



Private Health Insurance Legislation Amendment Bill 2008

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Private Health Insurance Legislation Amendment Bill 2008

Date introduced: 15 May 2008

House: House of Representatives

Portfolio: Health and Ageing

Commencement: On Royal Assent

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Private Health Insurance Legislation Amendment Bill 2008 (the Bill) proposes, amongst other things, to amend the *Private Health Insurance Act 2007* (the Private Health Insurance Act) and other related legislation to remove the dual regulation of health-related business conducted through health benefit funds by both the Private Health Insurance Administration Council (the Council) and the Australian Prudential Regulation Authority (APRA), and to require private health insurers to be a company in order to apply for registration to the Council.

Background

Basis of policy commitment

The Private Health Insurance Act, which commenced on 1 April 2007, was part of the previous Government's attempt to overhaul the private health insurance industry.¹

Organisations must be registered as private health insurers with the Private Health Insurance Administration Council (the Council) in order to carry on health insurance business.²

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1. For a comprehensive and detailed discussion of the policies underlying the Private Health Insurance Act, see Amanda Biggs and Luke Buckmaster, '[Private Health Insurance Bill 2006](#)', *Bills Digest*, no. 81, Parliamentary Library, Canberra 2006-07.
 2. See *Private Health Insurance Act 2007* Divisions 118 (prohibition to carry on health insurance business), 121 (meaning of 'health insurance business'), 126 (registration).

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It has been stated that since the Private Health Insurance Act commenced, the Council has said it would be difficult to enforce the Act in relation to private health insurers who are registered bodies under the *Corporations Act 2001* (the Corporations Act).³ Provisions of the Corporations Act relating to directors' duties⁴ of registered bodies only apply to interstate business and activities.⁵ Intrastate business and activities of registered bodies are regulated by the relevant authority in the State or Territory not the Council.⁶

Committee consideration

At the time of writing this Digest, the Bill has not been referred to any committee for inquiry.

Position of significant interest groups

There has been little commentary on this particular Bill. According to the Explanatory Memorandum, the four insurers that will be required to incorporate have been specifically consulted on the measures.⁷

Financial implications

The Explanatory Memorandum states that the Bill has no financial impact for the Government.⁸

However, in its Regulatory Impact Statement on the Bill, the Government states that there would be costs incurred by private health insurers resulting from the proposed amendments, which include costs in applying and becoming registered as a company; legal costs in complying with the new legislation; as well as administrative costs associated with changing their constitutions or operating rules, informing members of and seeking approval for the changes.

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3. Explanatory Memorandum, 'Private Health Insurance Legislation Amendment Bill', p. 4. For a definition of 'registered body' in the Corporations Act, see *Corporations Act 2001* section 9.
 4. For the law relating to directors' duties, see *ibid.*, Part 2D.1.
 5. *ibid.*, section 190A. See also Explanatory Memorandum, *op. cit.*
 6. *ibid.*, p. 5.
 7. *ibid.*, p. 9.
 8. *ibid.*, p. 2.

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These additional costs need to be considered in light of recent reports claiming that the budgetary measures relating to the Medicare Levy Surcharge in the 2008-09 Budget are likely to increase private health insurance premiums by as much as 10 percent.⁹

Regulation implications

Four of 38 private health insurers, registered with the Council, are not companies and will be affected by the requirement to become companies.¹⁰

Main provisions

Schedule 1

Items 1-5 of the Schedule 1 of the Bill propose to amend the following legislation:

- *Australian Securities and Investments Commission Act 2001* (the ASIC Act)
- *Corporations Act 2001* (the Corporations Act)
- *Insurance Act 1973* (the Insurance Act), and
- *Insurance Contracts Act 1984* (the Insurance Contracts Act).

These proposed amendments have the effect of removing the requirement for dual regulation of health-related business¹¹ that are conducted via health benefits funds,¹² thereby ensuring that such health-related business be regulated only by the Council.

For example, **item 1** proposes to **amend the definition of financial product in paragraphs 12BAA(7)(d) and 12BAA(8)(b)** of the ASIC Act so as to clarify that insurance provided as part of a health-related business conducted through a health benefits fund is not a financial product under the ASIC Act and would not fall under the unconscionable conduct and consumer protection provisions in that Act.

9. See Teresa Ooi, 'Private funds to feel funding squeeze: NAB', *The Australian*, 19 May 2008, p. 31; Alan Wood, 'Unbalanced remedy', *The Australian*, 21 May 2008; AMA, '[AMA's Budget Warning To Old, Sick: Insurance Premiums will Rise](#)', *Media Release*, 21 May 2008. See also Access Economics, '[Health and the 2008-09 Budget](#)', *Report for the Australian Medical Association*, May 2008, pp. 5–8.

10. Explanatory Memorandum, *op. cit.*, pp. 7–8.

11. As defined by *Private Health Insurance Act 2007* section 131–15.

12. As defined by *Private Health Insurance Act 2007* section 131–10.

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Items 3-5 propose similar amendments to the Corporations Act, the Insurance Act and Insurance Contracts Act.

Schedule 2

Items 1-4 of Schedule 2 of the Bill propose largely technical amendments to the Private Health Insurance Act relating to restricted access insurers.¹³

Item 2 proposes to **amend subsection 126-20(6)** of the Private Health Insurance Act by requiring restricted access insurers to specify their registration requirements in either their constitutions or rules.

Items 1, 3 and 4 propose amendments consequential to **item 2**.

Schedule 3

Part 1

Items 1 and 2 of Schedule 3 of the Bill propose to **amend paragraph 126-10(1)(a) and subsection 126-45(1)** of the Private Health Insurance Act to the effect that all private health insurers would have to be registered as companies pursuant to the Corporations Act.

Currently, private health insurers may also be registered bodies, which have different governance and regulation as previously discussed.

It is expected that the proposed amendment would ensure that all private health insurers are subject to the same governance and accountability standards.

Part 2

Under the proposed amendments in **items 1 and 2** (above) of Schedule 3 of the Bill, private health insurers who are registered bodies must change their status and become registered as companies under the Corporations Act before 1 January 2010.

Items 3 and 4 of Schedule 3 of the Bill contain transitional provisions.

Item 3 addresses a situation where a body that is not a company applies to be a private health insurer before the Bill commences and on commencement of the Bill, a decision is not yet made about that application. Under **item 3**, that application would not be valid.

13. As to the meaning of restricted access insurers, see *Private Health Insurance Act 2007* Schedule 1, subsections 126-20(6) and (7); Department of Health and Ageing, 'Glossary', <http://www.privatehealth.gov.au/glossary.htm>, accessed on 22 May 2008.

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Item 4 proposes certain stamp duty exemptions for private health insurers seeking to become registered as companies pursuant to the Corporations Act — to avoid cancellation of their private health insurer registration — between the date of commencement of the Bill and 1 January 2010.

Schedule 4

Item 1 of Schedule 4 of the Bill proposes to **amend section 55-5** of the Private Health Insurance Act in relation to offers of discounted premiums for corporate products¹⁴ and the principle of community rating.

The principle of community rating is defined in Division 55 of the Private Health Insurance Act. According to section 55-1, this principle is about ensuring that:

everybody who chooses has access to health insurance, the principle of community rating prevents private health insurers from discriminating between people on the basis of their health or for any other reason described in this Part.

Section 55-5 provides that private health insurers must not improperly discriminate between people who are or want to be insured based on factors such as a person's health, gender, age, sexual orientation and religious affiliation.

The proposed amendment would clarify that offers of discounted premiums for corporate products would not be improper discrimination for the purposes of the principle of community rating.

It should be noted that under the proposed amendment, a private health insurer would breach the principle of community rating by cancelling a discounted insurance policy of a person who ceases to be employed or contracted by the particular employer. This proposed amendment appears to be consistent with the general principle of community rating, whereby high risk groups, which would include people ending their employment or contract due to age or suffering a major illness, are not discriminated against. However, this proposed amendment would not hinder an employer from cancelling such discounted insurance policies.

14. A corporate product is a 'corporate policy', which is developed by a private health insurer for a specific company and usually available only to employees of that company: See Department of Health and Ageing, 'Glossary', <http://www.privatehealth.gov.au/glossary.htm>, accessed on 22 May 2008.

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Schedule 5

Item 1 of Schedule 5 of the Bill proposes to **amend Division 55** of the Private Health Insurance Act by **inserting a new section 55-15**.

The Government states that it is keen to ensure that a broader health cover is offered in private health insurance products and policies and the ability to conduct pilot projects is regarded as an important means of achieving that goal.¹⁵

The proposed amendment seeks to do two things.

First, where private health insurers conduct pilot projects that are specified in the Private Health Insurance (Complying Product) Rules (the Rules), they would not breach the principle of community rating.

Second, the Minister would be able to specify the kind of pilot projects in the Rules, which private health insurers may conduct.

15. The Hon. Nicola Roxon, Minister for Health and Ageing, 'Second reading speech: Private Health Insurance Legislation Amendment Bill 2008', House of Representatives, *Debates*, 15 May 2008, p. 3.

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