foundation in legislation but this could be achieved simply through the *National Health Act 1953.*

The details of the scheme could then either be set out in:

- one piece of delegated legislation (made under the *National Health Act 1953)*; or
- a contract with service providers (and if necessary, with device suppliers).

The advantages and disadvantages of the option

This option:

- eliminates 'stand alone' hearing services legislation

- it locates the hearing services program alongside other funding programs described in the *National Health Act 1953*

- the provisions in the *National Health Act 1953* would be minimalist with all of the detail in either delegated legislation or a contract.

If the details of the scheme were included in delegated legislation (the preferred approach), the advantages are that:

- the entirety of the scheme would be described in one document that is clearly identified in the primary Act. The delegated legislation would replace all of the existing determinations, standards, contracts and other documents. The one piece of delegated legislation would include eligibility, conditions relating to service provision, prohibitions and a schedule of service items. This would provide transparency and clarity

- there would be regulatory certainty. Changes to the scheme could only be made though amendments to the delegated legislation

- there is Parliamentary oversight of the scheme. Each time changes are made (including to the schedules of items and fees), a Regulation Impact Statement (RIS) would need to be prepared, the delegated legislation would be made by the Minister and the legislation would be tabled in Parliament and subject to disallowance. This reduces the risk of excessive coverage and regulatory creep. Currently the Rules of Conduct are subject to disallowance but other standards are not (e.g. the outcomes, the schedule of service items, the fees and the eligibility criteria for refitting).

If the details of the scheme were included in a contract the advantages are that stakeholders are more familiar with a contractual approach and the contract can more readily be amended. The disadvantage of this is that such changes are subject to less independent scrutiny and the ability to make regular changes reduces regulatory certainty.

Another potential disadvantage of a contract is that it may not be possible to include all relevant requirements in the one contract. There may continue to be the need to have a contract with device suppliers and potentially also primary or delegated legislation to describe the eligibility criteria. This would require

further investigation but potentially reduces the clarity that could be achieved through a scheme that is described entirely through legislation.

The extent of legislative drafting required

This would require repeal of the existing Act and delegated legislation, amendment to the *National Health Act 1953* and creation of a new piece of delegated legislation under the *National Health Act 1953*.

Implementation timeframes

Once the policy has been settled, between nine months and one year will be necessary to develop the RIS and drafting instructions, enable OPC to draft the Bill, undertake further consultation on the legislative changes and secure passage of the legislation through Parliament.

Drafting of the delegated legislation (or contracts) could occur in parallel with consideration of the primary legislation.

Additional time would also be required to develop supporting explanatory documents, make changes to IT systems and train OHS staff against new processes.

Cost implications

This option has more significant implementation costs than other options. It would require:

- a dedicated team to develop the policy, consult stakeholders, develop the necessary RISs, draft drafting instructions, liaise with the Office of Parliamentary Counsel and Office of Legislative Drafting and Publishing, develop new procedures and processes, educate industry and clients about the changes and undertake staff training
- legal advice to be sought on various matters
- changes to IT systems.

However, once the changes have been made, this option provides greater potential for long-term savings than options A or B.

Option D – Mainstreaming hearing services into the Medicare Benefits Schedule

Context

Currently the Medicare Benefits Schedule (MBS) includes a number of items relating to audiology. For example:

- items 11309 to 113210 – audiograms

- item 10952 – provision of an audiology health service for chronic disease management

- item 81310 – provision of an audiology health service to a person who is of Aboriginal and Torres Strait Islander descent

- item 82030 – provision of an audiology service for certain children under 13 (as part of the provision of services relating to autism, pervasive development disorder and disability)

- item 82035 - provision of an audiology service for certain children under 15 for treatment of a pervasive developmental disorder or eligible disability.

Based on 2012-13 budget fact sheets it is also understood that from 1 November 2012 new diagnostic audiology items will be introduced where an audiologist provides a service directly to a patient who has been referred to them by a specialist. These new items mirror the existing items for diagnostic audiology services being delivered by, or on behalf of, medical practitioners and specialists.

Description of the option

This option would involve 'mainstreaming' hearing services into the MBS such that all hearing service items would be listed on the MBS rather than in a separate OHS-specific Schedule.

This would also remove the need for separate legislation and contracts specifically for hearing services providers.

The advantages and disadvantages of the option

Significant further work would need to be undertaken before the viability of this option could be determined.

Based on a preliminary consideration of the issues the main advantages of this option are:

- practitioners would not need to be familiar with parallel systems. The one schedule would describe all service items relating to audiology and audiometry

- there would be no need for a separate system of service provider accreditation and contracting. The requirements relating to service items could be built into the MBS claiming criteria. If the government had additional requirements of providers this could be achieved through

delegated legislation (under the *Health Insurance Act 1973*) or through entering into an undertaking with practitioners.

There is some precedent for this approach in relation to optometrists. For example, Medicare pays benefits for services provided by optometrists who have signed an agreement with the Commonwealth. This agreement is known as the *Common Form of Undertaking – Participating Optometrists*. The Undertaking sets out the obligations to be met under the Medicare arrangements with the Commonwealth. For further detail regarding this approach, please refer to the Australian Government Department of Health and Ageing *Medicare Benefits Schedule Book - Optometrical Services Schedule – Operating from 1 July 2012*. This document includes a copy of the Undertaking.

- compliance with the requirements of the MBS (claiming criteria) could potentially be overseen by the Professional Service Review (PSR). The PSR is a scheme for reviewing and investigating the provision of services by a health practitioner to determine whether the practitioner has engaged in inappropriate practice in the rendering or initiating of Medicare services or in prescribing under the Pharmaceutical Benefits Scheme. The PSR does not currently have jurisdiction over audiologists and audiometrists (as they are not prescribed practitioners under the *Health Insurance Act 1973*) but this could potentially be addressed through amendments to that legislation

- many of the general requirements that apply to Medicare service items could equally apply to hearing services. For example, in relation to record keeping, the standards which determine if a record is adequate and contemporaneous for the purposes of the MBS are already prescribed in the *Health Insurance (Professional Services Review) Regulations 1999*. Even if this option (i.e. mainstreaming into the MBS) is not preferred it would still be useful to draw on these standards for the reform of the hearing services record keeping requirements.

Rather than identifying disadvantages of this approach it may be more useful to identify potential barriers to the adoption of this approach. Further consideration would need to be given to:

- whether it is possible to embed client eligibility criteria in the MBS. For example, is it possible to restrict access of the hearing services Medicare service items only to those people who are currently eligible under the hearing services scheme? If this is not possible, this would eliminate this option. In order to confirm whether this was possible, discussions would need to be held with relevant areas of the Department and with legal advisors

- while the MBS already enables payments to allied health professionals (such as mental health nurses, podiatrists, occupational therapists and social workers) consideration would need to be given to how audiometrists might be recognised under the MBS

- how this approach would operate with respect to Australian Hearing (a government provider). For example, it may be possible to legislate to enable MBS equivalent amounts to be paid to Australian Hearing providers.

If this approach were viable, considerable negotiation would also be needed with both hearing services practitioners and also MBS advisory bodies.

If hearing services items were to be included on MBS, it is assumed that they would also need to be assessed for inclusion on the MBS by the Medical Services Advisory Committee (MSAC).

The extent of legislative drafting required

If broad policy agreement to this approach were obtained, it is likely that this option would involve:

- repeal of existing hearing services legislation

- amendments to the *Health Insurance Act 1973* and delegated legislation.

Implementation timeframes

Implementation of this option is likely to take at least 2 years.

Cost implications

There would be significant initial implementation costs associated with:

- consultation, negotiation and amendments to legislation and agreements
- changes to the operation of the OHS
- changes to IT systems and processes (to integrate with MBS)
- client and industry education

While these up-front costs are likely to be higher than for other options, there is potential for long-term savings. Further consideration would need to be given to the extent of overall cost savings and also the extent to which OHS administrative costs would simply be shifted to Medicare and the PSR.

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- DVA Maintenance Eligibility Form
- Eligibility Confirmation Form (September 2008)
- Manual Claim for Payment Form
- Manual Claim Payment Attachment
- Spare Aid Form
- Remote Control Requirement Form
- Refitting Guidelines
- Refit Approval Request Form
- Other Clinical Scenario Guidelines
- Statutory Declaration for Replacing Lost Aids
- Request to fit a Non-Standard Device
- OHS Complex Client Notification (Private Provider)
- File Request (for return Voucher and Authorised Relocating Clients)
- Request for Voucher within 2 years
- Urgent Voucher Request Form
- Voucher Verification Request Form
- Application for Approval as a Qualified Practitioner
- Application for Provisional Registration
- Application for Registration as a Student Audiometrist
- Ambient Noise Level Certification Exemption Form
- Change of Client details
- New Site
- Site Amendment
- Closed Site
- Notification of Practitioners and Referral Audiologists