

Chief Executive Office



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Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

Thank you for the opportunity to comment on the Private Health Insurance Legislation Amendment Bill 2018 and related Bills currently before the Committee.

Medibank supports the Bills as they will deliver greater choice and transparency to consumers and help address the affordability of private health insurance.

The increase in excesses will provide greater consumer choice, while incentives for younger people will encourage take-up of private health insurance and place downward pressure on premium increases.

Consumers will also be able to include regional and rural accommodation and transport costs in their hospital cover, which is particularly advantageous for consumers in non-metropolitan areas, and the introduction of a new Gold, Silver, Bronze, Basic classification system will make it easier to compare and choose private health insurance products.

These are positive outcomes for consumers and for Australia's health system.

Medibank also supports, in principle, the strengthening of powers for the Private Health Insurance Ombudsman, but there are some concerns with the legislation drafting.

Our concerns and proposed changes are at Attachment A.

Fundamentally, Medibank wants to keep premiums as low as possible.

Our 2018 premium increase was the lowest in 17 years and below the industry average. We have passed on in full every dollar of savings from recent prostheses price reforms to our customers and we will keep working to minimise our internal costs by pursuing efficiencies, continuing our payment integrity program, and reducing overheads – these are measures that place downward pressure on premium increases.

Further reforms are necessary to ensure sustainably lower premium increases over time and Medibank has presented a raft of additional reforms in our submission to the Senate Community Affairs References Committee inquiry into the value and affordability of private health insurance and out-of-pocket medical costs.

Nevertheless, the Bills are a welcome first step and will improve the affordability, value and transparency of private health insurance.

Given there are deadlines associated for the implementation of some of the reforms (e.g. the increase in excesses is set to apply from 1 April 2019) and the necessity for private health insurers to consider such deadlines in their operational planning and 2019 premium applications, it is important that the Bills be passed without significant delay or amendment.

Thank you again for the opportunity to contribute to the inquiry into the Bills.

Yours sincerely,

Craig Drummond
Chief Executive Officer

Attachment A – Concerns and Proposed Changes Relating to the Private Health Insurance Ombudsman

1. Procedural safeguards

Powers of entry are serious ones since they interfere in property rights. They should be 'last resort' powers, used only when necessary and never just for convenience. In proposing that the Private Health Insurance Ombudsman (PHIO) should have such powers available, the Bill should implement appropriate safeguards.

The person who is exercising these powers should be required to have first formed the belief upon reasonable grounds that:

- (a) where entry is pursuant to proposed section 20SA – this is necessary in order to verify evidence provided in relation to a Division 3 complaint;
- (b) where entry is pursuant to proposed section 20TA – this is necessary for the effective conduct of a Division 4 investigation; and
- (c) in each of these cases – this purpose is not likely to be achieved by the exercise of the less intrusive powers comprised in sections 20ZD and 20ZE.

2. A person must be able to ascertain the extent of her or his legal obligations

A person's obligations vary according to which of the proposed powers (section 20SA or 20TA) is being relied upon. Penalties can apply for non-compliance.

It is fundamental to the rule of law that a person should be capable of ascertaining the extent of her or his obligations. The Bill must provide for the PHIO to be obliged to specify in a written notice the specific power upon which it exercises a right of entry. If entry is to the premises of a service provider, the notice must *also* be given to the insurer or broker.

In the case of proposed section 20SA, this means also that the notice must identify the evidence that is to be verified. Similarly, in the case of proposed section 20TA, the notice must describe the scope of the investigation.

3. Precondition to entering premises occupied by service providers

Each of proposed sections 20SA and 20TA permits entry to the premises occupied by private health insurers and private health insurance brokers and to the premises of persons ('service providers') who perform services for or on behalf of them.

Entry upon the premises of persons who are not private health insurers or private health insurance brokers themselves should not be the first recourse in utilisation of these powers.

A person should only be able to exercise this power of entry in relation to the premises of a service provider where they have formed the belief upon reasonable grounds that entering the premises of the insurer or broker would not be effective.

4. Evidence

The Government's earlier statements in relation to these proposed powers appeared to confine the "evidence verification" purpose to *evidence provided to the PHIO by private health insurers and private health insurance brokers*. The reference to "evidence" in proposed subparagraph 20SA(b)(i) should be limited so as to reflect this intention.

5. Legal professional privilege, privacy, etc.

The Bill should also amend subsection 20ZF(1) of the *Ombudsman Act 1976* by including references to proposed sections 20SA and 20TA. The same protections with respect to legal professional privilege, privacy etc. currently extended to the use of PHIO powers under sections 20ZD and 20ZE should be available where the new powers in proposed sections 20SA and 20TA are utilised. Existing paragraph 20ZF(1)(b) is not an adequate alternative.

6. Permitted delegates

The proposed amendment to subsection 34(2C) is problematic, as it permits the PHIO to delegate its powers of entry to *any person*. The person does not need to be a PHIO employee or even a Government employee.

The Explanatory Memorandum states that this “ensures consistency with the other subject matter specific roles held by Commonwealth Ombudsmen” (page 45). However, *those* Ombudsmen do not have powers of entry corresponding to proposed sections 20SA and 20TA. While the Commonwealth Ombudsman has entry powers under section 14 of the Act, and a wide power to delegate in subsection 34(1), its powers of entry under section 14 are not as broad as sections 20SA and 20TA.

The powers under sections 20SA and 20TA should only be delegable to a member of staff of the Commonwealth Ombudsman’s office.

7. Transparency

We note that the PHIO will be required to report on use of its powers under section 20SA (refer proposed subsection 20SB(5) and paragraph 20ZG(6)(ca)).

We would have expected that there would be a corresponding requirement to report upon the exercise of powers under proposed section 20TA. There is no obvious reason why this should be considered unnecessary.

8. Complaints made by health care providers

Complaints may be made to the PHIO by individuals, private health insurers, private health insurance brokers and health care providers. Complaints may be made *about* insurers, brokers and health care providers.

While complaints can be made about health care providers, the proposed powers of entry do not extend to the premises of a health care provider.

Accordingly it would be unfair for the proposed powers of entry to be exercised against an insurer on the basis of a complaint made by a health care provider – given that the health care provider is not subject to the same rights of entry in respect of its premises.