

Chapter 1

Referral

1.1 On 4 March 2015, the Senate referred the provisions of the Private Health Insurance Amendment Bill (No. 2) 2014 (Bill) to the Community Affairs Legislation Committee (committee) for inquiry and report by 12 May 2015.¹

Purpose of the Bill

1.2 The Bill proposes to amend the *Private Health Insurance Act 2007* (PHI Act) (Cth) and the *Ombudsman Act 1976* (Cth) to:

- (a) transfer the functions of the Private Health Insurance (PHI) Ombudsman to the Office of the Commonwealth Ombudsman; and
- (b) ensure provisions relating to the calculation of the Australian Government Rebate on private health insurance (Rebate) that were intended to be repealed by the *Private Health Insurance Legislation Amendment Act 2014* will be taken never to have commenced.²

1.3 The then Minister for Health (Minister), the Hon Peter Dutton MP, stated that the proposed transfer of functions of the PHI Ombudsman implemented a part of the 2014-15 budget measure *Smaller government—additional reductions in the number of Australian government bodies* (Smaller government) and will result in direct savings to industry. The Minister noted there will be no impact on the services provided to policy holders.³

1.4 The Minister further stated the technical amendments to remove references to the 'base premium' in the calculation of the Rebate are necessary to overcome a problem caused by an unintended delay to the Royal Assent for the *Private Health Insurance Legislation Amendment Act 2014*. The amendments will not affect how the current premiums reduction scheme is applied for insurers and relevant policy holders.⁴

Conduct of the inquiry

1.5 Details of the inquiry, including a link to the Bill and associated documents were placed on the committee's website.⁵ The committee also wrote to 21 organisations and individuals, inviting submissions by 10 April 2015. Submissions continued to be accepted after that date.

1 *Journals of the Senate*, No. 82—5 March 2015, pp 2257 – 2258.

2 Explanatory Memorandum (EM), p. 1.

3 *House of Representatives Hansard*, 4 December 2015, p. 14243.

4 *House of Representatives Hansard*, 4 December 2015, p. 14243.

5 See: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs

1.6 The committee received eight submissions which are listed at Appendix 1. All submissions were published on the committee's website.

1.7 The committee agreed not to hold a public hearing.

Background

Transfer of functions of the Private Health Insurance Ombudsman

1.8 The Private Health Insurance (PHI) Ombudsman is a statutory government agency tasked under the PHI Act with protecting the interests of people covered by private health insurance.⁶

1.9 The PHI Ombudsman is funded by a levy collected from private health insurers under the *Private Health Insurance Complaints Levy Act 1995* which fully recovers the cost of its funding.

1.10 As part of the *Smaller government 2014-15* budget measure, it was announced that the statutory agency of the Office of the PHI Ombudsman would be merged into that of the Office of the Commonwealth Ombudsman from 1 July 2015. This is consistent with the approach taken for other industry ombudsmen created under the *Ombudsman Act 1976*.⁷

1.11 The proposed scheme of functions set out in the Bill largely reflects the existing scheme under the PHI Act, including:

- (a) the same classes of individuals and organisations will be able to make complaints to the PHI Ombudsman, namely current or prospective policy-holders, private health insurers and brokers, and health care providers;
- (b) complaints may be made against the same classes of individuals and organisations, namely insurers, brokers and health care providers;
- (c) complaints may be made to the PHI Ombudsman on the same grounds, in particular complaints about health care providers will still need to be in relation to private health insurance arrangements and either:
 - (i) also involve a complaint against an insurer;
 - (ii) be made by an insurer or policy-holder; or
 - (iii) if the complainant is another health care provider or a private health insurance broker, must include an insurer or policy-holder as a complainant.⁸

6 Private Health Insurance Ombudsman, *Annual report 2013-14*, p. 5.

7 Including the Defence Force Ombudsman, Postal Industry Ombudsman and the Overseas Students Ombudsman.

8 EM, pp 4 – 5.

1.12 The Explanatory Memorandum states these changes are expected to reduce duplication, improve coordination and increase efficiency in how public funds are used to deliver services to the community.⁹

Removal of reference to base premium measures

1.13 Under the *Private Health Insurance Legislation Amendment (Base Premium) Act 2013*, the Rebate was calculated by reference to a 'base premium'. The Act took effect from 1 April 2014, although some provisions took immediate effect in 2013. Prior to the full commencement of the base premium measure the Government decided to use a different, simpler mechanism for calculating the Rebate.

1.14 In March 2014 the *Private Health Insurance Legislation Amendment Act 2014* was passed with the intent of removing all references to a base premium from the PHI Act. However, due to an unintended delay in the granting of Royal Assent it was only partially effective in doing so.¹⁰

Key provisions of the Bill

1.15 The Bill is comprised of two schedules:

- (a) schedule 1 establishes the Office of the PHI Ombudsman within the Commonwealth Ombudsman's office and provides for the functions and powers of the PHI Ombudsman; and
- (b) schedule 2 provides for references to the base premium inadvertently included in the PHI Act to be taken never to have been so included.¹¹

1.16 As part of the transfer of functions of the PHI Ombudsman, some minor changes are proposed to current investigative procedures, information gathering powers and penalties consistent with the existing provisions in the *Ombudsman Act 1976*.¹²

Consideration by other committees

1.17 The Bill has been considered by both the Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee) and the Parliamentary Joint Committee on Human Rights (Human Rights Committee).

1.18 The Scrutiny Committee sought clarification from the Minister for Health on issues relating to the delegation of legislative power and personal rights and

9 EM, p. 1.

10 EM, p. 1.

11 EM, p. 1.

12 EM, p. 6.

liberties.¹³ The Scrutiny Committee considered the Minister's responses on 18 March 2015 and provided no further comment.¹⁴

1.19 The Human Rights Committee concluded the Bill did not raise human rights concerns.¹⁵

Acknowledgement

1.20 The committee thanks those individuals and organisations that made submissions.

13 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 1*, 11 February 2015, pp 25 – 27.

14 Senate Standing Committee for the Scrutiny of Bills, *Third Report of 2015*, 18 March 2015, pp 236 – 243.

15 Parliamentary Joint Committee on Human Rights, *Eighteenth Report of the 44th Parliament; Bills introduced 1 – 4 December 2014; Legislative Instruments received 31 October 2014 – 22 January 2015*, p. 2.