



Health Legislation Amendment (Private Health Insurance) Bill 2006

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Health Legislation Amendment (Private Health Insurance) Bill 2006

Date introduced: 31 May 2006

House: House of Representatives

Portfolio: Health and Ageing

Commencement: 1 July 2006

Purpose

This Bill amends the *National Health Act 1953* (NHA) to expand the powers of the Private Health Insurance Ombudsman (PHIO) in dealing with complaints and conducting investigations.

The Bill also makes a minor amendment to the *Private Health Insurance Incentives Act 1998* (PHIIA) to allow for additional time for Medicare Australia to provide the Australian Taxation Office (ATO) with information on the Private Health Insurance Rebate (PHIR).

Background

Private Health Insurance Ombudsman

The PHIO is a government-funded, independent service whose main role is to help consumers with private health insurance problems and enquiries. The PHIO also addresses complaints from hospitals, medical practitioners and health funds, although complaints must be about a health insurance arrangement. The PHIO also publishes reports and consumer information about private health insurance, including (from 2004) an annual [*State of the Health Funds Report*](#).

The functions and powers of the Ombudsman are specified in the NHA (Section 82ZRC).

Under the *Private Health Insurance Complaints Levy Act 1995*, levies are imposed on health funds based on membership levels to offset the cost of the operations of the PHIO. The Private Health Insurance Complaints Levy was increased in 2005-06 to allow for an increase in funding for the Private Health Insurance Ombudsman to undertake additional activities (such as the publication of the *State of the Health Funds Report*).¹

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Basis of policy commitment

This Bill expands the powers of the PHIO in two main ways.

First, it expands the responsibilities of the PHIO to include receiving, investigating and making recommendations in relation to complaints from and about health care providers (such as hospitals) and health insurance brokers.² (It should be noted, though, that the Ombudsman claims to be already able to receive complaints from hospitals and medical practitioners under *current* arrangements).³

Currently the Ombudsman's powers are restricted to complaints about health funds. The Government argues that this is necessary to:

- ensure the Ombudsman is able to represent consumers in relation to 'all aspects of their privately insured experience', and
- ensure that 'all parties involved in a privately insured episode' are held to the same level of accountability.⁴

Examples of the types of complaints that may be investigated under these powers include hospitals that refuse to treat certain patients, doctors not warning patients about potential out-of-pocket costs and contract disputes between hospitals and health funds. According to the Ombudsman, Mr John Powlay:

In the past, some hospitals have been selective in terms of what type of patients they might take—some hospitals were not likely to take older medical-type patients [who did not need surgery], because they made more money from surgical patients ... And there's a continuing issue about unexpected gaps and whether patients are told in advance about out-of-pocket gaps.⁵

Given the longstanding focus of the Ombudsman on the activities of health funds, this measure represents a relatively significant expansion of accountability within the PHI sector (that is, to include health care providers and insurance brokers) and expansion of powers for the PHIO.

Second, the Bill provides the Ombudsman with the power to compel parties to a dispute in relation to a PHI matter to undertake mediation where the Ombudsman deems it appropriate (for example, in impasses involving contract disputes between health funds and providers). Currently, the Ombudsman may receive and investigate complaints but has no power to resolve them. The Government has indicated that this measure will benefit consumers who, it notes, currently 'have no clear alternative path of redress'.⁶

The Bill also:

- expands the types of documents the Ombudsman can require in the investigation of a PHI matter

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- includes penalties for parties (other than consumers) who fail to comply with matters relating to providing records, participation in mediation and reporting to the Ombudsman, and
- protects the Ombudsman and staff from civil and personal liability in the exercise of the increased powers in the Bill.

Finally, the Bill extends the time allowed for Medicare Australia to provide the ATO with information on the PHIR from 90 days to 120 days. The measure responds to a recommendation of the Australian National Audit Office (ANAO). The recommendation referred to is No. 5 of the 2002 ANAO audit, *Administration of the 30 Per Cent Private Health Insurance Rebate*, ('the ANAO recommends that HIC and ATO review their data exchange arrangements to ensure that ATO obtains timely access to the data it requires to undertake adequate data matching checks for inappropriate multiple claiming under the PHIR').⁷

Position of significant interest groups/press commentary

The Government has indicated that it consulted with stakeholders (including the Australian Health Insurance Association (AHIA), the Australian Medical Association (AMA) and the Australian Private Hospitals Association (APHA)) in the development of this Bill and that each supported the above measures.⁸ In general, this support has been reflected in press coverage of the Bill.

For example, APHA has welcomed the new powers to compel parties to a dispute to undertake mediation as 'something we have been calling for for some time' and indicated that it may now be possible for hospitals to use the Ombudsman in contract disputes with insurers.⁹ Chairman of the Consumers' Health Forum, Mr Mitch Messer, has also welcomed the changes as providing greater protection for consumers.¹⁰

Impact of changes

Possible impacts of the key measures of this Bill include:

- enhanced protection for consumers in relation to PHI matters
- enhanced *capacity* for resolution of disputes between parties involved in a privately insured episode such as hospitals, health funds and consumers (notwithstanding the fact that the PHIO would have *no power to impose or require a settlement*)
- an increase in complaints to the Ombudsman as a result of the increased dispute resolution powers (for example, as a result of rising expectations from private hospitals or health funds that the PHIO will be capable of resolving contract or other disputes)
- increased demands on parties subject to the power to supply documents and/or attend mediation

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- increased workload for and cost to the PHIO, given that:
 - disputes between, for example, health funds and health care providers are not uncommon, and
 - the PHIO will fund costs associated with mediation¹¹
- increased cost to health funds (and possibly also consumers—in the form of higher premiums) if, as has been flagged by the Government, the levy on health funds is increased to cover any increased cost to the PHIO in exercising its new powers.¹²

ALP/Australian Democrat/Greens/Family First policy position/commitments At this stage, neither the ALP, the Australian Democrats, Australian Greens or Family First has expressed a view on the proposed changes.

Financial implications

The Bill will have no financial implications for the Government. However, as indicated above, there may be an increased cost to the Ombudsman in exercising its new powers. As such, the levy on health funds may be slightly increased to cover any increased cost to the PHIO. There is a possibility that any increase in the levy could be passed on to consumers.

Main provisions

Schedule 1—Amendments relating to the Private Health Insurance Ombudsman

Item 1 sets out the principal object of the part of the Act that deals with the PHIO (Part VIC). This item emphasises the role of the Ombudsman in protecting the interests of people with private health insurance.

Items 2, 10-12, 14, 16, 18, 20, 22-31, 35-38, 41-46, 50-53, 55-63, 65-69, 71-72, 74, 76-79, 81, 84-86, 90-94, 96, 98 and 100 make minor amendments to align the provisions of the Act with the measures in the Bill.

Items 3, 4, 5, 6, 8 and 9 define or redefine terms necessary for implementation of the measures in the Bill.

Item 7 adds six arrangements to the definition of ‘private health insurance arrangements’.

Items 13 and 15 provide the PHIO with additional functions in relation to reporting and making recommendations to the Minister or Department on matters related to its work.

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Items 17 and 18 add health funds, health care providers and brokers to the list of those who can make a complaint to and those who against whom complaints can be made to the Ombudsman.

Item 21 establishes additional criteria necessary for a complaint to be considered as meeting the grounds for complaint set out in the Act. In brief, these refer to the types of matters and parties to a matter that can be considered.

Items 32 and 33 extends the scope of the existing criminal offence to fail to provide specified records requested by the Ombudsman in relation to a complaint to apply to an officer of a health care provider or broker.

Item 34 authorises the provision, in certain circumstances, of personal information to the Ombudsman for use in addressing a complaint.

Item 39 provides that the Ombudsman must not act on a complaint for which complaints cannot be made by virtue of the fact that they are prescribed by regulations.

Item 40 provides for the Ombudsman to be able to direct a subject of a complaint to participate in mediation and establishes the framework for the mediation process (including making it a criminal offence not to participate in mediation if so directed by the Ombudsman).

Items 47-49 make it a criminal offence (of strict liability) for an officer of a health care provider or broker, in relation to a complaint, (a) not to report to the Ombudsman on the action proposed to be taken in relation to a recommendation from the Ombudsman if so directed, and (b) provide false or misleading information in any such report.

Item 64 enables the Ombudsman to decide not to proceed with addressing a complaint under certain circumstances and provides that the Ombudsman must refer any complaint best dealt with by the Australian Competition and Consumer Commission (ACCC) to the Commission.

Item 70 provides protection from civil actions in respect of complaints made in good faith to the Ombudsman.

Items 73-75 provide for the Ombudsman to, together with an investigation of a health fund, investigate the practices and procedures of a health care provider (either at his or her own initiative, or at the request of the Minister).

Item 80 provides for circumstances under which information relating to an individual must not be requested by the Ombudsman.

Item 81 extends the scope of the existing criminal offence to fail to provide specified records requested by the Ombudsman in relation to an investigation to apply to an officer of a health care provider or broker.

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Item 82 authorises the provision, in certain circumstances, of personal information to the Ombudsman for use in undertaking an investigation. It also provides for the Ombudsman to mediate between a health fund or provider, to be able to direct a health fund or provider to participate in mediation and establishes the framework for the mediation process (including making it a criminal offence not to participate in mediation if so directed by the Ombudsman).

Item 87-89 make it a criminal offence (of strict liability) for an officer of a health care provider or broker, in relation to an investigation, (a) not to report to the Ombudsman on the action proposed to be taken in relation to a recommendation from the Ombudsman if so directed, and (b) provide false or misleading information in any such report.

Item 95 limits the extent to which the Ombudsman can make recommendations concerning health care providers when reporting to the Minister on the outcome of investigations.

Item 97 provides for the appointment of a person to conduct mediation and establishes the terms under which they will operate.

Item 99 lists additional matters in respect of which the Minister may issue guidelines (for example, the circumstances in which it is, or is not appropriate, for the Ombudsman to direct the subject of a complaint or investigation to participate in mediation) and provides that any such guidelines are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Item 101 provides the framework for reconsideration of a request made by the Ombudsman to the subject of a complaint or investigation for records.

Items 102 and 103 provide for Administrative Appeals Tribunal review of any decision by the Ombudsman not to extend the time for provision of records and the circumstances under which an appeal can be made.

Item 104 provides that nothing in Section 135A ('Officers to observe secrecy') prohibits the Ombudsman from referring information relating to a contravention or possible contravention of the prohibition of persons (other than registered organisations) from carrying on health insurance business to the Minister or Department.

Schedule 2—Amendments relating to private health insurance rebates

Items 1 and 2 extend the time allowed for Medicare Australia to provide the ATO with information on the PHI Rebate from 90 days to 120 days for the 2005-06 financial year and later financial years.

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Concluding comments

The increased powers in relation to addressing complaints and undertaking investigations provided for in this Bill will most likely increase the capacity for the PHIO to protect the interests of consumers and resolve disputes between parties involved in a privately insured episode. There is some possibility that any increased workload arising from the exercise of these powers may result in the need to provide additional resources for the Ombudsman. This would be funded through an increase in the levy applied to health funds and may be passed on to consumers in the form of increased premiums.

The change to arrangements for provision of information about the PHI Rebate from Medicare Australia to the ATO is relatively uncontroversial.

Endnotes

1. Department of Health and Ageing, *Portfolio Budget Statements 2006-07*, p. 457
2. A 'broker' is defined in the Bill as 'a person who deals (otherwise than by carrying on health insurance business within the meaning of section 67) in insurance provided under contracts of insurance entered into by registered organizations, and who acts on behalf of persons intending to become insured persons'.
3. Private Health Insurance Ombudsman, *Complaints*, at <http://www.phio.org.au/complaints.php>, accessed 15 June 2006.
4. Hon. Tony Abbott, Minister for Health and Ageing, Health Legislation Amendment (Private Health Insurance, Second Reading, House of Representatives, *Debates*, 31 May 2006, p. 1.
5. A. Stafford, 'New powers to probe hospitals', *Australian Financial Review*, 10 November 2005.
6. Hon. Tony Abbott, *op. cit.*, p. 1.
7. Australian National Audit Office, *Administration of the 30 Per Cent Private Health Insurance Rebate*, Performance Audit, Report No. 47, 2002.
8. Hon. Tony Abbott, *op. cit.*, p. 2.
9. S. Dunley, 'Guarding private patients', *Daily Telegraph*, 11 November 2006.
10. A. Stafford, *op. cit.*
11. *Explanatory Memorandum*, p. 9.
12. *Explanatory Memorandum*, p. 9.

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