

The Senate

Community Affairs
Legislation Committee

Private Health Insurance Amendment Bill
(No. 2) 2014 [Provisions]

May 2015

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ISBN 978-1-76010-200-5

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44th Parliament

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ABBREVIATIONS

Bill	Private Health Insurance Amendment Bill (No. 2) 2014
Department	Department of Health
Minister	Minister for Health
PHI	Private Health Insurance
PHI Act	<i>Private Health Insurance Act 2007</i>
Smaller government	<i>Smaller government—additional reductions in the number of Australian government bodies 2014-15 budget measure</i>

LIST OF RECOMMENDATIONS

Recommendation 1

2.24 The committee recommends that the Bill be passed.

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to the calculation of the Australian Government Rebate on private health insurance (Rebate) that were intended to be repealed by the *Private Health Insurance Legislation Amendment Act 2014* will be taken never to have commenced.²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.

Chapter 2

Key Issues

2.1 The majority of submissions supported the amendments to the *Private Health Insurance Act 2007* (PHI Act) and *Ombudsman Act 1976* transferring the functions of the Private Health Insurance (PHI) Ombudsman to the Office of the Commonwealth Ombudsman.¹

2.2 A small number of submissions expressed the following concerns about the transition and implementation process:

- ensuring adequate resourcing and retention of staff and corporate knowledge for the Commonwealth Ombudsman to assume the responsibilities of the PHI Ombudsman;
- lack of consultation with industry and uncertainty over ongoing industry contributions; and
- removal of the provision for the subject of a complaint to request an extension of time to present information to the Ombudsman.²

2.3 The committee did not receive any submissions on the technical amendments to remove references to the base premium in the calculation of the Australian Government Rebate on private health insurance.

2.4 In its submission, the Department of Health (department) noted the Bill aims to make minimal changes to existing legislative frameworks:

amendments have only been made where necessary to fit within the Commonwealth Ombudsman's current independence, accountability and review provisions; and to repeal provisions left over from the Base Premium indexation arrangements.³

Resourcing and staff retention

2.5 Most submissions praised the PHI Ombudsman as a highly effective and respected agency, providing a valuable service for both consumers and industry.⁴ Hirmaa, a peak body for private health insurers, noted the PHI Ombudsman 'has an enviable track record of achievement that has earned it the respect of all relevant

1 See: Hirmaa, *Submission 2*; Commonwealth Ombudsman, *Submission 3*; Australian Dental Association, *Submission 5*; and Consumer Health Forum of Australia, *Submission 6*.

2 *Submission 2*, p. 3; Confidential, *Submission 4*, p. 2; *Submission 5*, p. 2; and *Submission 6*, p. 3.

3 Department of Health, *Submission 7*, p. 6.

4 See: *Submission 2*; *Submission 3*; *Submission 5*; and *Submission 6*.

stakeholders'.⁵ Similarly, other submissions noted the PHI Ombudsman is a 'lean and efficient' operation with specialised staff and invaluable corporate knowledge.⁶

2.6 Some submissions expressed concerns that the resources available to the PHI Ombudsman, including dedicated and experienced staff, may not be transferred to the Commonwealth Ombudsman, and could potentially compromise the quality and efficiency of services provided.⁷

2.7 The Consumers Health Forum of Australia suggested the Bill contain an explicit statement that 'there will be no diminution in the effectiveness of the role [of the PHI Ombudsman] and that it will continue to be resourced appropriately'.⁸

2.8 Several submissions also highlighted the importance of ensuring the PHI Ombudsman continues to effectively disseminate information about its role, including through a clear internet presence.⁹

2.9 The Commonwealth Ombudsman expressed support for the proposed allocation of resources for the transfer of functions, stating:

I am confident that the Bill provides an appropriate framework within which my office can operate. I am also comfortable that sufficient resources have been allocated to my office to properly discharge the new function.¹⁰

2.10 The Commonwealth Ombudsman also confirmed:

I do not intend to radically alter the very successful working model implemented by the Private Health Insurance Ombudsman to date.¹¹

2.11 The department confirmed 11 of the 12 current staff positions of the Office of the PHI Ombudsman will be transferring to the Office of the Commonwealth Ombudsman. The department noted the transfer of staff:

will ensure retention of specialised industry knowledge and provide a continued high level of service to consumers.¹²

2.12 The department also confirmed the PHI Ombudsman's website (www.privatehealth.gov.au) will also continue to operate as it does now.¹³

Confirmation of the retention of the PHI Ombudsman's website by the Minister for

5 *Submission 2*, p. 3.

6 *Submission 4*, p. 2.

7 See for example: *Submission 5*, p. 2; and *Submission 6*, p. 1.

8 *Submission 6*, p. 2.

9 *Submission 2*, p. 5; *Submission 5*, p. 2; *Submission 6*, p. 3.

10 *Submission 3*, p 1 – 2.

11 *Submission 3*, p. 2.

12 *Submission 7*, p. 4.

13 *Submission 7*, p. 4.

Health (Minister), the Hon Sussan Ley MP, in the second reading speech on the Bill was welcomed by hirmaa.¹⁴

Lack of consultation with industry and industry contributions

2.13 One submission noted concerns regarding the lack of consultation with industry about the proposed transfer of functions, noting 'industry has had little opportunity to comment and provide input into the process'.¹⁵

2.14 The submission further expressed concerns about ensuring transparency of industry funding to the Commonwealth Ombudsman, and uncertainty about how the cost recovery process will be delivered by the Commonwealth Ombudsman.¹⁶

2.15 Private Healthcare Australia, an industry association representing private health insurance funds, expressed concerns the PHI Ombudsman structure is an 'inequitable dispute resolution facility in which health insurers are often at a disadvantage'.¹⁷ While it noted the proposed changes 'seem reasonable in isolation', it raised questions about the transfer of functions, including how the changes would be communicated to insurers and members and whether there will be any changes to the complaints process or industry levy.¹⁸

2.16 The committee notes the department's confirmation that:

the Private Health Insurance Complaints Levy will continue to be collected to support the investigation of private health insurance complaints by the Commonwealth Ombudsman.¹⁹

2.17 In response to a question on notice during the 2014-15 Budget Estimates, the department confirmed there will be a reduction in the cost recovery levy as a result of the transfer of functions, but 'the exact quantum will be determined as the transition proceeds'.²⁰

2.18 The department estimates the transfer of functions will result in net savings to industry of approximately \$0.6 million over three years. Any savings will be reflected in levies payable by the private health insurance industry.²¹

Extension of time to report

2.19 One submission expressed concern that the 'right for a person to request an extension of time to present information to the Ombudsman has been removed',

14 *Submission 2*, p. 5.

15 *Submission 4*, p. 2.

16 *Submission 4*, p. 2.

17 Private Healthcare Australia, *Submission 8*, p. 1.

18 *Submission 8*, p. 2.

19 *Submission 7*, p. 4.

20 Department of Health, *Answers to Questions on Notice – Health Portfolio, Budget Estimates 2014 - 2015, 2-3 June 2014*, question no. SQ14-000670.

21 *Submission 7*, p. 2.

arguing the provision 'helps to ensure complaints are completed with thoroughness as the focus rather than timeliness'.²²

2.20 Currently under section 241-40 of the PHI Act, the subject of a complaint may request additional time to report to the PHI Ombudsman. This provision is not included in proposed section 20N of the *Ombudsman Act 1976*.

2.21 On 26 March 2015, the House of Representatives negated a proposed amendment to the Bill to include a provision for the subject of a complaint to ask the Ombudsman for additional time to respond to a complaint, together with provisions for:

- (a) the Minister to intervene where the Ombudsman decides not to investigate a complaint;
- (b) provision enabling the Minister to request the Ombudsman to undertake investigations;
- (c) capacity of the Ombudsman to investigate complaints, produce high quality reports, and protect the rights of private health insurance consumers; and
- (d) penalty for failing to participate in mediation.²³

2.22 The department noted the provisions to request additional time to report to the PHI Ombudsman were removed to:

ensure consistency with the *Ombudsman Act 1976* and to provide efficiencies by streamlining the administrative processes of the Commonwealth Ombudsman.²⁴

2.23 In the second reading speech on the Bill, the Minister noted removing the provision:

should benefit consumers by potentially providing faster resolutions to complaints, as those organisations that have been complained about will now be required to report within the set time frames, without the ability for delays or extension.²⁵

Recommendation 1

2.24 The committee recommends that the Bill be passed.

Senator Zed Seselja

Chair

22 *Submission 4*, p. 1.

23 *House Votes and Proceedings*, no. 111, 26 March 2015, p. 1247.

24 *Submission 7*, p. 3.

25 *House of Representatives Hansard*, 26 March 2015, p. 27.

APPENDIX 1

Submissions received by the Committee

Submissions

- 1** Mr Peter Jones
- 2** Hirmaa
- 3** Commonwealth Ombudsman
- 4** Confidential
- 5** Australian Dental Association Inc
- 6** Consumers Health Forum of Australia
- 7** Department of Health
- 8** Private Healthcare Australia