1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH LEGISLATION (PRIVATE HEALTH INSURANCE REFORM) AMENDMENT BILL (No. 2) 1995

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Human Services and Health, the Hon Dr Carmen Lawrence, MP)

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OUTLINE

Health Benefits Reinsurance Trust Fund

The amendments introduce new reinsurance arrangements for registered health benefits organisations. These new arrangements are no longer based on classes determined to be reinsurable such as those defined in terms of benefits paid to people over the age of 65 years and benefits paid to persons requiring hospitalisation in excess of 35 days per annum.

The new arrangements take into account the Commonwealth shift towards a casemix environment by recommending an additional formula applicable to a casemix environment which can be implemented over time.

The new arrangements also take into account the profile of each registered health benefits organisation in terms of the age mix of its members and the patterns of usage of the health fund offered by the organisation based on its claims history.

The new arrangements remove the requirement that registered health benefits organisations maintain a notional Reinsurance Account. However, registered health benefits organisations are still required to keep records for reinsurance purposes.

The Private Health Insurance Administration Council (the Council) may determine the types of records that are to be kept by registered health benefits organisations in relation to reinsurance and the time-frame in which the information drawn from the records is to be provided to the Council. Any such determination made by the Council will be a disallowable instrument.

The Council will use the information provided to it by each registered health benefits organisation to calculate the amount payable out of the Reinsurance amount to each registered health benefits organisation dependent on such factors as the numbers and age of members. The Council will also use that information to calculate whether registered health benefits organisations are required to make a payment into the Health Benefits Reinsurance Trust Fund.

Complaints Commissioner

Schedule 2 of the Bill proposes amendments to the *National Health Act 1953*, relating to the Private Health Insurance Complaints Commissioner. The

amendments clarify the Complaints Commissioner's powers to apply and invest money, and to enter into contracts.

Provision of Information by Registered Organisations

As currently worded, the *National Health Act 1953* requires registered health benefits organisations to send information to both the Department of Human Services and Health (the Department) and the Private Health Insurance Administration Council (the Council). The amendments simplify this by requiring organisations to give the information to the Department only. The Council will obtain its information directly from the Department.

In addition, this Bill includes amendments to clarify that the required information is to be provided to the Department whether or not it was given to the registered health benefits organisation under a hospital purchaser-provider agreement.

Health Insurance Business

The purpose of this amendment is to change the definition of "health insurance business" in subsection 67(4) of the *National Health Act 1953*. This change is necessary to prevent products clearly designed to avoid the regulatory framework of private health insurance from undermining community rating. The products intended to be caught are those purporting to be accident and sickness insurance, but which are, effectively, a form of health insurance with risk rated premiums.

Failure to prevent such products from being offered will lead to insurance policies that undermine the principle of community rating. These products would be able to offer lower premiums to the younger and healthier members of the community thus leaving registered health benefits organisations with a disproportion of the sick and the elderly insured. With the removal of the lower risk members, registered health benefits organisations would have to increase premiums, making insurance too expensive for many of those who require it the most. Risk rated forms of insurance would either be unavailable or prohibitively expensive to those over 65.

The Act provides a safeguard against accidentally misclassifying genuine accident and sickness insurance products, which might otherwise be caught by the amendment, as "health insurance business". The Minister has power under section 67(4) of the Act to prescribe certain kinds of business not to be "health insurance business".

FINANCIAL IMPACT

The amendments in this Bill have no financial impact for the Commonwealth.

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NOTES ON CLAUSES

Clause 1 - Short title

This is a formal provision that specifies that the short title of the Act is to be the *Health Legislation (Private Health Insurance Reform) Amendment Act (No. 2) 1995*.

Clause 2 - Commencement

This clause provides for the commencement of the clauses and schedules of the Act.

Subclause 2(1) provides for Sections 1, 2 and 3 and Schedule 4 to commence on the day the Act receives Royal Assent.

Subclause 2(2) provides for Schedule 1 to commence on a day to be fixed by Proclamation.

Subclause 2(3) provides that if Schedule 1 has not commenced within 6 months of the Act receiving Royal Assent it will commence on the day after 6 months from Royal Assent.

Subclause 2(4) provides for the commencement of Schedule 2 and items 5 and 6 of Schedule 3 to be on 1 October 1995, immediately after the commencement of Schedule 2 to the *Health Legislation (Private Health Insurance Reform) Amendment Act 1995* which also commenced on that day.

Subclause 2(5) provides for the commencement of items 1, 2, 3 and 4 of Schedule 3 are taken to have commenced on 29 May 1995, immediately after the commencement of Schedule 1 to the *Health Legislation (Private Health Insurance Reform) Amendment Act 1995* which also commenced on that day.

Clause 3 - Amendments

This is a formal provision that specifies that the Acts specified in the Schedules, eg the *National Health Act 1953*, are amended in accordance with each of the items in the Schedules.

SCHEDULE 1

AMENDMENTS RELATING TO HEALTH BENEFITS REINSURANCE TRUST FUND

PART 1 - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Item 1 - Section 73BB

Item 1 repeals the previous section 73BB. It removes the requirement that each registered health benefits organisations must establish and maintain a separate Reinsurance Account. The Reinsurance Accounts kept by registered health benefits organisations are merely record keeping devices which are purely for administrative purposes.

New subsection 73BB(1) provides that the Private Health Insurance Administration Council (the Council) may determine the records which a registered health benefits organisation must keep and the information it must provide to the Council to enable the Council to calculate the amount of reinsurance owed by, and to, registered health benefits organisations, who then pay or receive their net amount through the Health Benefits Reinsurance Trust Fund. This new subsection also enables the Council to determine the time frame and form in which the information must be given to it.

New subsection 73BB(2) requires that the determination made by the Council under subsection 73BB(1) must be in writing. New subsection 73BB(3) specifies that this determination is to be a disallowable instrument.

New subsection 73BB(4) requires registered health benefits organisations to comply with determinations made by the Council and keep the records required under subsection 73BB(1) separate from other records it maintains. This replaces the concept of the notional Reinsurance Account kept by registered health benefits organisations.

Item 2 - Subsection 73BC(1)

Item 2 provides for subsection 73BC(1) to be replaced with a new subsection 73BC(1) which requires registered private health benefits organisations to make payments into the Health Benefits Reinsurance Trust Fund and for payments to be made out of the Fund to those organisations. It also provides that the Commonwealth, the State and the Territories can make payments into the fund.

Item 3 - Subsection 73BC(5A)

This item makes a wording change that is consequential on the amendment to subsection 73BC(12) which now provides that the Council may decide, rather than determine, that an amount will be paid out of the Reinsurance Trust Fund.

Item 4 - Subsection 73BC(12)

Item 4 replaces the existing subsection 73BC(12) with a new subsection 73BC(12). The new subsection omits the reference to the notional Reinsurance Account which was deleted by Item 1 while still expressing the intention of the previous subsection 73BC(12) which allows the Council to pay an amount to a registered health benefits organisation from the Health Benefits Reinsurance Trust Fund.

PART 2 - AMENDMENTS OF THE HEALTH LEGISLATION (PRIVATE HEALTH INSURANCE REFORM) AMENDMENT ACT 1995

Item 5 - Items 6 to 10 of Schedule 4

This is an amendment that is consequential on the replacement of section 73BB. It removes items amending section 73BB of the *National Health Act 1953* from Schedule 4 of the *Health Legislation (Private Health Insurance Reform) Amendment Act 1995* which will commence on 1 July 1997 as those items are no longer necessary.

Item 6 - Application

This is a consequential amendment which establishes the order in which particular events are to happen. Item 6 provides for Item 5 to be omitted if Schedule 4 of the *Health Legislation (Private Health Insurance Reform) Amendment Act 1995* commences before Item 5.

SCHEDULE 2

AMENDMENTS OF THE NATIONAL HEALTH ACT 1953 RELATING TO THE COMPLAINTS COMMISSIONER

Item 1 - After Division 5 of Part VIC

This item inserts, after Division 5 of Part VIC of the *National Health Act 1953*, new Division 5A - Finance, containing four new sections.

Section 82ZUGA - Application of money

New section 82ZUGA prescribes how the Complaints Commissioner's money is to be applied. It can only be applied to pay the costs and other obligations incurred by the Commissioner in performing functions or exercising powers under the Act; in paying remuneration and allowances and making investments under the Act; and in making other authorised payments.

Section 82ZUGB - Application of Division 3 of Part XI of the Audit Act

New section 82ZUGB replaces section 82ZVA which is identical, and is repealed by Item 2 of Schedule 2. This change moves the provision that applies the *Audit Act 1901* to the Complaints Commissioner, from Division 6 (containing miscellaneous provisions) to new Division 5A.

New subsection 82ZUGB(1) provides that the Complaints Commissioner is an authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

New subsection 82ZUGB(2) prescribes the information that the annual report of the Complaints Commissioner under the *Audit Act 1901* must include. It is a summary of the number and nature of complaints received, and the outcomes of any actions taken, recommendations made or investigations conducted, in relation to such complaints. The report must also summarise the outcomes of complaints referred to other bodies; the investigations initiated by the Commissioner or requested by the Minister, and the outcomes of such investigations.

Section 82ZUGC - Investment of money

This section specifies how money not immediately required for the purposes of the Complaints Commissioner may be invested. It may be invested only on deposit with an approved bank as defined under the *Audit Act 1901*, in Commonwealth securities, or in any other manner approved by the Treasurer.

Section 82ZUGD - Contracts

New subsection 82ZUGD(1) provides that the Complaints Commissioner must have the Minister's approval to enter into a contract valued at $250,000 or more.

New subsection 82ZUGD(2) provides that the limit set in subsection (1) does not apply to the investment of money under new section 82ZUGC.

Item 2 - Section 82ZVA

Item 2 repeals section 82ZVA of the *National Health Act 1953* as this section has been replaced by section 82ZUGB.

SCHEDULE 3

AMENDMENTS OF THE NATIONAL HEALTH ACT 1953 RELATING TO THE PROVISION OF INFORMATION BY REGISTERED ORGANISATIONS

Item 1 - Subsection 73AB(1)

This item removes the requirement for registered health benefits organisations to provide information required under the Hospital Casemix Protocol to the Private Health Insurance Administration Council. Organisations will now only have to provide that data to the Department of Human Services and Health.

Item 2 - Subsection 73AB(4)
Item 3 - Subsection 73AB(4A)

These items clarify that all the information concerning episodes in the relevant period in the possession of a registered health benefits organisation which relates to the Hospital Casemix Protocol must be provided to the Department of Human Services and Health whether or not it was provided to the organisation under a hospital purchaser-provider agreement.

Item 4 - Section 73AB(5)

This item is consequential on the removal of the requirement for registered health benefits organisations to provide information to the Private Health Insurance Administration Council under subsection 73AB(1).

Item 5 - Paragraph 82G(1)(ba)

This item clarifies that the kind of information determined in writing by the Minister will be obtained by the Private Health Insurance Administration Council from the Department of Human Services and Health rather than from registered health benefits organisations.

Item 6 - Section 82G

This item provides that the Secretary to the Department of Human Services and Health must provide information of the kind determined by the Minister under paragraph 82G(1)(ba) to the Private Health Insurance Administration Council.

SCHEDULE 4

AMENDMENTS OF THE NATIONAL HEALTH ACT 1953 RELATING TO HEALTH INSURANCE BUSINESS

Item 1 - Subsection 67(4) (paragraph (a) of the definition of *health insurance business*)

This item inserts a new paragraph which includes in the definition of "health insurance business", those products where liability depends on an occurrence ordinarily requiring hospitalisation or relevant health services. Relevant health services are defined in subsection 67(4) as medical, surgical, diagnostic, nursing, dental, chiropody, chiropractic, eye therapy, occupational therapy, physiotherapy, speech therapy or similar services of treatment.

The definition will apply whether or not the payment of benefits is dependent upon such treatment or services being required by, or provided to, the insured. The definition will also apply whether or not fees or charges are payable by the insured in relation to the provision of the treatment or services.