

# Chapter 1

## Private Health Insurance Legislation Amendment Bill 2018 and two related Bills

### Purpose of the Bills

1.1 On 13 October 2017, the Hon. Greg Hunt MP, Minister for Health (Minister), announced a package of reforms to improve the value and affordability of private health insurance. The below listed bills give legislative effect to parts of the reform package announced by the Minister:

- (a) Private Health Insurance Legislation Amendment Bill 2018 (Bill)
- (b) A New Tax System (Medicare Levy Surcharge-Fringe Benefits) Amendment (Excess Levels for Private Health Insurance Policies) Bill 2018 (A New Tax System Bill)
- (c) Medicare Levy Amendment (Excess Levels for Private Health Insurance Policies) Bill 2018 (Medicare Levy Amendment Bill).

### Background

1.2 Private health insurance funds part of Australia's mixed public and private healthcare system.

1.3 In 2015–16, Commonwealth Government consultation on private health insurance found that consumers and stakeholders held concerns about the complexity and transparency of private health insurance products, the high out-of-pocket costs being incurred by consumers and questioned whether private health insurance provided value for money and was sustainable.<sup>1</sup>

1.4 These concerns may explain a drop in participation in the private health insurance market. The Explanatory Memorandum notes that the reforms are aimed at arresting the decline in private health insurance participation:

...in the past nine consecutive quarters coverage has declined in proportion terms...If this trend continues, it may signal the start of a decline in coverage similar to that seen in the 1990s where hospital insurance dropped from 45 percent to 30 percent of the population over the decade.<sup>2</sup>

1.5 As noted above, on 13 October 2017 the Minister announced a package of 13 reforms to address community concerns about private health insurance. The reforms announced were:

- product design reforms including categorising policies as Gold, Silver, Bronze or Basic

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1 Explanatory Memorandum, p. 10.

2 Explanatory Memorandum, p. 5.

- improving patient access to mental health services
- establishing a working group to provide advice on improving models of care to fund mental health and rehabilitation services
- introducing standard clinical definitions
- improving access to travel and accommodation benefits to benefit regional and rural consumers
- strengthening the powers of the Private Health Insurance Ombudsman
- establishing an advisory committee to consider best practice models for transparency in out-of-pocket costs
- information provision reforms, including the development of a minimum data set for consumers
- allowing private health insurers to offer discounted private hospital cover to people aged 18 to 29
- Prosthesis List benefit reductions
- increasing maximum excess levels
- changing the coverage for some natural therapies
- implementing second-tier administrative hospital reforms.<sup>3</sup>

1.6 Some of the reforms that do not require legislative amendment have already been implemented.<sup>4</sup>

1.7 Other reforms will require rules to be made after the Bills have been passed. On 16 July 2018 the Department of Health released exposure drafts of the Private Health Insurance (Reforms) Amendment Rules 2018 and the Private Health Insurance (Complying Product) Amendment (Terminating Products) Rules 2018. Copies of the exposure drafts are attached to the Department of Health's submission.<sup>5</sup>

### **Provisions of the Bill**

1.8 The Bill contains five schedules.

1.9 **Schedule 1** amends the *Private Health Insurance Act 2007* to insert a new Part 2-4 to specify that from 2018–19 a complying private health insurance product can only have a maximum excess of \$750 in a 12 month period if the policy covers one individual or \$1500 in a 12 month period for any other policy.

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3 Explanatory Memorandum, p. 4.

4 For example, the \$1.1 billion of Prosthesis List benefit reductions was achieved through an agreement with the Medical Technology Association of Australia on behalf of device manufacturers. Department of Health, *Submission 4*, p. 1.

5 See Department of Health, *Submission 4—Attachment 1*, pp. 1–46; Department of Health, *Submission 4—Attachment 2*, pp. 1–3.

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1.10 **Schedule 2** amends the *Private Health Insurance Act 2007* and the *Age Discrimination Act 2004* to allow age-based discounts for hospital cover.

1.11 **Schedule 3** amends the *Ombudsman Act 1976* to provide inspection and audit powers to the Private Health Insurance Ombudsman, including powers to enter the premises of a private health insurer or broker, to inspect and copy documents and require persons to render assistance and facilities to allow the Ombudsman to exercise those powers.

1.12 **Schedule 4** contains transitional provisions relating to irregular private health insurance products.

1.13 **Schedule 5** contains four discrete parts. **Schedule 5 Part 1** amends the *Private Health Insurance Act 2007* to provide that the principles and requirements of community rating do not prevent an insurer from assessing a person's entitlement for travel or accommodation benefits based on the distance between the person's place of residence and place of treatment.

1.14 **Schedule 5 Part 2** amends the *Private Health Insurance Act 2007* by substituting the phrase 'standard information statement' in favour of 'private health information statement'.

1.15 **Schedule 5 Part 3** amends the *Private Health Insurance Act 2007* to allow the Minister to make Private Health Insurance (Health Insurance Business) Rules relating to the inclusion of hospitals in particular classes. This facilitates the second tier default benefits reforms.

1.16 **Schedule 5 Part 4** amends the *Private Health Insurance Act 2007* to allow private health insurers to close a product, including for those people who currently hold the product, after notice. The Explanatory Memorandum states that this part will also allow an insurer to close a national product or a product in a particular state by ceasing to make it available.<sup>6</sup>

### **Key provisions of the A New Tax System Bill and the Medicare Levy Amendment Bill**

1.17 The operative items of the A New Tax System Bill and the Medicare Levy Amendment Bill amend sections in the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999* and the *Medicare Levy Act 1986*, respectively, to remove provisions that define when a person is covered by an insurance policy that provides private patient hospital cover for the purposes of those Acts.

1.18 The relevant sections of the current Acts provide that a policy must only contain a particular excess and makes some transitional provisions. The Bills replace the existing provisions with a reference to the excess amounts specified in section 45-1 of the *Private Health Insurance Act 2007* (to be inserted by Schedule 1 of the Bill).

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6 Explanatory Memorandum, p. 53.

1.19 The Explanatory Memorandum notes that subsections 4(4)-(5) of the *A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999* and subsections 3(6)-(7) of the *Medicare Levy Act 1986* are being repealed because they were made redundant by the *Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007*.

### **Financial impact**

1.20 The total financial impact of the measures for the period 2017–18 to 2020–21 is \$6.2 million.<sup>7</sup>

### **Legislative scrutiny**

#### ***Standing Committee for the Scrutiny of Bills***

1.21 Standing Order 25(2A) provides that legislation committees considering bills shall take into account comments published by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills committee).

1.22 The Scrutiny of Bills committee published initial comments on the Bill in *Scrutiny Digest No. 5 of 2018*.<sup>8</sup> The Scrutiny of Bills committee raised concerns about powers proposed to be granted to the Private Health Insurance Ombudsman by the Bill. In particular, the Scrutiny of Bills committee requested advice from the Minister about the following matters:

- why it was necessary to allow the Private Health Insurance Ombudsman to enter premises and inspect documents without a warrant
- whether the explanatory memorandum ought to be amended to include a justification for reversing the evidential burden of proof in proposed section 20ZIA (requiring a defendant to produce evidence to demonstrate that an identity card was lost or destroyed) and
- why it was necessary to allow broad delegation of the Private Health Insurance Ombudsman's entry and inspection powers and whether it would be appropriate to amend the Bill to require the Private Health Insurance Ombudsman to be satisfied that people performing delegated functions have the expertise appropriate to the function or power delegated.<sup>9</sup>

1.23 The Minister responded to the Scrutiny of Bills committee and subsequently tabled an addendum to the Explanatory Memorandum (addendum).<sup>10</sup> The addendum responded to each of the concerns raised by the Scrutiny of Bills committee.

1.24 In relation to the Scrutiny of Bills committee's concerns about the entry and inspection powers proposed to be granted to the Private Health Insurance Ombudsman

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7 Explanatory Memorandum, p. 4.

8 Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills committee), *Scrutiny Digest No. 5 of 2018* (9 May 2018) pp. 47–51.

9 Scrutiny of Bills committee, *Scrutiny Digest No. 5 of 2018* (9 May 2018) pp. 48, 49, 51.

10 *House of Representatives Votes and Proceedings*, No. 116, 31 May 2018, p. 1581.

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by Schedule 3, the addendum notes that respondents to complaints have nearly always provided full records to the Private Health Insurance Ombudsman voluntarily.<sup>11</sup> The new power, which is not expected to be used, provides the Private Health Insurance Ombudsman with the power to enter premises with 48 hours' notice in the event a respondent does not voluntarily consent to the Private Health Insurance Ombudsman entering their premises.<sup>12</sup> The proposed entry and inspection powers complement the existing power of the Private Health Insurance Ombudsman to issue a notice to provide relevant information relating to an investigation.<sup>13</sup>

1.25 In relation to the need to reverse the evidential onus of proof in proposed section 20ZIA(5) the addendum noted that proposed section 20ZIA(5) only applied where the identity card was lost or destroyed. The addendum noted that knowledge of the card's destruction or loss was likely to be uniquely known to the card holder and it was therefore appropriate to impose an evidential burden on the defendant to produce evidence.<sup>14</sup>

1.26 The addendum lastly addressed the question of delegation of the Private Health Insurance Ombudsman's proposed powers. The addendum clarified that the power to delegate functions was necessary 'to ensure the function is staffed at the appropriate level and provides flexibility to reduce staffing levels'.<sup>15</sup> The addendum also noted that the Private Health Insurance Ombudsman would put in place procedures to ensure that only those with appropriate qualifications and experience are delegated key functions.<sup>16</sup>

1.27 The Scrutiny of Bills committee addressed the Minister's reply and the offer of an addendum in *Scrutiny Digest No. 6 of 2018*.<sup>17</sup> In *Scrutiny Digest No. 6 of 2018* the Scrutiny of Bills committee reiterated its concern about the entry and inspection powers being granted to the Private Health Insurance Ombudsman and drew its scrutiny concern to the attention of the Senate.<sup>18</sup> With regard to the question of delegation, the Scrutiny of Bills committee considered that it may be appropriate to amend the Bill in the following terms:

...to require that the Private Health Insurance Ombudsman's [sic] (PHIO) be satisfied that persons performing delegated functions and exercising delegated powers have the expertise appropriate to the function or power delegated.<sup>19</sup>

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11 Explanatory Memorandum—Addendum, p. 1.

12 Explanatory Memorandum—Addendum, p. 1.

13 Explanatory Memorandum—Addendum, p. 1.

14 Explanatory Memorandum—Addendum, p. 1.

15 Explanatory Memorandum—Addendum, p. 2.

16 Explanatory Memorandum—Addendum, p. 3.

17 Scrutiny of Bills committee, *Scrutiny Digest No. 6 of 2018* (20 June 2018) pp. 118–127.

18 Scrutiny of Bills committee, *Scrutiny Digest No. 6 of 2018* (20 June 2018) p. 122.

19 Scrutiny of Bills committee, *Scrutiny Digest No. 6 of 2018* (20 June 2018) p. 127.

1.28 The Scrutiny of Bills committee had no comments on the A New Tax System Bill or the Medicare Levy Amendment Bill.<sup>20</sup>

### ***Parliamentary Joint Committee on Human Rights***

1.29 The Parliamentary Joint Committee on Human Rights had no comments on the Bill, the A New Tax System Bill or the Medicare Levy Amendment Bill.<sup>21</sup>

### **Conduct of the inquiry**

1.30 The Bills were introduced and read a first time in the House of Representatives on 28 March 2018 and were passed without amendment on 31 May 2018.<sup>22</sup> The Bills were introduced and read a first time in the Senate on 18 June 2018.<sup>23</sup> On the same occasion, the Bills were read a second time and the debate was adjourned.

1.31 On 19 June 2018, pursuant to a notice of motion, the Bills were referred to the Senate Community Affairs Legislation Committee (committee) for inquiry and report by 13 August 2018.<sup>24</sup>

1.32 The committee advertised the inquiry on its website and wrote to 94 organisations inviting submissions by Friday, 20 July 2018. The committee received 33 submissions. A list of submissions to the inquiry can be found on the committee's website<sup>25</sup> and at Appendix 1.

1.33 The committee held a part-day hearing in Canberra on the Bills on Tuesday, 7 August 2018. For the duration of this hearing, the committee telecommuted via video-link from Perth. A list of witnesses who gave evidence to the committee can be found at Appendix 2.

1.34 The committee thanks those submitters who contributed to the inquiry.

### **Notes on references**

1.35 In this report, references to *Committee Hansard* are to proof transcripts. Page numbers may vary between proof and official transcripts.

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20 Scrutiny of Bills committee, *Scrutiny Digest No. 5 of 2018* (9 May 2018) pp. 1, 33.

21 Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report No. 4 of 2018* (8 May 2018) p. 96.

22 *House of Representatives Votes and Proceedings*, No. 106, 28 March 2018, p. 1477; *House of Representatives Votes and Proceedings*, No. 116, 31 May 2018, pp. 1581–1582, 1586.

23 *Journals of the Senate*, No. 98, 18 June 2018, p. 3149.

24 *Journals of the Senate*, No. 99, 19 June 2018, pp. 3171–3172.

25 Committee, *Private Health Insurance Legislation Amendment Bill 2018 and related Bills*, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/PrivateHealthInsur2018](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/PrivateHealthInsur2018) (accessed 23 July 2018).