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Health Legislation Amendment (Australian Community Pharmacy Authority and Private Health Insurance) Bill 2010

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Health Legislation Amendment (Australian Community Pharmacy Authority and Private Health Insurance) Bill 2010

Date introduced: 12 May 2010

House: House of Representatives

Portfolio: Health and Ageing

Commencement: Schedule 1 and formal provisions: on Royal Assent; Schedule 2: 1 July 2010

Links: The [links](#) to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills page, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Health Legislation Amendment (Australian Community Pharmacy Authority and Private Health Insurance) Bill 2010 (the Bill) proposes amendments to the *National Health Act 1953* (National Health Act) and the *Private Health Insurance Act 2007* (Private Health Insurance Act).

The amendments to the National Health Act would extend the operation of the Pharmacy Location Rules and the Australian Community Pharmacy Authority to 30 June 2015; and the amendments to the Private Health Insurance Act would ensure that arrangements for lifetime health cover are consistent for all for new migrants.

Background

Australian Community Pharmacy Authority

As part of the negotiations of the Fifth Community Pharmacy Agreement (5CPA), the Pharmacy Guild of Australia (the Guild) and the Australian Government agreed that current pharmacy location rules will be maintained. These rules prescribe where a pharmacy that supplies pharmaceutical benefits can be located and prevent the co-location of a pharmacy in a supermarket. The current location rules were first introduced in 2000

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by the Coalition Government as part of the Third Community Pharmacy Agreement and were amended in 2004 to prevent supermarkets from operating pharmacies.¹

These rules are administered by the Australian Community Pharmacy Authority (the Authority) and are due to expire at the end of 30 June 2010. The 5CPA comes into effect on 1 July 2011 for five years. The Authority will operate for the duration of the agreement until 30 June 2015.

The location rules have attracted criticism for being anti-competitive, limiting access and choice in rural and remote areas and preventing young pharmacists from owning their own business as a result of the high cost.² Due to the location rules, there are limited opportunities to open a pharmacy in most capital cities and major towns, resulting in a concentration of ownership and a relatively constant number of pharmacies across Australia since 1990.³ Although there was speculation that the Government might 'reassess' the location rules prior to the negotiations of the 5CPA, they remained unchanged.⁴ Since the announcement of the 5CPA, there has been little commentary about the retention of the location rules.

Lifetime Health Cover

Currently, people are encouraged to take up private health insurance through three main mechanisms: a rebate on the cost of private health insurance premiums, a Medicare levy surcharge applied to high income earners who opt to not purchase health insurance and a loading on premiums for persons over 31 years of age for every year they delay purchasing private health insurance. These arrangements, sometimes characterised as 'carrots and sticks', were introduced by the Howard Government to reverse a decline in private health insurance membership. This Bill relates to the third of these mechanisms.

Lifetime health cover (LHC) was introduced in July 2000 to encourage young people to purchase private health insurance whilst young and to maintain that coverage. Under LHC,

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1. L Buckmaster, *Fourth Community Pharmacy Agreement*, Background note, no. SP008, 2005, Parliamentary Library, Canberra, 2005, viewed 13 May 2010, http://libiis1/Library_Services/BN/health/sp008.doc
 2. See, for example, E Connors, 'Calls to ease limits on new pharmacies', *Australian Financial Review*, 10 August 2009, p. 5, <http://parlinfo/parlInfo/search/display/display.w3p;adv=yes;db=:group=:holdingType=:id=:orderBy=customrank;page=0;query=Author%3A%22connors%20%22%20Date%3A01%2F08%2F2009%20%3E%3E%2030%2F08%2F2009%20Dataset%3Apressclp;querytype=rec=6;resCount=Default>
 3. Ibid.
 4. Ibid.

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health insurers are permitted to charge different premiums depending on the age at which people first purchase private health insurance (specifically, hospital cover). If a person opts to not purchase hospital cover by a specified date (defined as the ‘lifetime health cover base day’), but instead purchases it in later years, health insurers can charge a 2 per cent loading on the premium for every year the person is aged over 30.⁵ Purchasing hospital cover by the base day, allows a person to ‘lock in’ the lowest premium. The base day for Australian citizens is set at the 1st of July after the person turns 31.

The lifetime health cover base day for migrants is different. Currently, for ‘new arrivals’ the base day is set at the later of the 1 July after their 31st birthday or the first anniversary after they become registered for Medicare benefits (defined as their Medicare eligible day). The Private Health Insurance Act currently limits the definition of a ‘new arrival’ to either someone who entered Australia for the first time on or after 1 July 2000, or someone who was not a citizen or permanent resident at the time of entry. This has the unintended effect of excluding some migrants from LHC arrangements, for example people who migrate to Australia with a permanent residence visa. The Bill proposes amendments to the definition of ‘new arrival’, which would ensure that the calculation of the lifetime health cover base day would be consistently applied to all non-Australian citizens.

LHC arrangements also allow health fund members to drop their hospital cover for a limited period without affecting their lifetime health cover loading, for example where there is a change in personal circumstances. These are referred to as ‘permitted days without cover’.⁶ The maximum number of permitted days without cover is 1094 days.

Currently, there is an anomaly that allows some migrants to accrue permitted days without cover without them ever having purchased hospital cover. Migrants who turned 31 on or before 1 July 2000 and who were overseas on that day are deemed to have hospital cover on their lifetime health cover base day. The unintended effect of this is that such migrants have a longer period of permitted days without cover, and thus have been able to delay incurring the LHC loading. The Bill proposes a new subsection that defines the specific circumstances under which someone who was overseas on 1 July 2000 is deemed to have had hospital cover on the person’s lifetime health cover base day. The proposed provisions do not affect Australian citizens or migrants who have had a lifetime health cover base day on or before 30 June 2010.

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5. The maximum loading allowed is 70 per cent: N Roxon, ‘Second reading speech: Health Legislation Amendment (Australian Community Pharmacy Authority and Private Health Insurance) Bill 2010’, House of Representatives, *Debates*, 12 May 2010, p. 4, viewed 31 May 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-05-12%2F0015%22>
 6. *Private Health Insurance Act 2007* section 34-20.

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The Government argues that in addition to ensuring that the LHC provisions are applied consistently to migrants, the proposed amendments will also benefit the private health insurance industry through more simplified administration.⁷ These proposed amendments have been characterised by the Government as largely technical in nature. So far, the lack of media commentary or stakeholder response suggests these are largely non-controversial amendments.

Committee consideration

The Selection of Bills Committee has recommended the Bill not be referred to a parliamentary committee for inquiry.⁸

Financial implications

There are no financial impacts for the Government as a result of this Bill.⁹

Main provisions

Schedule 1—Amendments relating to the Australian Community Pharmacy Authority

Item 1 (proposed section 90(3C)) deals with the current power of the Australian Community Pharmacy Authority to make recommendations to the Secretary of the Department of Ageing and Health as to pharmacy locations. It will extend the operation of this power until 30 June 2015.

Item 2 (proposed section 99Y) extends the existence and operation of the Australian Community Pharmacy Authority itself until 30 June 2015. Without this amendment, the Authority would effectively cease to exist.

Schedule 2—Amendments relating to lifetime health cover

Item 1 proposes to substitute the entire **section 34-25** in the Private Health Insurance Act, relating to determining the lifetime health cover base day.

Proposed subsection 34-25(1) provides that a person's lifetime health cover base day is the 1 July after the person turns 31, subject to **proposed subsections 34-25(2), (3) and (4)**.

7. N Roxon, op. cit.

8. Selection of Bills Committee, *Report no. 7 of 2010*, 13 May 2010, p. 4, viewed 25 May 2010,
http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2010/report0710.pdf

9. Explanatory Memorandum, Health Legislation Amendment (Australian Community Pharmacy Authority and Private Health Insurance) Bill 2010, p. 2.

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Proposed subsection 34-25(2) provides that if a person had a lifetime health cover base day before 30 June 2010, this remains so.

Proposed subsection 34-25(3) specifies how to determine the lifetime health cover base day for migrants (subject to **proposed subsection 34-25(4)**), so that it is the later of either the 1 July after the person turns 31 or the first anniversary of their Medicare eligibility day. The Medicare eligibility day is defined in **proposed subsection 34-25(5)** as being the day on which the person is registered with Medicare Australia as an eligible person within the meaning of the *Health Insurance Act 1973*.

Proposed subsection 34-25(4) applies where a person is overseas on the day determined under **proposed subsections 34-25(1)** or **(3)**. That person's lifetime health cover base day would be the first anniversary of either: their first return to Australia from overseas or their first entry into Australia.

Items 2 and **3** propose minor technical amendments to **section 34-30** of the Private Health Insurance Act to ensure consistency.

Items 4 and **5** propose to replace paragraph 34-30(c) with **new subsection 34-30(2)**.

Proposed subsection 34-30(2) specifies that if a person's return or entry to Australia is for a period of less than 90 days, that person is deemed to have not returned or entered Australia for the purposes of Part 2-3 of the Private Health Insurance Act. In other words, the subsection proposes that the person is to be treated as if they are still overseas. This ensures that **proposed subsection 34-25(4)** only applies if the person returns to or enters Australia for a period greater than 90 days.

Item 6 proposes to insert **new paragraph 37-5 (aa)** into the Private Health Insurance Act.

Currently, section 37-5 deals with how people aged over 31 and who were overseas on 1 July 2000, are deemed to have hospital cover on their lifetime health cover base day. The unintended consequence of this section is that some new arrivals have been able to wait up to four years after their lifetime health cover base day without incurring a lifetime health cover loading.

Proposed subsection 37-5(aa) specifies that from 1 July 2010, the section will only apply to those who were Australian citizens or residents as at 1 July 2000.

Item 7 proposes to insert **new section 37-7** into the Private Health Insurance Act, which clarifies that lifetime health cover does not apply before the 1 July following the person's 31st birthday.

Items 8-10 propose various consequential amendments to definitions in **Schedule 1** of the Private Health Insurance Act that are now required as a result of the proposed provisions in this Bill.

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Item 8 proposes a definition of an Australian citizen that is consistent with the *Australian Citizenship Act 2007*.

Item 9 is a technical amendment to reflect that the definition of a Medicare eligibility day has moved to proposed **subsection 34-25(5)**.

Item 10 removes the definition of ‘new arrival’ as it is no longer relevant given the other amendments proposed in the Bill.

Concluding comments

The proposed amendments in relation to the Australian Community Pharmacy Authority extend the operation of the Authority for the duration of the 5CPA. As the location rules remain unchanged, it ensures that the number of pharmacies in Australia will remain relatively constant for the next five years, potentially limiting choice and access in some rural areas and preventing young pharmacists from owning their own business due to high costs. It also ensures that the possibility of enhanced competition in the pharmacy sector, through either increased numbers of pharmacies or the operation of pharmacies in supermarkets, remains elusive for another five years.

The proposed amendments relating to lifetime health cover are designed to correct some anomalies in the Private Health Insurance Act and ensure that in future, lifetime health cover provisions are applied consistently for migrants. The proposed provisions are due to commence on 1 July 2010 and appear to be largely uncontroversial.

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