The Senate

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# Community Affairs Legislation Committee

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## Health Legislation Amendment (Private Health Insurance Reform) Bill 2003

June 2003

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Senate Community Affairs Legislation Committee Secretariat

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# Membership of the Committee

## Members

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|---|---|
| Senator Sue Knowles, Chairman | LP, Western Australia |
| Senator Brian Greig, Deputy Chairman | AD, Western Australia |
| Senator Kay Denman | ALP, Tasmania |
| Senator the Hon Bill Heffernan | LP, New South Wales |
| Senator Gary Humphries | LP, Australian Capital Territory |
| Senator Steve Hutchins | ALP, New South Wales |

## Participating Member

| | |
|---|---|
| Senator Lyn Allison<br>for matters relating to the Health and Ageing portfolio | AD, Victoria |

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# REPORT

## HEALTH LEGISLATION AMENDMENT (PRIVATE HEALTH INSURANCE REFORM) BILL 2003

## THE INQUIRY

1.1 The Health Legislation Amendment (Private Health Insurance Reform) Bill 2003 (the Bill) was introduced into the Senate on 6 March 2003. On 19 March 2003, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 3 of 2003), referred the Bill to the Committee for report by 13 May 2003. The reporting date was subsequently extended to 16 June 2003.

1.2 In recommending the reference of the Bill to the Committee, the Selection of Bills Committee provided the following issues for consideration:

To examine the provisions of the Bill which provide wide discretion to the Minister on the operation of the industry;

To determine the fiscal implications of the proposed legislation of Lifetime Health Cover as a vehicle for industry advertising; and

To determine the fiscal implications of the community rating amendments.

1.3 The Committee considered the Bill at a public hearing on 15 May 2003. Details of the public hearing are referred to in Appendix 2. The Committee received 11 submissions relating to the Bill and these are listed at Appendix 1 and may be accessed through the Committee's website at http://www.aph.gov.au/senate_ca

## THE BILL

1.4 This Bill amends the *National Health Act 1953* and the *Private Health Insurance Incentives Act 1998*. Part 1 of Schedule 1 of the Bill will decrease the regulatory burden surrounding health fund product design. Currently, health funds are required to seek approval from the Department of Health and Ageing (DHA) for all changes to rules and products, no matter how insignificant, placing a considerable administrative burden on the health benefits industry. The Bill will replace that process with a system of strategic monitoring and enforcement, through the establishment of a series of performance indicators that are designed to ensure changes are consistent with government policy objectives and maintain the principle of community rating.

1.5 Part 2 of Schedule 1 of the Bill provides the Private Health Insurance Ombudsman (PHIO) with increased powers to investigate complaints and resolve disputes, increasing consumer protection within the private health industry. Part 3 of Schedule 1 of the Bill provides for the production of an annual 'State of the Health Funds' report by the PHIO, to provide consumers with much needed information on the performance of health funds.

1.6 Lastly, Part 4 of Schedule 1 of this Bill will make a number of minor improvements to the Lifetime Health Cover regulations to sustain high levels of membership in private health insurance.

# ISSUES

1.7 A number of submissions were received fully supporting the proposed legislation, including those of the Private Health Insurance Ombudsman and the Health Insurance Restricted Membership Association of Australia. Points of issue raised in these and other submissions are considered below.

## *Ministerial Discretion*

### Establishment of Performance Indicators

1.8 Clause 73BEA in the Bill provides for the Minister for Health and Ageing to establish, via regulation, '*performance indicators to be used by the Minister in monitoring the performance of registered organisations*'. The detailed nature of these indicators is still being finalised and DHA confirmed it is consulting with industry to ensure the funds are fully aware of their obligations.[1]

1.9 In their submissions, some organizations suggested that the performance indicators might:

- be better included as explicit items (covering their nature and extent at a minimum) within the *National Health Act 1953*, rather than being regulated, together with a regime of appropriate sanctions;[2]
- be subject to open debate, for defining and agreement across the industry;[3]
- be focused on a principle of 'community rating' rather than 'efficiency' benchmarking;[4]
- require Registered Health Benefits Organisations (RHBO) to have their quality management systems certified to the International Organisation for Standardisation benchmark, ISO 9000, to ensure cost efficiency, customer service, product quality and management controls.;[5]
- require RHBO to pay a minimum of 55 per cent of total benefits to private hospitals and day hospital facilities;[6]
- require RHBO to consult with the private hospital sector prior to lodging applications for premium increases;[7]

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1 *Submission* 10, pp.9-10 (DoHA)

2 *Submission* 4, p.3 (APHA) and *Submission* 9, pp.4-5 (MBF)

3 *Submission* 2, p.1 and p.5 (Medibank Private)

4 *Submission* 9, p.4 (MBF); *Submission* 6, p.4 (AHIA)

5 *Submission* 4, p.3 (APHA)

6 *Submission* 4, p.3 (APHA)

- require RHBO to provide 24 hour / 7 day a week services to verify the eligibility of customers to particular health care services;[8] and
- cover the degree to which RHBO comply with the spirit of the *Health Legislation (Private Health Insurance Reform) Amendment Act 1995*, requiring mandatory coverage for private psychiatric, palliative care and rehabilitation services.[9]

1.10 The Australian Consumers Association and the Institute of Actuaries of Australia considered the monitoring and compliance regime proposed would not be an adequate replacement for the current system nor would it be effective in detecting breaches of the Act.

1.11 In response, DHA advised that effective performance indicators have been developed to measure changes in membership and benefit payments profiles by demographics, to detect any 'weeding out' of high risk or high cost members, and therefore relate specifically to community rating obligations. Indicators will include:

- measures in premiums paid by age cohort;
- changes in premiums of persons insured in each age cohort;
- changes in the number of episodes, and episodes per one hundred members, in each age cohort;
- changes in the nature of episodes; and
- changes in benefits paid per member and episode in each age cohort.[10]

## Sanctions

1.12 Some health funds noted that the Bill makes allowance for performance monitoring and sanctions to cover the wider ambit of adherence to the whole *National Health Act 1953,* rather than applying only to the application of community rating principles. Funds therefore sought clarification on the intended scope of Ministerial investigatory powers and administrative sanctions.[11]

1.13 In particular, removal of the entitlement to offer rebate as a premium reduction was noted as an extremely serious sanction, affecting a private health insurer's fundamental ability to operate its business. Given this, these funds also expressed the view that a safeguard should be introduced into the Bill, allowing the Minister to exercise this sanction only when he/she is fully satisfied there has been a

7 *Submission* 4, p.5 (APHA)

8 *Submission* 4, pp.5-6 (APHA)

9 *Submission* 5, p.7 (RPHG)

10 *Submission* 10, p.9 (DoHA)

11 *Submission* 2, p.1 and p.4 (Medibank Private) and *Submission* 9, pp.5-7 (MBF)

definite and severe breach of the *Act* .[12] Clarification was also sought on the extent to which Ministerial actions or decisions may be appellable or disputed in a court.[13]

1.14 DHA responded by noting that the Bill provides relatively few new discretionary powers to the Minister and actually provides for more flexibility and proportionality in action and outcomes e.g. the proposed new power in section 73BEB to require health funds to explain their operations allows for the:

> easy resolution of cases where it is subsequently found that no breach of the legislation exists, or where a breach may have occurred, but it is only minor in nature and can be dealt with simply…The introduction of arrangements that allow the Minister to request an enforceable undertaking…will ensure funds have adequate opportunity to take voluntary corrective or re-directive action in respect of their business where necessary, rather than relying on regulator imposed sanctions.[14]

1.15 The Department also clarified its intent that the sanction to revoke a health fund's authority to offer the 30 per cent rebate as a premium reduction is specifically intended to prevent severe breaches of community rating obligation, and will be an action of last resort.[15]

1.16 Other groups supported increased measures to ensure compliance by funds with their obligations under Schedule 1 of the *National Health Act 1953*. Submissions included additional suggestions to strengthen sanctions for breaches of policy on community rating including financial restitution to consumers and bans on accepting new members.[16]

## *Fiscal implications of Lifetime Health Cover amendments to assist industry advertising*

1.17 A majority of the submissions which addressed this issue indicated that the legislation seems to be a practical approach.[17] DHA indicated that it expects the proposed policy changes to have no fiscal impact, beyond the potential to provide health funds with an opportunity to improve the efficiency and effectiveness of their Lifetime Health Cover (LHC) advertising.[18]

1.18 The Institute of Actuaries Australia argued that unless the LHC provision comes into effect on 1 July, there is a potential for a group of people to be penalised

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12 *Submission* 2, p.5 (Medibank Private), *Submission* 9, pp.7-8 (MBF), *Proof Hansard* 15 May 2003, p.10 (MBF)

13 *Submission* 6, p.3 (AHIA) and *Proof Hansard* 15 May 2003, p.10 (AHIA)

14 *Submission* 10, pp.8-9 (DHA)

15 *Submission* 10, p.10 (DHA); *Proof Hansard* 15 May 2003, p.22 (DHA)

16 *Submission* 3, p.7 (ACA) and *Submission* 4, pp.6-7 (APHA)

17 *Submission* 1, p.4 (PHIO); *Submission* 2, p.9 (Medibank Private); *Submission* 6, p.6 (AHIA); *Submission* 7, p.4 (HIRMAA); *Submission* 8, p.3 (Institute of Actuaries of Australia)

18 *Submission* 10, p.13 (DHA)

by the operation of Item 59, which precludes retrospective adjustment (if they have taken out new hospital cover after their birthday falling between the previous 1 July and the date of implementation).[19]

## *Fiscal implications of Community Rating amendments*

1.19 A number of submissions referred to Section 66 of the Bill which proposes to define 'improper discrimination' as '*any other characteristic of a person (including but not limited to matters such as place of residence, occupation, leisure pursuits) that is likely to result in an increased requirement for professional services'*. It was argued that the new wording would have the effect of outlawing the current practice of RHBO setting different contribution rates in each State (ie place of residence) and imposing limits on ancillary benefits. Submissions requested that careful consideration be given to all the potential consequences of this change.[20]

1.20 In its submission, DHA acknowledged that 'each (health fund) product tends to have its own schedules and rates of benefits in each State or Territory'[21]. The intent of the new wording was made clear at the hearing on 15 May 2003 when DHA 'emphasised that the Bill does not alter the community rating obligation of funds…and, as such, is not expected to have any fiscal implications for the funds or the government.'[22]

1.21 Hence, the definition in Section 66 is not intended to change the ability of funds to set different contribution rates in each State. Rather, explained the Department, the new rule change assessment procedures are expected to benefit funds substantially by 'providing greater flexibility and control over the products that funds offer and increased capacity to respond efficiently to consumer demands and other market forces.'[23]

## *Other issues*

### Informing contributors of rule changes

1.22 Proposed Section 73BEL requires organisations making rule changes to take reasonable steps to advise any contributor that may be disadvantaged of the nature of the change. Some organisations questioned the interpretation of 'reasonable steps' in this instance, as the cost of directly informing all members was considered to be

19 *Submission* 8, p.3 (Institute of Actuaries of Australia)

20 *Submission* 2, p.1 and p.4 (Medibank Private); *Submission* 6, p.2 (AHIA); *Submission* 8, p.2 (Institute of Actuaries of Australia); *Proof Hansard* 15 May 2003, p.10 (AHIA)

21 *Submission* 10, p.11 (DHA)

22 *Proof Hansard* 15 May 2003, p.23 (DHA)

23 *Submission* 10, p.12 (DHA)

prohibitive.[24] The PHIO noted that consumers also have significant rights to receive enough notice to take their business elsewhere if that is their intended response.[25]

### Powers of the Public Health Insurance Ombudsman

1.23 Organisations sought clarification on the expected resource costs of meeting both the PHIO's additional activities and expeditiously responding to PHIO issues and complaints within specified timeframes. It was also noted that the legislation provides sanctions against RHBOs for non-compliance with the requirements of the Ombudsman, but no such sanctions apply to doctors, hospitals or other providers. It was argued that this sets an unfair playing field.[26]

### State of the Health Funds report

1.24 Most submissions were supportive of this concept. Health funds expressed a preference that the report should not involve complex new reporting criteria, nor focus on price alone.[27]

### Legal Professional Privilege

1.25 Section 73BEE effects a limited abrogation of the privilege against self-incrimination, but does not specifically refer to legal professional privilege. Confirmation was sought that the Bill is not intended to abrogate such privilege.[28]

## RECOMMENDATION

1.26 The Committee reports to the Senate that it has considered the Health Legislation Amendment (Private Health Insurance Reform) Bill 2003 and **recommends** that the Bill proceed.

Senator Sue Knowles
Chairman

June 2003

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24 *Submission* 6, p.3 (AHIA); *Submission* 2, p.1 (Medibank Private)

25 *Proof Hansard* 15 May 2003, p.17 (PHIO)

26 *Submission* 2, p.2 (Medibank Private); *Submission* 6, p.5 (AHIA)

27 *Submission* 2, p.1 and p.6 (Medibank Private); *Submission* 6, p.4 (AHIA)

28 *Submission* 9, p.6 (MBF)

PARLIAMENT OF AUSTRALIA · **THE SENATE**
**SENATOR LYN ALLISON**
Australian Democrat
Senator for Victoria

The Secretariat
Community Affairs Legislation Committee

**Health Legislation Amendment (Private health Insurance Reform) Bill 2003**

The Democrats support the above-named bill and in general agree with the Chair's Report.

However, we note that there were two areas of concerns that are not addressed by the bill but need to be remedied through consultation between the private health industry, the Department of Health and Ageing and the Minister.

The extent of Ministerial discretion and lack of transparency on performance indicators was raised as an issue by Medibank Private, MBF and by the Australian Private Hospitals Association.

Both the Private Health Insurance Ombudsman and the Australian Consumers Association raised the contractual uncertainty experienced by health insurance members as a significant detriment in the value of the product. Failure to provide consumers with sufficient advance notice of price changes on products, due to the Government decision to announce weighted average price increases only, and insufficient notice of product changes that withdraw entitlement to benefits were raised as specific examples.

Given the extent of tax-funded involvement in private health insurance and individuals' preference for certainty in health costs, the Democrats seek an assurance from the Minister that guidelines will be made publicly available that will detail the performance indicators and the benchmark measures against which the Minister will take action. As well, should the Ombudsman continue to receive complaints about poor consumer information practises, that the Minister will consider giving consumers greater remedial action than that afforded now.

Senator Lyn Allison

12 June 2003

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# APPENDIX 1

## Submissions received by the Committee

1 Private Health Insurance Ombudsman (NSW)
2 Medibank Private (Vic)
3 Australian Consumers Association (NSW)
4 Australian Private Hospitals Association (APHA) (ACT)
5 National Private Rehabilitation Group (NSW)
6 Australian Health Insurance Association (ACT)
7 Health Insurance Restricted Membership Association Australia (NSW)
8 Institute of Actuaries of Australia (NSW)
9 Medical Benefits Fund of Australia Limited (NSW)
10 Department of Health and Ageing (ACT)
11 Brent Walker Actuarial Services Pty Limited (NSW)

**Additional information**

Leeder S and Webber E, *Medicare and its Discontents*, Healthcover pp.36-43 April-May 2003

Australian Health Insurance Association, opening statement tabled at hearing

Supplementary submission Australian Private Hospitals Association (APHA)

# APPENDIX 2

# Public Hearing

A public hearing was held on the Bill on 15 May 2003 in Senate Committee Room 2S1, Parliament House, Canberra.

## Committee Members in attendance

Senator Knowles (Chairman)
Senator Allison
Senator Denman
Senator Heffernan
Senator Humphries
Senator Hutchins

***Witnesses***

**Medibank Private**

Mr John Wallace, Health Policy & Economics Manager
Mr Andrew Gale, Chief Actuary

**Medical Benefits Fund of Australia Limited (MBF)**

Ms Kate Middleweek, Public Officer/Corporate Lawyer

**Australian Health Insurance Association (AHIA)**

Mr Russell Schneider, Chief Executive Officer

**Australian Consumers Association (via teleconference)**

Mr Martyn Goddard, Senior Health Policy Officer
Ms Uta Mihm, *Choice* Content Producer

**Mr John Powlay, Private Health Insurance Ombudsman**

**Australian Private Hospitals Association (APHA)**

Mr Michael Roff, Executive Director
Mr Paul Mackey, Director, Policy & Research

**Department of Health and Ageing**

Dr Louise Morauta, Acting Deputy Secretary
Mr Charles Maskell-Knight, Principal Adviser
Mr Andrew Johnson, Acting Principal Legal Officer