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National Health Amendment (Private Health Insurance Levies) Bill 2003

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No.139 2002-03

National Health Amendment (Private Health Insurance
Levies) Bill 2003

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30 April 2003

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National Health Amendment (Private Health Insurance Levies) Bill 2003

Date Introduced: 26 March 2003

House: House of Representatives

Portfolio: Health and Ageing

Commencement: 1 July 2004

Purpose

To make amendments to the *National Health Act 1953* in relation to the reimposition of four private health insurance levies.

Background

In [a report](#)¹ in 1999-2000 the Australian National Audit Office ('ANAO') questioned the constitutional validity of the Private Health Administration Council ('PHIAC') levy.

PHIAC is the prudential regulator of the private health insurance industry. The PHIAC Levy is authorised under section 82G(1)(h) of the *National Health Act 1953* and funds the general administrative costs of PHIAC.

The ANAO report queried whether the PHIAC Levy was a 'tax' rather than a 'fee for service'. As the ANAO noted, to raise a tax in accordance with the Constitution requires both an Act to impose the tax and a separate Act to authorise its collection.² There is currently no Act imposing the PHIAC levy.

The current Bill replaces provisions in the National Health Act authorising the PHIAC Levy and three other levies administered by PHIAC that private health insurers are liable for, namely:

- *The Collapsed Organization levy*. This levy is designed to protect contributors to private health insurance funds. If a fund is unable to meet liabilities to its members, the Minister for Health may impose a levy on each other registered organisation to help meet those liabilities. This levy has not been imposed to date.³

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- *The Acute Care Advisory Committee ('ACAC') review levy.* A levy is imposed on each registered health benefits organization to meet the administrative costs of reviews conducted by Acute Care Advisory Committees under section 3B of the *Health Insurance Act 1973*.⁴
- *The Reinsurance Trust Fund levy.* A levy is imposed on each registered health benefits organization to provide for internal cross-subsidisation within the private health insurance industry for aged, chronic and long-term acute care patients.

The current Bill authorises collection of the four levies, with separate bills for imposition of each levy.⁵ This ensures compliance with section 55 of the Constitution.⁶

The Bill also adds new provisions to the National Health Act authorising PHIAC officers to enter and search premises of private health insurance funds to locate documents related to payment of the various levies. The new powers are in addition to existing provisions requiring private health insurance bodies to provide information to PHIAC and authorising PHIAC to appoint inspectors to investigate the financial affairs of these organisations.

Main Provisions

Schedule 1 repeals existing provisions in the National Health Act requiring private health insurance providers to pay the four levies. It substitutes new provisions re-authorising collection of the levies, linked to separate bills imposing each of the four measures.

Item 24 of Schedule 1 inserts **new Part VID** in the National Health Act covering the revised arrangements for private health insurance levies. **New section 83D** states that 'a private health insurance levy that is due and payable' must be paid to PHIAC. 'Private health insurance levy' is defined in **Item 12** to mean:

- An ACAC review levy
- A Collapsed Organization levy
- A Council Administration levy, or
- A Reinsurance Trust Fund levy.

In accordance with section 81 of the Constitution, **items 18 and 23** appropriate the Consolidated Revenue Fund for payment to PHIAC of amounts collected under the four levies.⁷

New Division 4 in **Part VID** confers on officers of PHIAC the power to enter premises and search for 'levy-related documents'. **New section 83K** defines 'levy-related documents' as any document related to the liability of a health benefits organization to pay a private health insurance levy. Under **new section 83M**, if the owner of premises refuses access,

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PHIAC staff can apply to a magistrate for a search warrant. The warrant must 'authorise the officers to use such assistance and force as is necessary and reasonable' to enter the premises and search for documents. **New section 83O** requires an officer using a warrant to make a copy available to the occupier of the premises, show the occupier an identity card and inform the occupier that they are entitled to observe the execution of the warrant provided they do not impede the search for documents.

Concluding Comments

The provisions in the current Bill designed to ensure the constitutional validity of the four levies on private health insurance providers do not appear to raise any issues.

In relation to the extra search powers in **Division 4 of new Part VID**, neither the Explanatory Memorandum or the Second Reading Speech explain why these are needed in addition to the powers that PHIAC already has.

Under existing section 82K of the National Health Act, the PHIAC Commissioner can authorise a PHIAC staff member or an external consultant to examine and report on the 'records, books and accounts' of a private health insurance provider. The authorised person is to have 'full and free access to any premises in which the records, books and accounts are kept'.

Section 82K also gives the Commissioner power to issue a written notice requiring an officer or agent of a private health insurer to:

- give specified information to PHIAC
- appear before a PHIAC meeting to be questioned under oath about the insurer's affairs, or
- produce all records, books and accounts under the person's control relating to the affairs of the insurer.

It is an offence not to comply with such a notice, with a penalty of \$1,000 or six months imprisonment or both. The offence is one of 'strict liability', meaning the onus is on the recipient of the notice to show 'reasonable cause' for not complying.

In addition to these powers, section 82R authorises PHIAC or the Minister to appoint an inspector to investigate the affairs of a private health insurer. This can be done if there is reason to suspect that the insurer's affairs are not being carried on 'in the best interests of the contributors to the fund' or that the insurer 'has contravened, or failed to comply with, a provision of this Act'. An inspector can require any person 'with knowledge of the affairs' of the insurer to provide records, appear before the inspector and/or provide 'all reasonable assistance' in connection with an investigation (section 82S). If access to premises is

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refused, the inspector can obtain a warrant authorising entry from a magistrate (section 82V). Obstructing an inspector or failing to comply with an inspector's requirements invokes a penalty of \$1,000 and/or six months imprisonment (sections 82U and 82R).

The Explanatory Memorandum notes – in relation to the measures proposed in the current Bill – that 'the inclusion of a power to enter premises and search for documents is important to ensure compliance with the payment requirements of these levies'.⁸ It appears, however, that such material could be obtained by PHIAC using the powers it already has under the National Health Act. If the drafters of the Bill felt that the current regime was inadequate, it might have been expected that details would have been provided for the benefit of Parliament either in the Explanatory Memorandum or in the Second Reading Speech.

Endnotes

- 1 ANAO Report No. 32 1999-2000, *Management of Commonwealth Non-Primary Industry Levies*, at:
<http://www.anao.gov.au/WebSite.nsf/Publications/4A256AE90015F69B4A256903001679A5>
- 2 Section 55 of the Constitution states that 'Laws imposing taxation shall deal only with the imposition of taxation...'
- 3 National Health Act paragraph 82G(1)(j); Private Health Insurance (Collapsed Organization Levy) Bill 2003, Explanatory Memorandum, p. 2.
- 4 Private Health Insurance (ACAC Review Levy) Bill 2003, Explanatory Memorandum, p. 2.
- 5 Private Health Insurance (Council Administration Levy) Bill 2003; Private Health Insurance (Collapsed Organization Levy) Bill 2003; Private Health Insurance (ACAC Review Levy) Bill 2003; Private Health Insurance (Reinsurance Trust Fund Levy) Bill 2003.
- 6 Section 55 also requires that each bill imposing taxation 'deal with one subject of taxation only'.
- 7 Section 81 states that 'All revenues or moneys raised by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth...'. The disbursement of revenue paid into Consolidated Revenue must be authorised by an appropriation Act.
- 8 Explanatory Memorandum, p. 14.

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