

# AUSTRALIAN DEMOCRATS

## MINORITY REPORT

### Introduction

1.1 The purpose of the Medibank Private Sale Bill 2006 (the bill) is to make changes to the relevant legislation to facilitate the sale of Medibank Private by the Government in due course. The bill is comprised of three schedules.

1.2 Schedule One modifies provisions in the *Health Insurance Commission (Reform and Separation of Functions) Act 1997* (HICA) and the *National Health Act 1953* (NHA) to allow the Commonwealth to sell its equity in Medibank Private Limited (MPL). Schedule Two provides for the MPL sale scheme. Schedule Three contains amendments relating to various operational aspects of MPL which will cease to exist once MPL is privatised.

1.1 In comparison to public concern and debate on previous Commonwealth privatisations, this proposed privatisation of Medibank has not been highly contentious. Nevertheless, putting the bill through a Senate Inquiry has been useful in fleshing out the opportunities and risks attendant to the proposed sale.

1.2 Although it is important in the interests of good governance and the democratic tradition that there be a full, informed and aware debate in relation to the sale of Medibank Private, that debate is unlikely to result in delay or to stop the sale proceeding. The Howard Government holds a majority in both houses of the federal parliament and the bill will likely pass, meaning Medibank Private will likely be sold as intended in 2008. As I remarked in the Senate Committee Hearing:

... unless there is a Snowy River type revolt in government ranks, they have the numbers to pass this bill. So we should therefore presume...that it will pass out of government hands.<sup>1</sup>

1.3 Therefore, while it is important for me to indicate my position on the proposed sale, it is probably more important to try to maximise the benefits of what seems to be an inevitable sale. In that regard, the bill could be improved.

1.4 The Australian Democrats are not automatically opposed to privatisation of government assets. Each case of privatisation should be assessed on its merits, and

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1 Senator Andrew Murray, *Committee Hansard*, Friday 3 November 2006, Canberra, p.48.

should not be driven by ideology.<sup>2</sup> What should drive asset sales is the community benefit and the public interest.<sup>3</sup> In situations where privatisation is genuinely in the public interest and benefits the community, then it should be supported.

1.5 With respect to this proposed sale the questions are generic to all sales:

- Is the public interest better served by the asset remaining in public hands?
- Can the sale realise funds that can be put to a better use?
- Is the net funds flow positive with respect to government finances?
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### **Commonwealth objectives for the sale of Medibank Private**

1.6 There is a considerable distance between the *real* reasons for this sale and the *stated* reasons for the sale. I believe the real reasons for the sale are these:

- The Government can see little policy benefit arising from keeping Medibank Private in public hands;
- The Commonwealth earns no income from Medibank Private; and, most importantly of all,
- The Government can make a windfall of several billion dollars from this sale.

1.7 In other words – the sale is mostly about money. That is not necessarily a bad motive, depending on what the money will be used for.

1.8 The Government has not been as open about its motives as that. It has dressed up its sales objectives. According to the Explanatory Memorandum (EM), there are five objectives for the sale of MPL. In my view, the last one is the one that really counts for the Government:

- to contribute to an efficient, competitive and viable private health insurance industry;
- to maintain service and quality levels for Medibank Private contributors, including in regional and rural Australia;
- to ensure the sale process treats Medibank Private Limited employees in a fair manner, including through the preservation of accrued entitlements;
- to minimise any post sale residual risk and liabilities to the Commonwealth; and
- *having regard to the above objectives, to maximise the net sale proceeds from the sale.*<sup>4</sup>

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2 Australian Democrats, 2004 Election Issues Sheet ‘Public Service’, p.1.

3 Australian Democrats, 2004 Election Issues Sheet ‘Public Service’, p.1.

4 Medibank Private Sale Bill 2006 Explanatory Memorandum, p.2.

1.9 I find it remarkable that there is no mention of the removal of the ‘conflict of interest’ as an objective, especially in view of how often it has been mentioned:

the specific phrase ‘conflict of interest’ and its motivation for the government getting out of Medibank Private has been constantly used over many months and perhaps years.<sup>5</sup>

1.10 At the Senate Committee Public Hearing, I entered into a discussion with Mr Rob Butterworth (Division Manager, Shareholder and Asset Sales, Department of Finance and Administration) on this point:

**Senator MURRAY**—I want to draw your attention to item 11, which is the Commonwealth’s objectives for sale. There are five of them, (a) to (e). Can you tell me why removing conflict of interest issues is not part of the Commonwealth’s objectives for the sale? Why were conflict of interest problems omitted?

**Mr Butterworth**—Arguably they are covered by the first objective of ‘to contribute to an efficient, competitive and viable private health insurance industry’.

**Senator MURRAY**—You know I am not going to buy that. Was it an oversight?

**Mr Butterworth**—And, item (d):

- to minimise any post sale residual risk and liabilities to the Australian Government;

...

**Mr Butterworth**—The sale objectives we have here are the ones that we have in the broad consistently used for previous asset sales. They have been tailored slightly to the circumstances of Medibank Private, but I am not aware that the issue was considered in the way that you are suggesting.

**Senator MURRAY**—I will ask you directly: do you consider one of the objectives for the sale to be to rid the government of its conflict of interest?

**Mr Butterworth**—Yes.<sup>6</sup>

1.11 The term ‘conflict of interest’ has a strong meaning in the public mind, and its minimisation is generally viewed as a positive thing by the community at large. However, this applies to *genuine* conflicts of interest. I am not the only Senator who is concerned that the perceived conflict of interest is somewhat of a weak proposition:

**Senator McLUCAS**—How does the sale of Medibank Private resolve a conflict of interest?

**Mr Maskell-Knight**—One postulates that the government may find itself in a position where it is trying to decide how to regulate the industry, having regard to the fact that it owns a major player in it. If it no longer owns a major player in it, it can make decisions about regulatory policy based on first principles.

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5 Senator Andrew Murray, *Committee Hansard*, Friday 3 November 2006, Canberra, p.62.

6 *Committee Hansard*, Friday 3 November 2006, Canberra, pp.62-63.

**Senator McLUCAS**—Can you identify any time where the government has regulated differently because it owns the major player?

**Mr Maskell-Knight**—Not that I can think of.<sup>7</sup>

1.12 As well as the missing ‘conflict of interest’ objective, the objective that the sale of MPL will “contribute to an efficient, competitive and viable health insurance industry”<sup>8</sup> warrants further discussion.

1.13 Whilst such an objective is to be commended if it is true and achievable, claims of increasing efficiency and competition in the context of the proposed sale seem to be just motherhood statements, in effect. The Government has not said *how* this could be achieved. The expert witness Dr Deeble described the functioning of the private health insurance market in the following interchange:

**Senator MURRAY**—....One of the points you make very clearly in your long discourse.....is that the private health insurance industry is in no sense a free market, it is a very managed market. It is a market characterised by high subsidies, high government intervention, high regulation, very low mobility of customers between funds and extremely poor customer knowledge because of lack of comparability. In other words, it is, to use an economist’s term, a most imperfect market.

**Dr Deeble**—Absolutely.

**Senator MURRAY**—That is right, isn’t it, as a summary.

**Dr Deeble**—And it is an oligopolistic market—six major funds dominate.

**Senator MURRAY**—I am in something of a difficulty in this discussion in that my party actually took a more free market view of private health insurance in that the Democrats opposed the private health insurance rebate. We believed that premiums should be set where they may and that the moneys being spent on supporting private health insurers should rather be put into public health, and reinforced there.

**Dr Deeble**—In general, I would agree with you.

**Senator MURRAY**—The difficulty we have, I think, arising from your views is that we are asked as a Senate committee, as a parliament, to appraise the benefits of the sale in the public interest, and yet the normal market comparators are not available to us. That is right, isn’t it?

**Dr Deeble**—When people say a profitable industry is a good one, the assumption is that it is an informed market and that its ability to make a profit indicates that it serves that market better than the other funds do or the other firms do.

**Senator MURRAY**—My point is that, if there are marked market rigidities because of a lack of mobility, understanding and so on, it is very difficult, then, to compare efficiencies, administration fee levels and profitability in the sense of retained assets. It is also difficult to compare products. That is the point that you have made.

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7 *Committee Hansard*, Friday 3 November 2006, Canberra, p.10.

8 Medibank Private Sale Bill 2006 Explanatory Memorandum, p.2.

**Senator MURRAY**—Where I am going to with this—I am conscious that the government has the numbers to push through its legislation if it wishes—is that if the government is taking a market oriented view and saying, ‘Well, we should not be engaged in the provision of private health insurance through Medibank Private,’ which has 30 per cent of the market, then logically it has to review subsidies, tax concessions and also review just how competitive the market is with respect to choice, the availability of product disclosure statements, information and so on. I can give you an analogy, which is the superannuation choice regime. Effectively that introduced a far more market oriented approach in what was a market which was highly rigidified prior and is no longer as rigid. Isn’t that the logical consequence of the government stepping out of this particular investment?

**Dr Deeble**—If you think of all of the subsidies and benefits the government gives to the health insurance business, they are really enormous, but it flows through to the providers and to the people who are supported by private health insurance. There is the rebate. There are the various encouragements that people have to go into it, including their own tax position and there is the tax exempt position of the health funds. Nearly all but one of them are tax exempt because in the past it was seen as not to be a business that the private people would go into because it would never be profitable enough—that is, the for-profits would not go into it. I agree that if a government then moved its own fund into the for-profit area, it is changing the balance of that enormously and changing lots of the assumptions that underpinned its subsidies. Does that answer your question?<sup>9</sup>

1.14 I can only go on the evidence before me, and that evidence does not persuade me that (given current policy and market settings) a more efficient, competitive and viable health insurance industry will necessarily result if Medibank Private moves into *private hands*. On this point, I should note the Government has failed to put on the public record a strong case to show the market benefits of privatising Medibank Private. The release of the CRA report was supposed to trump criticism of the sale in this respect. However, Dr Deeble and the AMA respectively presented a strong critique of the limitations of the CRA report.<sup>10</sup> The Government has also withheld the scoping study on the sale from scrutiny. Its hand would have been stronger if it had published the findings of this study, assuming the study demonstrated the advantages to the industry and consumers of the sale.

1.15 The question is whether a more efficient, competitive and viable health insurance industry will result if Medibank Private remains in *public hands*. On this point the answers of one of the departmental<sup>11</sup> witnesses was instructive:

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9 *Committee Hansard*, Friday 3 November 2006, Canberra, pp.34-35.

10 AMA, *Committee Hansard*, 3 November 2006, Canberra, pp.13-14; Dr Deeble, *Committee Hansard*, 3 November 2006, Canberra, pp.30-31 and esp. 37. See also AMA *Submission 8a*, pp.2-3.

11 Mr Charles Maskell-Knight, Principal Adviser, Acute Care Division, Department of Health and Ageing.

**Senator MURRAY**—Do you think that Medibank at present contributes to an efficient, competitive and viable private health insurance industry?

**Mr Maskell-Knight**—You are asking me to think, and I do not know that I do that readily about those sorts of issues.

**Senator MURRAY**—Do not be smart.

**Mr Maskell-Knight**—I am sorry, but you are asking for an expression of opinion. I believe that Medibank Private is an efficient, well-run fund, yes.

**Senator MURRAY**—The explanatory memorandum specifically says: The Commonwealth’s objectives for the sale of Medibank Private Limited are:

(a) to contribute to an efficient, competitive and viable private health insurance industry;

I do not want a smart answer from you. That would either imply that it is not at present or that it would become more efficient, competitive and viable if sold. As someone who is involved with an agency with intimate connections with Medibank Private, I want to know if you think it does contribute at present to an efficient, competitive and viable private health insurance industry and whether, if it were to be sold, it would do a better job in that respect?

**Mr Maskell-Knight**—The questions about the statements in the explanatory memorandum should be directed to the department which wrote it, which is not the Department of Health and Ageing. As I said, I believe that Medibank is an efficient and well-run fund on the evidence available to us at the moment. It is a matter for speculation about what would happen were it to be in different ownership.<sup>12</sup>

1.16 The Australian Medical Association (AMA) was more straightforward. In its submission, the AMA expressed concern at the changing market structure that would result from the sale of MPL. The AMA is of the opinion that “the sale of Medibank Private would reduce competition in the sector...”<sup>13</sup> The AMA argues that there is no national market for private health insurance and the acquisition of MPL by another private health fund would result in a market which is dominated by a single player, even more so than at the moment.<sup>14</sup>

1.17 Whilst such a situation as the AMA foresees seems unlikely in the medium term, given the ownership restrictions in the bill that will apply for the first five years, there can be no guarantee that such a situation will not emerge in the longer term.

1.18 There is often a perception that government involvement somehow makes things inherently more equitable and accessible, and that privatisation will result in declining standards and consumer detriment. Whilst this may be true in some cases, it cannot be said to be the norm. Increased competition in a market place usually results in benefits to the consumer market, as companies are forced to offer better services or lower prices in a bid to maintain their market share.

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12 *Committee Hansard*, Friday 3 November 2006, Canberra, pp.11-12.

13 Australian Medical Association, *Submission 8*, p.4, paraphrased.

14 Australian Medical Association, *Submission 8*, p.4.

1.19 In my view the AMA argument is not that a more competitive market will result if MPL remains a public asset – it is an argument that the sale of MPL is insufficient of itself to produce greater competition.

1.20 The evidence before me does not persuade me that (given current policy and market settings) a more efficient, competitive and viable health insurance industry will result if Medibank Private stays in *public hands*. From a policy perspective that means there is no sound reason as to why the Government should continue its participation in the private health insurance market.

1.21 That means too that the government focus should be restored to the provision of public health services. Perhaps it is this point (the role of the government in public health services) that is the real cause of many people's fears over the sale of MPL. I would suggest that maybe many are not so much directly concerned with the sale as such. Rather, they are concerned with the government absenting themselves even more from the health services and insurance market.

1.22 The government has shown no signs that they will focus more of their efforts on public health as a result of exiting the private health insurance market, and has made no guarantee that the proceeds from the sale will even be placed back into health care.

1.23 One counter to the fears expressed by the AMA and others is for a more competitive market to be actively promoted by government. Simply sitting back after selling Medibank Private and expecting significant new competition to emerge is relying too much on hope. It would indeed be advantageous for policy to be developed so that a more competitive market did become a feature of private health insurance. In that respect recent superannuation industry experience is instructive. In that industry, mobility, portability, comparability, choice, and so on, have all helped create a much more competitive market than formerly.

1.24 As increasing competition is a stated objective for the sale of MPL, and it is obvious that the sale of MPL alone will not result in marked changes to the competitive characteristics of the private health insurance market in Australia, I think it is crucial that as part of the sale process, the Productivity Commission be required to inquire into competition in the private health insurance market. The last time such a project was carried out was almost ten years ago with the Productivity Commission's 1997 report 'Private Health Insurance' and, given the circumstances, it is an opportune time for that report to be updated and reviewed.

1.25 Price is an issue. Will prices rise if Medibank is privatised? The changing nature of competition in the market also flows on to the issue of health insurance premiums, concerns over which have been raised throughout the committee stage. In the report by CRA International commissioned by the Department of Finance and Administration, it is concluded that:

Irrespective of any change in ownership, Medibank Private's premiums will need to rise to cover a substantial increase in benefits necessitated by such factors as the ageing of the Australian population, increased cost per day of hospital care and increases in the number and value of ancillary claims.<sup>15</sup>

1.26 Extending this line, I would add that there may be additional sources of upwards pressure on premiums if MPL is privatised to become a for-profit entity. For instance the surplus may reduce as a result of changes in tax status. There are negative tax implications of MPL changing its status from a not-for-profit organisation to one that is operated on a for-profit basis. Once MPL becomes a for-profit entity there is an associated additional tax burden.

1.27 A second source of pressure potentially forcing premiums upwards is the changing motives of management. Currently, MPL is focused on the provision of health services. Although management prudentially aim for operating surpluses, by and large, the focus is on provision of services. However, privatisation via a public float (as against a sale to members, discussed below) may change the focus, and result in the pursuit of profits being the dominant goal.

1.28 Chasing profits is always going to be an ownership aim. Paying several billion dollars for MPL will mean the new owners will want a commensurate return on investment. To claim that MPL will not need to raise premiums because it will become more efficient once it is privatised is to claim that it is being run inefficiently now, and the Committee has been given no evidence of this.

1.29 There are only so many ways that greater profits can be pursued, such as: raising prices; gaining market share; innovation and diversification of products; improvements in administrative efficiency; and by lowering costs associated with the provision of services, such as by cutting services back.

1.30 As a government owned entity it is difficult for MPL at present to diversify its products – this would certainly be possible once MPL is removed from government hands.

1.31 There is the possibility of lowering the standards of service to increase profit margins. In an ordinary market, this would not be a concern: if standards fell, consumers could change their service provider. However, private health insurance is no ordinary market, as the earlier quoted discussion with Dr Deeble illustrates. The private health insurance industry is oligopolistic in nature, and there is low portability and mobility between insurers: it is a captive market.

1.32 Different outcomes on product pricing and services will arise according to the nature of sale and ownership. The mutualisation of MPL and associated assets

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15 CRA International, *The impact of privatisation of Medibank Private on private health insurance premiums*, 2006, p11.



deserves further consideration and should not be automatically discounted as an option by the government. A proposal is outlined below (under ‘Method of privatisation’) but in my view, it seems to be a ‘best outcomes’ approach. Members who have a vested interest will not be interested in lowering the standards of service which they use. But equally, they will not be interested in seeing a company in which they have a vested interest collapse. Member-owners will be in the best position to find a balance between the pursuit of profits and the provision of services, with the freedom to diversify the business.

### **The issues of MPL ownership and compensation**

1.33 At the centre of the debate about whether or not the Government should sell MPL has partly been the question of who owns Medibank Private and in particular whether members of MPL have any claim to compensation if it is sold.<sup>16</sup>

1.34 MPL was established in December 1997 as a public company, limited by shares. All the shares were vested in the Commonwealth and section 35 of the HICA provides that: *the Commonwealth must not transfer any of its shares in the nominated company.*

1.35 The Medibank Private Fund and associated assets (into which member contributions are placed, and out of which member benefits are paid) has been operated by MPL since 1998.

1.36 As noted above, Schedule One will enable the Government to sell MPL. It repeals section 35 of the HICA which currently has the effect of prohibiting the Commonwealth from transferring its shares in MPL. Schedule One also amends the NHA to provide for the fact that once sold MPL will become a for-profit organisation and have a resulting need to distribute profits. Finally, Schedule One also creates a new section, section 73AADA, which provides (in the words of the EM) a ‘constitutional safety net’, allowing for the payment of compensation if property is acquired from a person other than on just terms.

1.37 The real contention, then, lies not in the ownership of MPL: both the Blake Dawson Waldron advice to the Department of Finance and Administration, and the Parliamentary Library Research Brief, are in agreement on this matter. What is really at the centre of contention is who owns the fund and its associated assets.

1.38 The bill is predicated on the belief that the Government is entitled to sell off MPL without any specific regard as to possible risks or claims to compensation by members. This (to be punnish) seems like a risky proposition.

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16 Parliamentary Library, Bills Digest No 47, 30 October 2006.

**Senator MURRAY**—I will go to the question of compensation possibilities. I accept the view of the library's advice, which I read into the record earlier as expressed on page 11:

'[I]t is arguable that members of Medibank Private could be entitled to compensation if the terms of any sale do not adequately account for their right to the benefit of fund assets. It was not asserted in the Research Brief, and is not asserted here, that this means that Medibank Private is owned by its members, or that members could block the sale.'

I accept the government not only has the right to dispose of the asset but has the ability to dispose of the asset subject to parliament's finding, which is essentially the position of the department. So what is left of the issue is a potential class action with respect to compensation. I assume there will be a class action rather than individual members. My question to you is: is it possible to compute the level of compensation that could be sought? I am not asking here for a hypothetical. I am really asking: in view of your experience within DOFA in the sale of assets where these issues are raised, are there aspects or areas to which compensation claims such as these might focus—for instance, the total level of surpluses or the total break-up value of the fund? Is there a standard kind of area to which these claims of compensation can be directed?

**Mr Butterworth**—I will say before answering that that it is certainly our strong view that Medibank Private contributors will not be entitled to compensation on the sale. The government's legal advice is clear that Medibank Private contributors do not own an interest in the fund.

**Senator MURRAY**—What I am trying to compute here is the level of risk. If I were the buyer, I would get my own legal advice and then I would seek to get you to indemnify me from a risk, and that is therefore a cost to you, because it either results in a lower sale price or a higher sale price with a potential risk. You would want to calculate the risk. The way in which you deal with that is perhaps to cap what risk you agree to expose yourself to, but as soon as you do that and you nominate a figure you are telling anybody who is going to sue you what figure to target. As a seller, my preference would be not to indemnify them, to tell them that it is their risk and put that into the contract, but that may affect the price. I have not raised this with you in a hypothetical sense; I have raised it in a real risk sense. I understand that the government thinks it is on firm ground, but I have heard that from many defendants in courts. Are you able to assist the committee at all? One of the things that the committee might need to take into account is, regardless of what we think the risk might or might not be, how the Commonwealth should deal with any risk, notional or otherwise?

**Mr Butterworth**—The entire process of preparing for a sale of a government asset is focussed on minimising those risks. We think that the process we have gone through reduces those legal and commercial risks to the minimum. We are confident of that position.

**Senator MURRAY**—Can you answer this question? If you cannot, can you take it on notice? If the committee was of the view that the government should not indemnify for compensation, would that mean that the committee would need to recommend that the legislation explicitly specify that?

**Mr Butterworth**—I am happy to consider that question.

**Mr Staines**—From the legislation that is drafted at the moment, any liability for the Commonwealth arising out of the sale process itself would lie with the Commonwealth.

**Senator MURRAY**—It would lie with the Commonwealth?

**Mr Staines**—Yes.

**Senator MURRAY**—Exactly. That means that you have accepted that there is risk. You might be able to, but I doubt you will want to, quantify that risk.

**Mr Butterworth**—Again, we have researched this issue. We have drafted this legislation. We will approach the process between now and the sale with a view to minimising that risk. We do not think that risk is significant.<sup>17</sup>

1.39 The majority report accepts the Government's position, and the Blake Dawson Waldron advice, that the government is entitled to sell MPL and does not need to be concerned with members claiming any rights against assets, or bringing actions for compensation against the government. Yet representatives from the Department of Finance and Administration confirm that the bill specifically includes a liability clause that lays the cost of any compensation claim at the taxpayer's door:

**Senator MURRAY**—...Let me try a different direction. Blake Dawson Waldron says in item 5(f) on page 3:

For this reason, the Commonwealth will not be liable to pay compensation as suggested in the Brief.

They have given us this guarantee. Do you think we should add an amendment to this bill that says, if there is any claim for compensation, Blake Dawson Waldron is liable? You are convinced this advice is good, so let them wear the responsibility if it is not. What do you think of that?

**Mr Butterworth**—I do not think they would find that acceptable.

**Senator MURRAY**—Therefore, they have no faith in their brief? Is that what you are saying to me?

**Mr Butterworth**—No, I am not saying that at all.

**Senator MURRAY**—That is what it says to me. If somebody says that they will not be liable to pay compensation, let them put their money where their mouth is.

**Mr Butterworth**—I am saying that they have staked their reputation on that advice.

**Senator MURRAY**—So later on, in five years time, when the Commonwealth is hit with a class action for \$200 million, we are going to remember that the reputation of Blake Dawson Waldron was wonderful? Do you see where I am going with this? Neither you nor I can forecast the future with the cleverness of lawyers or courts. I have seen dozens of legal briefs, some to my cost and some to my benefit, which have been very firm in their opinion and have been wrong, and so have you.

**Mr Butterworth**—We have been conscious of certain risks. We have been conscious of the potential for risks. We have gone through a very thorough

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17 *Committee Hansard*, 3 November 2006, Canberra, pp.62-63.

process. We have taken the best advice. We will continue to apply the sale processes with a view to minimising those risks.

**Senator MURRAY**—You are not at risk. Blake Dawson Waldron is not at risk. The buyer is not at risk. But the taxpayers of Australia are potentially at risk because you are going to give the buyer an indemnity. That is what is happening. Is that right? If there is any risk, it is to the taxpayers of Australia, is it not?

**Mr Butterworth**—The Commonwealth as the vendor is accepting that risk at the end of the day.<sup>18</sup>

1.40 The Government say that the liability clause is a standard one.<sup>19</sup> In other words it is a precautionary provision – it prevents the validity of the bill being challenged if it did not allow for compensation under the just terms provisions of the Australian constitution. This is a circular argument. In the absence of such a liability clause no one would challenge the validity of the legislation unless they thought there *was* a case for compensation.

1.41 The fact is that the bill specifically anticipates the risk of a compensation claim, and allows for the taxpayer to pick up any compensation tab. The only sure-fire way to avoid this risk altogether is to sell MPL to the members.

### **Method of privatisation**

1.42 As previously noted, Schedule Two deals with the actual process of selling MPL. It does not limit the method or timing of the sale, and recognises that the Government may wish to use a number of strategies to obtain the maximum revenue from the sale. Importantly, it also contains provisions which will enable MPL to modify its constitution and rules such that it can alter its not-for-profit status, and operate (once sold) on a for-profit basis. With respect to the timing of the sale I agree with the Majority's concerns, reflecting that of the Senate Scrutiny of Bills Committee.<sup>20</sup>

1.43 Schedule Two also contains two appropriations clauses in relation to the costs of the MPL sale scheme, and a number of other situations in which expenses may arise. Within the second schedule are also provisions which relate to the ownership of a privatised MPL. Under the bill, there will be a five year period in which the maximum stake that can be held by anyone in MPL will be fifteen per cent.

1.44 The bill also contains requirements relating to the 'Australian nature' of MPL, including that the company is to remain incorporated in Australia, that the majority of directors must be Australian citizens, and ensure that its central management and control is ordinarily exercised in Australia.

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18 *Committee Hansard*, 3 November 2006, Canberra, p.65.

19 *Committee Hansard*, 3 November 2006, Canberra, p.64.

20 Senate Scrutiny of Bills Committee Alert Digest 13/06.

1.45 As the quotes in the previous section show, the method of sale of MPL may determine the Commonwealth's (i.e. the public's) exposure to risk. Although the majority report is silent on the way in which MPL is sold and does not offer any recommendations or comments on the issue, I feel it is of central concern.

**Senator MURRAY**—Moving on to the issue of the actual sale, can you tell me whether any of the following are explicitly ruled in or ruled out? I know some of the answers, but I would like them on the record. Firstly, is mutualisation ruled in or ruled out?

**Mr Butterworth**—The government has announced that they will be offering the shares in the company through an IPO.

**Senator MURRAY**—That would rule out mutualisation. Is a public float ruled in or ruled out?

**Mr Butterworth**—An IPO is a public float.

**Senator MURRAY**—Is a private placement ruled in or ruled out?

**Mr Butterworth**—The government has announced that they will be offering shares by way of an IPO.

**Senator MURRAY**—Is an offer to Medibank members ruled in or ruled out?

**Mr Butterworth**—Medibank members would be free to participate in an IPO.

**Senator MURRAY**—Is the IPO announcement in the legislation or in the general policy announcement of the government?

**Mr Butterworth**—The legislation provides the scope for an IPO. The government has indicated in its public announcements that it will be pursuing the sale as an IPO.<sup>21</sup>

1.46 It is my opinion that one method stands out above all others as the preferred option and the avenue which should be taken: the sale of MPL to its members. For example, if there are 1.2 million members of MPL, each member could be offered a shareholding equivalent to \$1,500. This would give the Government \$1.8 billion, a figure at the upper end of estimates that have been suggested it might raise in public sale, and at a lower cost than otherwise might be the case with a public float. Those share portions which were left over as a result of members opting out could then be sold to the general public. The members of MPL could then operate it as they saw fit, including a public float later if they so wished.

1.47 In my mind this removes any risk that the Government may be exposed to, satisfies the members by giving them right of first refusal in buying into MPL, and satisfies the Government who receive their budgeted sale revenue. The only people that it might not satisfy are the companies and commission-makers looking to get a hold of MPL, or members of the general public who feel aggrieved that they cannot buy shares in MPL. However, they may still get the option to buy shares later – they are just not guaranteed a right to buy shares in the initial sale.

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21 *Committee Hansard*, Friday 3 November 2006, Canberra, p.63.

1.48 So far, the Government have been unwilling to seriously consider this approach. As I remarked in the Senate Committee Hearing:

...I cannot quite understand why that option should automatically be excluded...it seems to me there is an automatic assumption in the government mind that, if it were to be sold, it needs to be sold either in a private placement to the highest bidder, which takes it out of the hands of the members, or that it should be a public float ...<sup>22</sup>

1.51 For this reason, and despite the apparent freedom of choice that the government of the day will have in relation to the sale scheme I would like to see an amendment incorporated into the bill. In addition to those options currently contained in the bill (indicated by the list of items in Schedule 2, Part 2, Item 5, Subsection 6), I wish to see a specific subsection which provides that the Government may sell MPL via:

- mutualisation;
- public float;
- private placement; or
- any other method the government feels is appropriate.

### **Proceeds of sale revenue**

1.49 The sale of MPL will create a substantial windfall for the Government. They are naturally interested in maximising their revenue from the sale, and make no secrets of the fact: it is one of the stated objectives for the sale.

**Senator MURRAY**—... We might disagree with it, but the idea that you should make a couple of billion for the people of Australia through a sale is not a reprehensible one. I do not impute a bad motive...<sup>23</sup>

1.50 In terms of what the sale of MPL would raise, figures close to \$2 billion have been seen as a reasonable sum. The important question then becomes “what is to be done with the proceeds of the sale?” \$2 billion is a substantial amount, and there should be cause for concern about how the Government puts the sale proceeds to work.

1.51 The bill, not surprisingly, is silent on the matter. It would be poor financial management to put the proceeds of asset sales into general revenue for current expenditure. Tipping the money into the Future Fund to meet future superannuation liabilities of public servants would be a singularly unattractive option, as opposed to the far more immediate alternative represented by the need for current health capital expenditure.

1.52 That suggests there should be a hypothecation of funds. This would ensure that the proceeds from the sale are kept within the domain of public health services

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22 *Committee Hansard*, Friday 3 November 2006, Canberra, p.48.

23 *Committee Hansard*, Friday 3 November 2006, p.49.

expenditure. When the possibility of hypothecation was raised in the Senate Committee Hearing, it was received with interest by the representatives of the Australian Medical Association.<sup>24</sup>

**Senator MURRAY**—...In other words, could the sale be made more palatable to somebody like the AMA, for example, just taking a figure, if it realised \$1 billion and that billion was hypothecated into mental health, dental health or something in the health regime, which meant that you might have given up something on the one hand but you have gained on another in the health context? Would this be more palatable to you as a policy if there were a hypothecation—in other words, if the sale proceeds were directly reinvested back into public health services?

**Dr Yong**—That is an interesting question.

**Senator MURRAY**—It is my job to ask you.

**Mr O’Dea**—In the material the government is talking about putting money into research. Clearly, from our point of view, if there is a sale it is better that the money stays in health. We have not covered that in our submission. We have not looked at it and it is very complicated. From our point of view, it is certainly better that the money stays in health rather than going into Defence or wherever.

**Senator MURRAY**—You have got to be careful of the government’s promises. The legislation does not hypothecate the money.<sup>25</sup>

1.53 Whilst on the evidence before me I can see no sound policy reason for the government to continue to maintain a position in the private health insurance market, there is an ongoing need for it to play a role in the provision of public health insurance and services. The Democrats have been anxious for some years about declining levels of Government expenditure on mental and dental health, as well as on public health measures. The hypothecation of the sale proceeds to specific health areas would undoubtedly make the sale of MPL less contentious and more in the public interest.

## Conclusions and recommendations

1.54 In my opening remarks of this Minority Report I said that with respect to this proposed sale these questions are generic to all sales:

- Is the public interest better served by the asset remaining in public hands?
- Can the sale realise funds that can be put to a better use?
- Is the net funds flow positive with respect to government finances?

1.55 A strong case has *not* been made for Medibank Private remaining in public hands. The net funds flow is positive with respect to government finances. The weakest aspect is with regard to the present intended use of the realised sale funds.

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24 *Committee Hansard*, Friday 3 November 2006, p.16-17.

25 *Committee Hansard*, 3 November 2006, Canberra, p.16.

1.56 I wish to reiterate the point I made at the start of this minority: the Democrats are not opposed to the privatisation of Commonwealth assets if they are *genuinely* in the public interest and for the benefit of the community. I do not believe that the government needs to continue to play an ownership role in the private health insurance market. The public health market is the area in which the government should focus on.

1.57 However, I do not wish to see the Medibank Private Sale Bill pushed through parliament without regard for some of the key issues that the proposal raises, especially when there are potential consequences for the people of Australia. The concern over the risks of compensation claims must be taken seriously and effort should be spent in minimising the potential for these risks where possible.

1.58 Additionally, the revenue that would be raised from the sale of MPL must be dealt with specifically by the bill. To not do so would be to leave the door open for its appropriation into general revenue, or for ‘vote-buying’ by the government of the day.

### **Recommendation 1**

1.59 That the bill be amended to

- require that the net sale proceeds be hypothecated for health expenditure; and,
- to include a list of unrestricted options for the sale of MPL: mutualisation; public float; private placement; or any other method the government considers appropriate.

### **Recommendation 2**

1.60 That the sale to members of MPL be the first option for sale.

### **Recommendation 3**

1.61 That prior to the sale, the Productivity Commission be required to conduct an inquiry into the private health insurance industry, with specific attention to enabling an efficient, competitive and viable private health insurance industry.

### **Recommendation 4**

1.62 That prior to the sale, the government of the day be required to prepare and present a discussion paper to the Parliament addressing the (eventual) method of sale of MPL, with particular reference as to why that particular method was chosen over alternative methods.

**Senator Andrew Murray**  
**Australian Democrats**  
**Senator for Western Australia**