



9 April, 2015

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

Dear Committee Secretary

Re: Private Health Insurance Amendment Bill (No. 2) 2014

hirmaa welcomes the opportunity to make a submission to the Senate Standing Committee on Community Affairs regarding the Private Health Insurance Amendment Bill (No. 2) 2014.

By way of introduction, hirmaa is a peak industry body representing ten (10) restricted access private health insurers and seven (7) open access regional private health insurers which collectively provide health insurance to over one million Australians across the country.

Since its formation in 1978, hirmaa has advocated for the preservation of competition, believing it to be fundamental to Australians having access to the best value health care services. hirmaa has done this by:

- promoting legislation, regulations, policies and practices which increase the capacity of its member organisations to deliver best value health care services; and,
- advocating for the preservation of a competitive market, which we see as essential to the integrity and viability of the PHI industry.

A number of characteristics distinguish the hirmaa member funds. They:

- are value-based as opposed to being profit-based;
- continue to offer various levels of insurance at highly competitive premiums;
- optimise benefit entitlements and premiums;
- continue to tangibly grow their membership numbers, in recent years above the industry average;
- in terms of the restricted insurers, have their unique nature acknowledged in the Private Health Insurance Act 2007.

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At the outset, it is important to note that hirmaa supports the transfer of the functions of the Private Health Insurance Ombudsman (PHIO) to the Office of the Commonwealth Ombudsman, in line with the Government's budget measure *'Smaller Government – additional reductions in the number of Australian Government bodies'*.

hirmaa has been a consistent supporter of reducing the compliance burden for private health insurers. We are satisfied that this budget measure will achieve its intention of lessening costs to the industry through a reduced industry levy, by way of streamlining a number of back-office operations and by applying cost-recovery principles to the functioning of the Office of the Commonwealth Ombudsman while maintaining the distinctive 'identity' and 'presence' of the Private Health Insurance Ombudsman role.

We are grateful to have the opportunity to comment on some of the key aspects of the legislation and hope the comments below are helpful to the Committee's deliberations.

Yours sincerely

MATTHEW KOCE
Chief Executive Officer

1. Ensuring transparency in the use of the private health insurance industry levy

As conveyed, we are supportive of the Bill and its purpose of lowering costs for industry through a reduced industry levy.

hirmaa notes the *Explanatory Memorandum* which specifies that: “*The Private Health Insurance Ombudsman will remain a separate statutory office*”.¹

hirmaa notes that the Commonwealth Ombudsman holds responsibilities across multiple sectors, many of which are not funded through industry levies, so we welcome the distinction of PHIO as a separate statutory office and see this as crucial to ensuring transparency over the application of the private health insurance levy - which is currently used to fund PHIO.

It is important that this levy not be used to cross-subsidise separate responsibilities held by the Commonwealth Ombudsman and hirmaa is satisfied that maintaining a separate statutory office will allow for the appropriate oversight and / or reporting requirements to be applied to ensure the levy is used directly and exclusively for PHI industry operations.

2. Retaining the functions and activities undertaken by PHIO

PHIO has an enviable track record of achievement that has earned it the respect of all relevant stakeholders, whether that be the private health insurers and their policy holders, hospitals and their patients or government. hirmaa is reassured that the functions and responsibilities of PHIO will be retained by the Office of the Commonwealth Ombudsman.

We note in the *Explanatory Memorandum* that:

“...The basic schema of the Private Health Insurance Ombudsman functions will be retained under the *Ombudsman Act 1976*:

- a. the same classes of individuals and organisations will be able to make complaints to the Private Health Insurance Ombudsman, namely current or prospective policy-holders, private health insurers and brokers, and health care providers;
- b. complaints may be made against the same classes of individuals and organisations, namely insurers, brokers and health care providers;
- c. complaints may be made to the Private Health Insurance Ombudsman on the same grounds, in particular complaints about health care providers will still need to be in relation to private health insurance arrangements and either:
 - i. also involve a complaint against an insurer,
 - ii. be made by an insurer or policy-holder; or
 - iii. if the complainant is another health care provider or a private health insurance broker, must include an insurer or policy-holder as a complainant.”²

We also note in the *Explanatory Memorandum* that “*The Private Health Insurance Ombudsman will also retain the current mechanisms for dealing with a complaint, which are conducting mediation, referring a complaint to the subject of the complaint, or investigating the complaint.*”³

¹ PRIVATE HEALTH INSURANCE AMENDMENT BILL (NO. 2) 2014, *Explanatory Memorandum*, p 1

² Ibid. p 4-5

³ Ibid. p 5

Retaining the mediation function is particularly important with respect to the negotiation of contracts between private hospitals and private health insurers and we are pleased to see, that for all intents and purposes, the status quo will remain.

hirmaa supports these provisions and the continuation of these responsibilities into the Office of the Commonwealth Ombudsman.

We note the inclusion of Division 2, Section 20D in the Bill which refers to the establishment and functions of the Private Health Insurance Ombudsman:

The Private Health Insurance Ombudsman has the following functions:

- a. dealing with complaints under Division 3;
- b. conducting investigations under Division 4;
- c. publishing (in written form and on the Private Health Insurance Ombudsman's website) a report, called the State of the Health Funds Report, as soon as practicable after the end of each financial year providing comparative information on the performance and service delivery of all private health insurers during that financial year;
- d. collecting and publishing (in written form and on the internet) information about the complying health insurance products available to people, in order to assist people to understand the entitlements and benefits available under those products;
- e. publishing, in aggregate form, information (not personal information) about complaints under Division 3;
- f. reporting and making recommendations to the Health Minister under sections 20R and 20V;
- g. reporting to the Health Minister or to the Health Department about the practices of particular private health insurers or private health insurance brokers;
- h. reporting (as part of reports mentioned in paragraph (g)) to the Health Minister or to the Health Department about the practices of particular health care providers, to the extent to which those practices relate to:
 - (i) the application of private health insurance arrangements or classes of private health insurance arrangements to services or goods provided, or to goods manufactured or supplied, by the health care providers; or
 - (ii) private health insurance arrangements or classes of private health insurance arrangements to which those kinds of health care providers may be party;
- i. making recommendations to the Health Minister or the Health Department about regulatory practices or industry practices relating to private health insurers or private health insurance brokers;
- j. making recommendations (as part of recommendations mentioned in paragraph (i)) to the Health Minister or to the Health Department about regulatory practices or industry practices relating to health care providers, to the extent to which those practices relate to:
 - (i) the application of private health insurance arrangements or classes of private health insurance arrangements to services or goods provided, or to goods manufactured or supplied, by the health care providers; or
 - (ii) private health insurance arrangements or classes of private health insurance arrangements to which those kinds of health care providers may be party;
- k. promoting a knowledge and understanding of the Private Health Insurance Ombudsman's functions;
- l. any other functions that are incidental to the performance of any of the preceding functions.⁴

⁴ PRIVATE HEALTH INSURANCE AMENDMENT BILL (NO. 2) 2014, p 7-8

hirmaa supports these provisions and the continuation of these responsibilities into the Office of the Commonwealth Ombudsman.

In fulfilling its responsibilities above, in particular function *K. promoting a knowledge and understanding of the Private Health Insurance Ombudsman's functions*; the Private Health Insurance Ombudsman has undertaken a number of initiatives that have been valuable to the industry.

In particular, hirmaa notes the success of the independent comparison and information website www.privatehealth.gov.au. This website is the only source of full, accurate and independent information on private health insurance policies and in 2013-14 received almost 900,000 unique visits.

As such, hirmaa welcomes the Minister for Health's statements in her second reading speech, dated 26 March 2015, confirming the continued operation of the privatehealth.gov.au website, in the exact same form that it operates presently.⁵

hirmaa also suggests that the transfer of current PHIO staff and the associated transfer of corporate knowledge and culture will be crucial to ensuring the Commonwealth Ombudsman is able to successfully undertake the above functions and responsibilities. As such, we welcome the Minister for Health's statements in her second reading speech, dated 26 March 2015, confirming that more than 90% of PHIO staff are expected to transfer to the Office of the Commonwealth Ombudsman.⁶

3. Independence of the Commonwealth Ombudsman

hirmaa acknowledges that the following divisions in the Private Health Insurance Act 2007, will not be carried through with the Private Health Insurance Legislation Amendment Bill (No. 2) 2014:

Chapter 6, Part 6-2, Division 241-50

Minister may direct Private Health Insurance Ombudsman to investigate, or to continue to investigate, a complaint

Chapter 6, Part 6-2, Division 244-5

Investigations at Minister's request

hirmaa notes that the Commonwealth Ombudsman is not subject to such provisions under the Ombudsman Act 1976 and is supportive of the Commonwealth Ombudsman's independence from Government.

We acknowledge that during the Minister's second reading speech on the Ombudsman Act 1976, it was noted:

"the most important element of the new legislation was that it would provide the citizen with a legitimate complaint about official action with access to an impartial investigator to inquire into the matter" and that "The strength of the ombudsman's work lies in the independence and impartiality of his investigation".⁷

⁵ House of Representatives Hansard, Thursday 26 March, 2015 – p 26

⁶ Ibid.

⁷ <http://www.ombudsman.gov.au/pages/about-us/our-history/index.php>

hirmaa suggests that removing the Minister's capacity to direct investigations, as intended in the Bill, is an important measure that will act to enhance confidence in the private health insurance function of the Commonwealth Ombudsman by enshrining the independence and impartiality of the Office.

4. A separate statutory office to ensure a clear and separate executive structure

hirmaa notes the *Explanatory Memorandum* which specifies that:

*"The Private Health Insurance Ombudsman will remain a separate statutory office, however the person who holds the position of the Commonwealth Ombudsman will automatically also hold the position of the Private Health Insurance Ombudsman. This is consistent with the approach taken for other industry ombudsmen created under the Ombudsman Act 1976."*⁸

hirmaa supports the continuation of PHIO as a separate statutory office and we expect that this will ensure an appropriate executive structure is maintained which provides for sufficient engagement with the PHI industry.

Considering the Commonwealth Ombudsman is responsible for more than eight industries and agencies, the time and resources of the Ombudsman and/or Deputy Ombudsman will naturally be spread across multiple responsibilities. hirmaa expects that in maintaining PHIO as a separate statutory office, an appropriate Executive Officer will be appointed, whose role is specific to PHI industry operations.

hirmaa also expects that in maintaining PHIO as a separate statutory office, PHIO will be able to retain the internal administrative processes that have enabled it to operate efficiently and effectively. Furthermore, hirmaa expects that operational savings will be achieved through consolidation with the Commonwealth Ombudsman and that those savings will translate into a reduced industry level levy over time.

5. Penalties for failing to participate in mediation

hirmaa supports the continuation of mediation powers under the Commonwealth Ombudsman and supports the alignment of penalty rates as contained within the Ombudsman Act 1978. hirmaa believes that the penalty rates proposed in the legislation are appropriate and stresses that the penalty offence on private health insurance mediation has never been applied.

⁸ PRIVATE HEALTH INSURANCE AMENDMENT BILL (NO. 2) 2014, *Explanatory Memorandum*, p 1