



## **Medibank Private Sale Act 2006**

**No. 160, 2006**

**An Act about the sale of the Commonwealth's  
equity in Medibank Private Limited, and for other  
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Medibank Private Sale Act 2006

No. 160, 2006

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## **An Act about the sale of the Commonwealth's equity in Medibank Private Limited, and for other purposes**

*[Assented to 11 December 2006]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Medibank Private Sale Act 2006*.

### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

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column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	11 December 2006
2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	12 December 2006
3. Schedule 3	The designated sale day declared under section 3.	1 December 2014 (F2014L01631)

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Designated sale day**

- (1) If, in the opinion of the Minister for Finance, a particular day is the first day after the commencement of Schedules 1 and 2 on which all the shares in Medibank Private are held by a person, or persons, other than the Commonwealth or a wholly-owned Commonwealth company, the Minister for Finance must, by written instrument, declare the day to be the designated sale day for Medibank Private.
- (2) The declaration under subsection (1) has effect accordingly.
- (3) The declaration under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the declaration.
- (4) The designated sale day may be earlier than the day on which the declaration under subsection (1) is registered under the *Legislative Instruments Act 2003*.

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(5) In this section:

***Medibank Private*** means Medibank Private Limited (ACN 080 890 259).

***Minister for Finance*** means the Minister administering the *Financial Management and Accountability Act 1997*.

***wholly-owned Commonwealth company*** has the same meaning as in Schedule 2.

#### **4 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments commencing on the day after Royal Assent**

### **Part 1—Sale of the Commonwealth's equity in Medibank Private Limited**

#### ***Health Insurance Commission (Reform and Separation of Functions) Act 1997***

##### **1 Section 3**

Omit:

- |   |
|---|
| <ul style="list-style-type: none"><li>• Following separation, the Commonwealth is to retain ownership of the nominated company.</li></ul> |
|---|

##### **2 At the end of section 34**

Add:

- (7) To avoid doubt, this section does not prevent or limit the formulation, entering into, or carrying out, of a Medibank Private sale scheme.
- (8) In this section:

*Medibank Private sale scheme* has the same meaning as in the *Medibank Private Sale Act 2006*.

##### **3 Section 35**

Repeal the section.



## **Part 2—Other amendments**

### *National Health Act 1953*

#### **4 Subsection 68(3)**

Omit “established”, substitute “that is, or is to be, conducted”.

#### **5 Paragraph 73AAD(2)(d)**

Repeal the paragraph, substitute:

- (d) if the organization is conducted for profit:
  - (i) to distribute profits to shareholders in the organization;  
or
  - (ii) to return capital to shareholders in the organization;

#### **6 At the end of section 73AAD**

Add:

- (3) For the purposes of subparagraph (2)(d)(i), it is immaterial whether the profits were generated at a time when the organization was not conducted for profit.

#### **7 After section 73AAD**

Insert:

#### **73AADA Compensation for acquisition of property**

- (1) If:
  - (a) the operation of:
    - (i) paragraph 73AAD(2)(d); or
    - (ii) subsection 73AAD(3);in relation to a registered organization would result in an acquisition of property from a person otherwise than on just terms; and
  - (b) subitem 58(3) of Schedule 2 to the *Medibank Private Sale Act 2006* does not apply in relation to that operation;the organization is liable to pay a reasonable amount of compensation to the person.

- (2) If the organization and the person do not agree on the amount of the compensation, the person may institute proceedings in the Court for the recovery from the organization of such reasonable amount of compensation as the court determines.
- (3) The organization may make a payment from its health benefits fund for the purpose of paying compensation under this section.
- (4) A payment, or a decision to make a payment, under subsection (3) does not contravene section 73AAC or 73AAD.
- (5) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

## Schedule 2—Facilitation of the sale of the Commonwealth's equity in Medibank Private Limited etc.

### Part 1—Introduction

#### 1 Definitions

In this Schedule:

**associated person** means:

- (a) a Minister; or
- (b) an individual who holds an office under, or is employed by, the Commonwealth; or
- (c) a person appointed or engaged under the *Public Service Act 1999*; or
- (d) a person who performs services for or on behalf of the Commonwealth in connection with:
  - (i) the formulation, entering into, or carrying out, of a Medibank Private sale scheme; or
  - (ii) the Commonwealth's capacity as a shareholder in a Medibank Private company.

**charge** has the same meaning as in the *Corporations Act 2001*.

**constitution**, in relation to a company, has the same meaning as in the *Corporations Act 2001*.

**contributor**, in relation to a health benefits fund, has the same meaning as in the *National Health Act 1953*.

**designated company** has the meaning given by item 2.

**Federal Court** means the Federal Court of Australia.

**financial product** has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

**holding company** has the meaning given by item 5.

**hybrid-security issuer company** has the meaning given by item 5.

**interest** in a share (except in Part 4) means a legal or equitable interest in the share.

**listed disclosing entity** has the same meaning as it is given by section 9 of the *Corporations Act 2001*.

**listing market**, in relation to a listed disclosing entity, has the same meaning as it is given by section 9 of the *Corporations Act 2001*.

**listing rules** of a market has the same meaning as it is given by section 9 of the *Corporations Act 2001*.

**Medibank Private** means Medibank Private Limited (ACN 080 890 259).

**Medibank Private Board** means the board of directors of a Medibank Private company.

**Medibank Private company** means:

- (a) Medibank Private; or
- (b) the holding company.

**Medibank Private fund** means the health benefits fund conducted by Medibank Private.

**Medibank Private sale scheme** has the meaning given by item 5.

**Minister for Finance** means the Minister administering the *Financial Management and Accountability Act 1997*.

**modify** has the same meaning as in the *Corporations Act 2001*.

**registered health benefits organization** has the same meaning as in the *National Health Act 1953*.

**rules**, in relation to a registered health benefits organization, has the same meaning as in the *National Health Act 1953*.

**sale-scheme hybrid security** has the meaning given by item 6.

**scheme** (except in Part 4) means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

**wholly-owned Commonwealth company** has the same meaning as in the *Commonwealth Authorities and Companies Act 1997* (in working out whether a company is covered by this definition, ignore any sale-scheme hybrid securities issued by the company).

## **2 Designated company**

- (1) For the purposes of this Schedule, a **designated company** is:
    - (a) a wholly-owned Commonwealth company; or
-

(b) a body corporate specified in a written declaration made by the Minister for Finance under this paragraph.

(2) A declaration under paragraph (1)(b) is not a legislative instrument.

### **3 External Territories**

This Schedule extends to the external Territories.

### **4 Crown to be bound**

This Schedule binds the Crown in each of its capacities.

## **Part 2—Medibank Private sale scheme**

### **5 Medibank Private sale scheme**

#### *Object*

- (1) The object of this item is to define the expressions *Medibank Private sale scheme*, *holding company* and *hybrid-security issuer company*.

#### *Medibank Private sale scheme*

- (2) For the purposes of this Schedule, a *Medibank Private sale scheme* is:
- (a) a scheme the object of which is to achieve the transfer of the whole of the Commonwealth's equity in Medibank Private to one or more persons; or
  - (b) a scheme the object of which is to achieve:
    - (i) the transfer of the whole of the Commonwealth's equity in Medibank Private to a wholly-owned Commonwealth company (the *holding company*); and
    - (ii) the transfer of the whole of the Commonwealth's equity in the holding company to one or more persons.
- (3) A Medibank Private sale scheme must comply with any rules set out in a determination in force under subitem (4).
- (4) The Minister for Finance may make a written determination setting out rules that are to be complied with by a Medibank Private sale scheme.
- (5) A determination under subitem (4) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the determination.
- (6) A Medibank Private sale scheme may involve any or all of the following:
- (a) the transfer by the Commonwealth of any of its shares in a Medibank Private company;
  - (b) an investor in a Medibank Private company initially acquiring a particular interest in shares in the company and subsequently acquiring the remaining interests in those shares;
  - (c) the payment by a Medibank Private company of a dividend;

- (d) a reduction of a Medibank Private company's share capital;
  - (e) a return of capital by a Medibank Private company;
  - (f) the cancellation of a particular parcel of shares in a Medibank Private company held by the Commonwealth;
  - (g) a Medibank Private company buying back shares in itself;
  - (h) the issue of securities in a Medibank Private company;
  - (i) the redemption of redeemable preference shares in a Medibank Private company held by the Commonwealth;
  - (j) the modification of a Medibank Private company's constitution (including, in the case of Medibank Private, a modification of a kind referred to in subitem 20(1));
  - (k) the modification of Medibank Private's rules (including a modification of a kind referred to in subitem 20(3));
  - (l) the issue by the Commonwealth or a Medibank Private company of sale-scheme hybrid securities;
  - (m) an arrangement under which one or more designated companies (each of which is called a **hybrid-security issuer company**) issue sale-scheme hybrid securities;
  - (n) the guarantee by the Commonwealth of obligations of a hybrid-security issuer company in relation to sale-scheme hybrid securities (for example, obligations to make payments of interest or dividends);
  - (o) an agreement of the kind known as a securities lending arrangement, where the securities lending arrangement relates to shares in a Medibank Private company;
  - (p) market stabilisation measures in relation to a Medibank Private company.
- (7) In determining whether a scheme is a Medibank Private sale scheme, regard must be had to the economic and commercial substance of the scheme.
- (8) Subitems (6) and (7) do not, by implication, limit subitem (2).

**Definition**

- (9) In this item:  
**securities** includes:
- (a) shares; and

- (b) debentures (within the meaning of the *Corporations Act 2001*).

## **6 Sale-scheme hybrid securities**

- (1) For the purposes of this Schedule, a ***sale-scheme hybrid security*** is:
- (a) an interest-bearing security that is issued on the basis that it will or may be redeemed in exchange for a share or shares in a Medibank Private company; or
  - (b) a share that is issued on the basis that it will or may be redeemed in exchange for a share or shares in a Medibank Private company; or
  - (c) any other security or financial product that is issued on the basis that it will or may be redeemed in exchange for a share or shares in a Medibank Private company; or
  - (d) an option to acquire a share or shares in a Medibank Private company; or
  - (e) an interest-bearing security that is issued on the basis that it will or may be converted to a share or shares in a Medibank Private company; or
  - (f) any other security or financial product that is issued on the basis that it will or may be converted to a share or shares in a Medibank Private company; or
  - (g) an interest-bearing security that is issued on the basis that it will or may be exchanged for a share or shares in a Medibank Private company; or
  - (h) any other security or financial product that is issued on the basis that it will or may be exchanged for a share or shares in a Medibank Private company; or
  - (i) a security, or a financial product, that:
    - (i) is specified in a written declaration made by the Minister for Finance under this subparagraph; and
    - (ii) relates directly or indirectly to a Medibank Private company.
- (2) A security or financial product covered by a paragraph of subitem (1) may (but need not) include a charge, pledge or lien.
- (3) A security covered by paragraph (1)(a), (e) or (g) may be issued in or outside Australia, and may be denominated in:
- (a) Australian currency; or
-



- (b) a currency other than Australian currency.
- (4) A share covered by paragraph (1)(b) may be issued in or outside Australia, and any rights or obligations may be denominated in:
- (a) Australian currency; or
  - (b) a currency other than Australian currency.
- (5) A security or financial product covered by paragraph (1)(c), (f), (h) or (i) may be issued in or outside Australia, and any rights or obligations may be denominated in:
- (a) Australian currency; or
  - (b) a currency other than Australian currency.
- (6) An option covered by paragraph (1)(d) may be issued in or outside Australia, and the exercise price may be denominated in:
- (a) Australian currency; or
  - (b) a currency other than Australian currency.
- (7) A declaration under subparagraph (1)(i)(i) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but section 42 of that Act does not apply to the declaration.
- (8) In this item:  
*security* has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

## **7 Authorisation of borrowing—issue of sale-scheme hybrid securities**

To the extent to which the issue of sale-scheme hybrid securities under a Medibank Private sale scheme involves a borrowing of money by the Commonwealth, that borrowing is authorised by this item.

Note: Section 37 of the *Financial Management and Accountability Act 1997* provides that an agreement for the borrowing of money by the Commonwealth is of no effect unless the borrowing is authorised by an Act.

## **8 Appropriation—costs incurred in connection with a Medibank Private sale scheme**

- (1) The Consolidated Revenue Fund is appropriated to the extent necessary for the purposes of the payment or discharge of the costs, expenses and other obligations incurred by the Commonwealth in connection with the
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formulation, entering into, or carrying out, of a Medibank Private sale scheme.

- (2) The costs, expenses and obligations covered by subitem (1) include (but are not limited to) the following:
- (a) legal and accounting fees;
  - (b) costs of undertaking due diligence inquiries;
  - (c) underwriting fees;
  - (d) costs associated with an offer document;
  - (e) marketing expenses;
  - (f) other administrative and logistical expenses;
  - (g) calls on indemnities granted by the Commonwealth;
  - (h) calls on guarantees given by the Commonwealth;
  - (i) obligations to make payments of amounts in relation to sale-scheme hybrid securities issued by the Commonwealth (for example, payments of interest).

## **9 Assistance given by a Medibank Private company or a Medibank Private Board in connection with a Medibank Private sale scheme**

### *Giving assistance on own initiative*

- (1) A Medibank Private company may, on its own initiative, assist the Commonwealth in connection with the formulation, entering into, or carrying out, of a Medibank Private sale scheme.
- (2) A member of a Medibank Private Board may, on the member's own initiative, assist the Commonwealth in connection with the formulation, entering into, or carrying out, of a Medibank Private sale scheme.
- (3) The Minister for Finance may, by written notice given to a Medibank Private company, give directions to the company about the exercise of the company's powers under subitem (1). The company must comply with the direction.
- (4) The Minister for Finance may, by written notice given to a member of a Medibank Private Board, give directions to the member about the exercise of the member's powers under subitem (2). The member must comply with the direction.

*Giving assistance when requested by the Minister for Finance*

- (5) A Medibank Private company must, when requested in writing by the Minister for Finance to do so, assist the Commonwealth in connection with the formulation, entering into, or carrying out, of a Medibank Private sale scheme. The assistance is to be given within the period, and in the form and manner, specified in the request.
- (6) A Medibank Private Board must, when requested in writing by the Minister for Finance to do so, assist the Commonwealth in connection with the formulation, entering into, or carrying out, of a Medibank Private sale scheme. The assistance is to be given within the period, and in the form and manner, specified in the request.

*Immunity*

- (7) To avoid doubt, the giving of assistance as mentioned in subitem (1), (2), (5) or (6), the making of a request under subitem (5) or (6), or the giving of a direction under subitem (3) or (4), does not result in a contravention of, or give rise to a liability or remedy under:
- (a) a provision of the *Corporations Act 2001*; or
  - (b) a provision of the *National Health Act 1953*; or
  - (c) a rule of common law or equity (other than a rule of administrative law).

*Consequences of a contravention*

- (8) A contravention of subitem (3), (4), (5) or (6) is not an offence. However, it is a ground for obtaining an injunction under Part 7.

**10 Giving of assistance—ancillary provisions**

- (1) The assistance mentioned in subitem 9(1), (2), (5) or (6) may take the form of:
- (a) the giving of information; or
  - (b) the giving of financial assistance (within the meaning of Part 2J.3 of the *Corporations Act 2001*); or
  - (c) the giving of a financial benefit to a related party (within the meaning of Chapter 2E of the *Corporations Act 2001*); or
  - (d) the provision, by a Medibank Private company's directors or employees, of facilities, information and other assistance in connection with the conduct of:

**Schedule 2** Facilitation of the sale of the Commonwealth's equity in Medibank Private Limited etc.

**Part 2** Medibank Private sale scheme

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- (i) a due diligence procedure or a similar process; or
  - (ii) a market briefing or a similar process.
- (2) Subitem (1) does not, by implication, limit the forms in which assistance may be given.
- (3) Item 9 does not, by implication, limit any rights that are conferred on shareholders by other laws.
- (4) Item 9 does not authorise the imposition of taxation (within the meaning of section 55 of the Constitution).
- (5) Item 9 does not, by implication, limit:
  - (a) the executive power of the Commonwealth to enter into an agreement; or
  - (b) the capacity of a Medibank Private company, or of a member of a Medibank Private Board, to enter into an agreement with the Commonwealth.
- Note: This ensures, for example, that the Commonwealth can enter into a co-operation agreement with a Medibank Private company or with a member of a Medibank Private Board.
- (6) Item 9 extends to the giving of assistance outside Australia, whether or not in a foreign country.
- (7) Medibank Private may make a payment from the Medibank Private fund for the purpose of:
  - (a) paying expenses incurred by it in relation to the giving of assistance under item 9; or
  - (b) paying expenses incurred by a member of a Medibank Private Board in relation to the giving of assistance under item 9.
- Note: Item 11 makes provision for the reimbursement of expenses incurred in relation to the giving of assistance under item 9.
- (8) A payment, or a decision to make a payment, under subitem (7) does not contravene section 73AAC or 73AAD of the *National Health Act 1953*.

**11 Reimbursement of expenses incurred in giving assistance**

- (1) This item applies if:
    - (a) assistance is given under item 9; and
-

- (b) a Medibank Private company or a member of a Medibank Private Board incurs expenses in relation to the giving of that assistance.
- (2) The Minister for Finance may authorise the payment by the Commonwealth to the company, or to the member, as the case may be, of an amount equal to so much of those expenses as the Minister for Finance considers reasonable.
- (3) This item does not, by implication, limit the executive power of the Commonwealth to make a payment to a Medibank Private company or to a member of a Medibank Private Board.

## **12 Use by the Commonwealth of information obtained from a Medibank Private company or a Medibank Private Board**

- (1) This item applies to information obtained under item 9.
- (2) The Commonwealth, or an associated person, may use the information for a purpose in connection with the formulation, entering into, or carrying out, of a Medibank Private sale scheme.
- (3) The Commonwealth, or an associated person, may disclose the information for a purpose in connection with the formulation, entering into, or carrying out, of a Medibank Private sale scheme.
- (4) If subitem (2) or (3) does not apply, the Commonwealth, or an associated person, may use or disclose the information for a purpose in connection with the Commonwealth's capacity as a shareholder in a Medibank Private company, so long as the use or disclosure does not involve giving the information to a person who is not an associated person.
- (5) To avoid doubt, the use or disclosure of information as mentioned in subitem (2), (3) or (4) does not result in a contravention of, or give rise to a liability or remedy under:
- (a) a provision of the *Corporations Act 2001*; or
  - (b) a provision of the *National Health Act 1953*; or
  - (c) a rule of common law or equity (other than a rule of administrative law).

**13 Agreements relating to the protection of information obtained from a Medibank Private company or a Medibank Private Board**

- (1) The Minister for Finance may, on behalf of the Commonwealth, enter into an agreement with a Medibank Private company, or with one or more members of a Medibank Private Board, relating to the protection of information:
  - (a) that is obtained under item 9; and
  - (b) the publication of which might be expected to prejudice substantially a Medibank Private company's commercial interests.
- (2) The agreement may be enforced as if it were a contract.
- (3) This item does not, by implication, limit the executive power of the Commonwealth to enter into agreements.

**14 Medibank Private company's obligations to disclose information**

- (1) To avoid doubt, the mere fact that particular information was requested, required or given under item 9 is not a ground on which Medibank Private can be required to disclose or notify that, or any other, information under:
    - (a) a provision of the *Corporations Act 2001*; or
    - (b) if Medibank Private becomes a listed disclosing entity after the commencement of this item—the listing rules of a listing market in relation to Medibank Private; or
    - (c) a provision of the *National Health Act 1953*.
  - (2) To avoid doubt, the mere fact that particular information was requested, required or given under item 9 is not a ground on which the holding company can be required to disclose or notify that, or any other, information under:
    - (a) a provision of the *Corporations Act 2001*; or
    - (b) if the holding company ceases to be a wholly-owned Commonwealth company, and becomes a listed disclosing entity, after the commencement of this item—the listing rules of a listing market in relation to the holding company; or
    - (c) a provision of the *National Health Act 1953*.
-

## **15 Information statements**

- (1) The Minister for Finance may:
- (a) prepare a written statement about the formulation, entering into, or carrying out, of a Medibank Private sale scheme; and
  - (b) give the statement to Medibank Private, together with a written direction requiring Medibank Private to:
    - (i) take all reasonable steps to ensure that the contributors to the Medibank Private fund are given a copy of the statement; and
    - (ii) make a copy of the statement available on Medibank Private's Internet site;as soon as practicable.

- (2) Medibank Private must comply with a direction under subitem (1).

### *Immunity*

- (3) To avoid doubt, giving or complying with a direction under subitem (1) does not result in a contravention of, or give rise to a liability or remedy under:
- (a) a provision of the *Corporations Act 2001*; or
  - (b) a provision of the *National Health Act 1953*; or
  - (c) a rule of common law or equity (other than a rule of administrative law).

### *Consequences of a contravention*

- (4) A contravention of subitem (2) is not an offence. However, it is a ground for obtaining an injunction under Part 7.

### *Other powers not limited*

- (5) This item does not, by implication, limit item 9.

## **16 Payment and reimbursement of expenses incurred in complying with a direction about information statements**

*Payment of expenses*

- (1) Medibank Private may make a payment from the Medibank Private fund for the purpose of paying expenses incurred by it in complying with a direction under item 15.
- (2) A payment, or decision to make a payment, under subitem (1) does not contravene section 73AAC or 73AAD of the *National Health Act 1953*.

*Reimbursement of expenses*

- (3) If:
  - (a) Medibank Private complies with a direction under item 15; and
  - (b) Medibank Private incurs expenses in complying with the direction;the Minister for Finance may authorise the payment by the Commonwealth to Medibank Private of an amount equal to so much of those expenses as the Minister for Finance considers reasonable.
- (4) This item does not, by implication, limit the executive power of the Commonwealth to make a payment to Medibank Private.

**17 Commonwealth to be bound by Chapters 6CA, 6D and 7 of the Corporations Act etc.**

- (1) Despite subsection 5A(4) of the *Corporations Act 2001* (but subject to subsection 5A(5) of that Act), Chapters 6CA, 6D and 7 of the *Corporations Act 2001* bind the Crown in right of the Commonwealth to the extent to which those Chapters deal with the formulation, entering into, or carrying out, of a Medibank Private sale scheme.
- (2) Subitem (1) has effect despite anything in the *Corporations Act 2001*.

*Chinese wall arrangements*

- (3) The Commonwealth does not contravene subsection 1043A(1) of the *Corporations Act 2001* by entering into a transaction or agreement at any time in relation to:
  - (a) shares in a Medibank Private company; or
  - (b) sale-scheme hybrid securities; or
  - (c) a Medibank Private sale scheme;



merely because of information in the possession of an officer or employee of the Commonwealth if:

- (d) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than that officer or employee; and
  - (e) it had in operation at that time arrangements that could reasonably be expected to ensure that:
    - (i) the information was not communicated to the person or persons who made the decision; and
    - (ii) no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and
  - (f) the information was not so communicated and no such advice was given.
- (4) A reference in subitem (3) to an *officer* of the Commonwealth includes a reference to the holder of an office under a law of the Commonwealth.

## **18 Reduction of a Medibank Private company's share capital**

- (1) This item applies to a reduction of a Medibank Private company's share capital if:
- (a) the reduction relates to the formulation, entering into, or carrying out, of a Medibank Private sale scheme; and
  - (b) the reduction is part of an overall arrangement or plan that involves:
    - (i) the replacement of a particular type of share with one or more other types of share; and
    - (ii) the replacement of the reduced share capital.
- (2) Notice of the reduction does not have to be given to the creditors of a Medibank Private company.
- (3) The creditors of a Medibank Private company are not entitled to object to the reduction.
- (4) The reduction does not have to be confirmed by a court.
- (5) Subitems (2), (3) and (4) have effect despite anything in Part 2J.1 of the *Corporations Act 2001*.

## **19 Rights of certain persons to be subject to this Schedule**

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**Schedule 2** Facilitation of the sale of the Commonwealth's equity in Medibank Private Limited etc.

**Part 2** Medibank Private sale scheme

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The rights of the following persons are subject to this Schedule:

- (a) a Medibank Private company's shareholders;
- (b) a Medibank Private company's creditors;
- (c) a person who is a contributor to the Medibank Private fund.

## **Part 3—Profit status of Medibank Private**

### **20 Change of profit status—modifying Medibank Private's constitution and rules**

#### *Modification of constitution*

- (1) If all the shares in Medibank Private are held by the Commonwealth or the holding company, Medibank Private may, in accordance with section 249B of the *Corporations Act 2001*, do any or all of the following:
  - (a) modify its constitution so as to permit it to be conducted for profit;
  - (b) modify its constitution so as to permit it to distribute profits to its shareholders;
  - (c) modify its constitution so as to permit it to return capital to its shareholders.
- (2) Subitem (1) has effect despite any provision of Medibank Private's constitution.

#### *Modification of rules*

- (3) If all the shares in Medibank Private are held by the Commonwealth or the holding company, Medibank Private may do any or all of the following:
  - (a) modify its rules so as to permit it to be conducted for profit;
  - (b) modify its rules so as to permit it to distribute profits to its shareholders;
  - (c) modify its rules so as to permit it to return capital to its shareholders.
- (4) Subitem (3) has effect despite:
  - (a) any provision of Medibank Private's constitution; or
  - (b) any provision of Medibank Private's rules.
- (5) The Minister for Finance may, by written notice given to Medibank Private, give directions to Medibank Private relating to the exercise of its powers under subitem (3).
- (6) Medibank Private must comply with a direction under subitem (5).

**Schedule 2** Facilitation of the sale of the Commonwealth's equity in Medibank Private Limited etc.

**Part 3** Profit status of Medibank Private

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*Notice to contributors*

- (7) At least 60 days before a modification of a kind referred to in subitem (1) or (3) takes effect, Medibank Private must take all reasonable steps to ensure that the contributors to the Medibank Private fund are informed of the nature of the modification in terms that can reasonably be expected to be understood.
- (8) The Minister for Finance may, by written notice given to Medibank Private, give directions to Medibank Private relating to the performance of its obligations under subitem (7).
- (9) Medibank Private must comply with a direction under subitem (8).

*Immunity etc.*

- (10) Section 78 of the *National Health Act 1953* does not apply to a modification of a kind referred to in subitem (3).
  - (11) A modification of a kind referred to in subitem (1) or (3), or giving or complying with a direction under subitem (5) or (8):
    - (a) does not result in a breach of contract; and
    - (b) does not result in a contravention of:
      - (i) the *Trade Practices Act 1974*; or
      - (ii) a corresponding law of a State or Territory; and
    - (c) does not result in a contravention of, or give rise to a liability or remedy under:
      - (i) a provision of the *Corporations Act 2001*; or
      - (ii) a provision of the *National Health Act 1953*; or
      - (iii) a rule of common law or equity (other than a rule of administrative law).
  - (12) If, at any time before a modification of a kind referred to in subitem (1) or (3) took effect, Medibank Private, or a person authorised by Medibank Private, made:
    - (a) a representation to the effect that Medibank Private is not, or will not be, conducted for profit; or
    - (b) a similar representation;then:
    - (c) the representation does not result in a contravention of:
      - (i) the *Trade Practices Act 1974*; or
-

- (ii) a corresponding law of a State or Territory; and
- (d) the representation does not result in a breach of contract; and
- (e) the representation does not result in a contravention of, or give rise to a liability or remedy under, a rule of common law or equity.

*Consequences of a contravention*

- (13) A contravention of subitem (6) or (9) is not an offence. However, it is a ground for obtaining an injunction under Part 7.

**21 Payment and reimbursement of expenses incurred in modifying Medibank Private's constitution and rules etc.**

*Payment of expenses*

- (1) Medibank Private may make a payment from the Medibank Private fund for the purpose of paying expenses incurred by it in:
  - (a) modifying its constitution as mentioned in subitem 20(1); or
  - (b) modifying its rules as mentioned in subitem 20(3); or
  - (c) complying with subitem 20(7).
- (2) A payment, or a decision to make a payment, under subitem (1) does not contravene section 73AAC or 73AAD of the *National Health Act 1953*.

*Reimbursement of expenses*

- (3) If:
    - (a) Medibank Private:
      - (i) modifies its constitution as mentioned in subitem 20(1); or
      - (ii) modifies its rules as mentioned in subitem 20(3); or
      - (iii) complies with subitem 20(7); and
    - (b) Medibank Private incurs expenses in doing so;the Minister for Finance may authorise the payment by the Commonwealth to Medibank Private of an amount equal to so much of those expenses as the Minister for Finance considers reasonable.
  - (4) This item does not, by implication, limit the executive power of the Commonwealth to make a payment to Medibank Private.
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## **22 Information statements**

- (1) The Minister for Finance may:
- (a) prepare a written statement about a modification, or a proposed modification, of a kind referred to in subitem 20(1) or (3); and
  - (b) give the statement to Medibank Private, together with a written direction requiring Medibank Private to:
    - (i) take all reasonable steps to ensure that the contributors to the Medibank Private fund are given a copy of the statement; and
    - (ii) make a copy of the statement available on Medibank Private's Internet site;as soon as practicable.
- (2) Medibank Private must comply with a direction under subitem (1).

### *Immunity*

- (3) To avoid doubt, giving or complying with a direction under subitem (1) does not result in a contravention of, or give rise to a liability or remedy under:
- (a) a provision of the *Corporations Act 2001*; or
  - (b) a provision of the *National Health Act 1953*; or
  - (c) a rule of common law or equity (other than a rule of administrative law).

### *Consequences of a contravention*

- (4) A contravention of subitem (2) is not an offence. However, it is a ground for obtaining an injunction under Part 7.

### *Other powers not limited*

- (5) This item does not, by implication, limit item 9.

## **23 Payment and reimbursement of expenses incurred in complying with a direction about information statements**

*Payment of expenses*

- (1) Medibank Private may make a payment from the Medibank Private fund for the purpose of paying expenses incurred by it in complying with a direction under item 22.
- (2) A payment, or a decision to make a payment, under subitem (1) does not contravene section 73AAC or 73AAD of the *National Health Act 1953*.

*Reimbursement of expenses*

- (3) If:
  - (a) Medibank Private complies with a direction under item 22 and
  - (b) Medibank Private incurs expenses in complying with the direction;the Minister for Finance may authorise the payment by the Commonwealth to Medibank Private of an amount equal to so much of those expenses as the Minister for Finance considers reasonable.
- (4) This item does not, by implication, limit the executive power of the Commonwealth to make a payment to Medibank Private.

## **Part 4—Restrictions on ownership of Medibank Private companies**

### **Division 1—Introduction**

#### **24 Sunset provision**

This Part ceases to have effect at the end of the period of 5 years beginning at the start of the designated sale day declared under section 3.

#### **25 Extra-territorial operation**

This Part extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

### **Division 2—Limits on ownership**

#### **26 Application to the holding company**

This Division applies in relation to the holding company even if the holding company ceases to be a wholly-owned Commonwealth company after the commencement of this item.

#### **27 Meaning of *unacceptable ownership situation***

##### *Medibank Private*

- (1) For the purposes of this Part, an *unacceptable ownership situation* exists in relation to Medibank Private if:
    - (a) there is or are one or more persons each of whom holds a particular type of stake in Medibank Private of more than 15%; or
    - (b) both:
      - (i) the holding company is in existence; and
      - (ii) a person other than the holding company holds any type of direct control interest in Medibank Private (disregarding subitem 42(6)).
  - (2) However, an *unacceptable ownership situation* does not exist in relation to Medibank Private under paragraph (1)(a) if no person other
-



than the holding company holds any type of direct control interest in Medibank Private (disregarding subitem 42(6)).

*Holding company*

- (3) For the purposes of this Part, an ***unacceptable ownership situation*** exists in relation to the holding company if there is or are one or more persons each of whom holds a particular type of stake in that company of more than 15%.

Note 1: The paragraph (1)(a) and subsection (3) limits on the ownership of a Medibank Private company relate to a person's ***stake*** in that company.

Note 2: ***Stake*** is defined in item 33.

Note 3: A person's ***stake*** is calculated on the assumption that the only shares in a Medibank Private company are shares held by persons other than the Commonwealth—see item 42.

Note 4: A person's ***stake*** includes the interests of the person's associates.

Note 5: There are 4 different types of stake. The main types are the percentage of total paid-up share capital and the percentage of voting power.

Note 6: The paragraph (1)(a) and subsection (3) restrictions will be breached if any type of stake goes over the relevant limit.

Note 7: ***Direct control interest*** is defined in item 33.

**28 Prohibition of transactions that result in an unacceptable ownership situation**

- (1) A person must not enter into a transaction if the transaction has the result, in relation to a Medibank Private company, that an unacceptable ownership situation comes into existence in relation to the company.
- (2) If an unacceptable ownership situation exists in relation to a Medibank Private company because there is or are one or more persons each of whom holds a particular type of stake in that company of more than 15%, a person must not enter into a transaction if the transaction has the result that there is an increase in any type of stake held by any of those persons.
- (3) A contravention of subitem (1) or (2) is not an offence. However, it is a ground for obtaining an injunction under Part 7.

**29 Compliance by Medibank Private company**

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**Schedule 2** Facilitation of the sale of the Commonwealth's equity in Medibank Private Limited etc.

**Part 4** Restrictions on ownership of Medibank Private companies

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- (1) A Medibank Private company must take all reasonable steps to ensure that an unacceptable ownership situation does not exist in relation to the company.
- (2) A contravention of subitem (1) is not an offence. However, it is a ground for obtaining an injunction under Part 7.

### **30 Remedial orders**

- (1) If an unacceptable ownership situation exists in relation to a Medibank Private company, the Federal Court may, on application by the Minister for Finance or the company, make such orders as the court considers appropriate for the purpose of ensuring that that situation ceases to exist.
  - (2) The Federal Court's orders include:
    - (a) an order directing the disposal of shares; or
    - (b) an order restraining the exercise of any rights attached to shares; or
    - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
    - (d) an order that any exercise of rights attached to shares be disregarded.
  - (3) Subitem (2) does not, by implication, limit subitem (1).
  - (4) In addition to the Federal Court's powers under subitems (1) and (2), the court:
    - (a) has power, for the purpose of securing compliance with any other order made under this item, to make an order directing any person to do or refrain from doing a specified act; and
    - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
  - (5) The Federal Court may, before making an order under this item, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
  - (6) The Federal Court may, by order, rescind, vary or discharge an order made by it under this item or suspend the operation of such an order.
  - (7) The Federal Court must not make an order under this item if:
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- (a) the order would result in the acquisition of property from a person otherwise than on just terms; and
- (b) the order would be invalid because of paragraph 51(xxxi) of the Constitution.

(8) In subitem (7):

**acquisition of property** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**just terms** has the same meaning as in paragraph 51(xxxi) of the Constitution.

### **31 Anti-avoidance**

(1) If:

- (a) one or more persons enter into, begin to carry out or carry out a scheme; and
- (b) it would be concluded that the person, or any of the persons, who entered into, began to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of this Division in relation to any person or persons (whether or not mentioned in paragraph (a)); and
- (c) as a result of the scheme or a part of the scheme, a person (the **stakeholder**) increases the stakeholder's stake in a Medibank Private company;

the Minister for Finance may give the stakeholder a written direction to cease holding that stake within a specified time.

(2) A person must comply with a direction under subitem (1).

(3) A contravention of subitem (2) is not an offence. However, it is a ground for obtaining an injunction under Part 7.

(4) Applications may be made to the Administrative Appeals Tribunal for review of decisions made by the Minister for Finance under subitem (1).

(5) In subitem (4):

**decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

### **32 Giving of information**

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**Schedule 2** Facilitation of the sale of the Commonwealth's equity in Medibank Private Limited etc.

**Part 4** Restrictions on ownership of Medibank Private companies

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- (1) The regulations may make provision for and in relation to requiring a person:
- (a) to give information to the Minister for Finance, where the information is relevant to an ownership matter; and
  - (b) to give information to a Medibank Private company, where the information is relevant to an ownership matter.

Note: **Ownership matter** is defined by subitem (7).

***Statutory declarations***

- (2) The regulations may provide that information given in accordance with a requirement covered by paragraph (1)(a) or (b) must be verified by statutory declaration.

***No self-incrimination***

- (3) An individual is not required to give information in accordance with a requirement covered by paragraph (1)(a) or (b) if the information might tend to incriminate the individual or expose the individual to a penalty.

***Compliance***

- (4) A person must comply with regulations made for the purposes of this item.
- (5) A contravention of subitem (4) is not an offence. However, it is a ground for obtaining an injunction under Part 7.

***Regulations may confer discretionary powers on the Minister for Finance***

- (6) Regulations made for the purposes of this item may make provision for or in relation to a matter by conferring a power on the Minister for Finance. For example, the regulations could provide that the Minister for Finance may, by written notice given to a Medibank Private company, require the company to give the Minister for Finance, within the period and in the manner specified in the notice, specified information about an ownership matter.

***Definition***

- (7) For the purposes of this item, each of the following matters is an ***ownership matter***:
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- (a) whether a person holds a particular type of stake in a Medibank Private company;
- (b) if a person holds a particular type of stake in a Medibank Private company—the level of that stake;
- (c) if the holding company is in existence—whether a person other than the holding company holds any type of direct control interest in Medibank Private (disregarding subitem 42(6)).

## **Division 3—Interpretation**

### **33 Definitions**

In this Part:

**acquisition** includes an agreement to acquire, but does not include:

- (a) an acquisition by will or by devolution by operation of law;  
or
- (b) an acquisition by way of enforcement of a loan security.

**agreement** means any agreement, whether formal or informal and whether express or implied.

**arrangement** has the meaning given by item 34.

**associate** has the meaning given by item 35.

**company** means a body corporate.

**constituent document**, in relation to a company, means:

- (a) the constitution of the company; or
- (b) any rules or other documents constituting the company or governing its activities.

**direct control interest** has the meaning given by item 42.

**director** includes any person occupying the position of director of a company, by whatever name called.

**discretionary trust** means a trust where:

- (a) a person (who may include the trustee) is empowered (either unconditionally or on the fulfilment of a condition) to exercise any power of appointment or other discretion; and
- (b) the exercise of the power or discretion, or the failure to exercise the power or discretion, has the effect of determining, to any extent, either or both of the following:
  - (i) the identities of those who may benefit under the trust;

- (ii) how beneficiaries are to benefit, as between themselves, under the trust.

**increase**, in relation to a stake in a company, includes an increase from a starting point of nil.

**interest** in a share has the meaning given by item 38.

**lending money** includes providing non-equity finance where the provision of the finance may reasonably be regarded as equivalent to lending money.

**loan security** means a security held solely for the purposes of a moneylending agreement.

**moneylending agreement** means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, but does not include an agreement dealing with any matter unrelated to the carrying on of that business.

**officer**, in relation to a company, includes:

- (a) a director, secretary or employee of the company; or
- (b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument; or
- (c) a liquidator of the company appointed in a voluntary winding-up.

**power to appoint a director of a company** has a meaning affected by item 36.

**relative**, in relation to a person, means:

- (a) the person's spouse; or
- (b) another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person; or
- (c) a parent or remoter lineal ancestor of the person; or
- (d) a son, daughter or remoter issue of the person; or
- (e) a brother or sister of the person.

**scheme** means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

**share**, in relation to a company, means a share in the share capital of the company, and includes:

- (a) stock into which any or all of the share capital of the company has been converted; or  
(b) an interest in such a share or in such stock.

**stake**, in relation to a company, has the meaning given by item 41.

**sub-underwriter**, in relation to an issue of shares, means a person who is a party to an agreement with an underwriter that obliges the first-mentioned person to subscribe for any of the shares in circumstances specified in the agreement.

**unacceptable ownership situation** has the meaning given by item 27.

**underwriter**, in relation to an issue of shares, means a person who is a party to an agreement with the company issuing the shares that includes a provision obliging the person to subscribe for any of the shares in the event of a shortfall in public subscriptions below an amount specified in the agreement.

**voting power** has the meaning given by item 40.

### **34 Entering into an agreement or arrangement**

- (1) For the purposes of this Part, a person is taken to have **proposed to enter into an agreement or arrangement** if the person takes part in, or proposes to take part in, negotiations with a view to entering into the agreement or arrangement.
- (2) A reference in this Part to **entering into an agreement or arrangement** includes a reference to altering or varying an agreement or arrangement.
- (3) A reference in this Part to **entering into an arrangement** is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication and, without limiting the generality of the foregoing, includes a reference to:
- (a) entering into an agreement; or  
(b) creating a trust, whether express or implied; or  
(c) entering into a transaction;
- and a reference in this Schedule to an **arrangement** is to be construed accordingly.
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- (4) A reference in this Part to an **arrangement** does not include a reference to a moneylending agreement.

### **35 Associates**

- (1) For the purposes of this Part, the following persons are **associates** of a person:
- (a) a relative of the person;
  - (b) a partner of the person;
  - (c) a company of which the person is an officer;
  - (d) if the person is a company—an officer of the company;
  - (e) an employee or employer of the person;
  - (f) an officer of a company of which the person is an officer;
  - (g) an employee of an individual of whom the person is an employee;
  - (h) the trustee of a discretionary trust where the person or another person who is an associate of the person by virtue of another paragraph of this subitem benefits, or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting, under the trust, either directly or through any interposed companies, partnerships or trusts;
  - (i) a company whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person;
  - (j) a company where the person is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the company;
  - (k) a company in which the person has, apart from this paragraph, a particular type of stake of not less than 15%;
  - (l) if the person is a company—a person who holds, apart from this paragraph, a particular type of stake in the company of not less than 15%;
  - (m) a person who is, because of this subitem, an associate of any other person who is an associate of the person (including a person who is an associate of the person by any other application or applications of this paragraph).
- (2) If a person (the **first person**) enters, or proposes to enter, into an arrangement with another person (the **second person**) that relates to any of the following matters:
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- (a) the first person and the second person being in a position, by acting together, to control any of the voting power in a company;
- (b) the power of the first person and the second person, by acting together, to appoint or remove a director of a company;
- (c) the situation where one or more of the directors of a company are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the first person and the second person acting together;

then, the second person is taken to be an associate of the first person for the purposes of the application of a provision of this Part in relation to the matter concerned.

### **36 Power to appoint director**

- (1) A reference in this Part to a *power to appoint a director* includes a reference to such a power whether exercisable with or without the consent or concurrence of any other person.
- (2) For the purposes of this Part, a person is taken to have the power to appoint a director if:
  - (a) the person has the power (whether exercisable with or without the consent or concurrence of any other person) to veto such an appointment; or
  - (b) a person's appointment as a director of the company follows necessarily from that person being a director or other officer of the first-mentioned person.

### **37 Meaning of *entitled to acquire***

For the purposes of this Part, a person is *entitled to acquire* any thing if the person is absolutely or contingently entitled to acquire it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

### **38 Meaning of *interest in a share***

- (1) Subject to this item, for the purposes of this Part, a person holds an *interest* in a share if the person has any legal or equitable interest in the share.

- (2) For the purposes of this Part, a person is taken to hold an *interest* in a share if:
- (a) the person has entered into a contract to purchase the share; or
  - (b) the person has a right (otherwise than because of having an interest under a trust) to have the share transferred to the person or to the person's order (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
  - (c) the person has a right to acquire the share, or an interest in the share, under an option (whether the right is exercisable presently or in the future and whether or not on the fulfilment of a condition); or
  - (d) the person is otherwise entitled to acquire the share or an interest in the share; or
  - (e) the person is entitled (otherwise than because of having been appointed as a proxy or representative to vote at a meeting of members of the company or of a class of its members) to exercise or control the exercise of a right attached to the share.
- (3) Subitem (2) does not, by implication, limit subitem (1).
- (4) A person is taken to hold an *interest* in a share even if the person holds the interest in the share jointly with another person.
- (5) For the purpose of determining whether a person holds an interest in a share, it is immaterial that the interest cannot be related to a particular share.
- (6) An interest in a share is not to be disregarded only because of:
- (a) its remoteness; or
  - (b) the manner in which it arose; or
  - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

### **39 Certain interests in shares to be disregarded**

- (1) For the purposes of this Part, the following interests must be disregarded:
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- (a) an interest in a share held by a person whose ordinary business includes the lending of money if the person holds the interest as a loan security;
- (b) an interest in a share held by a person, being an interest held by the person because the person holds a prescribed office;
- (c) an interest of a prescribed kind in a share, being an interest held by such persons as are prescribed.

(2) For the purposes of this Part, if:

- (a) a person holds an interest in a share as a loan security; and
- (b) the ordinary business of the person includes the lending of money; and
- (c) the loan security is enforced; and
- (d) as a result of the enforcement of the loan security, the person becomes the holder of the share; and
- (e) the person holds the share for a continuous period (the ***holding period***) beginning at the time when the security was enforced;

the person's interest in the share must be disregarded at all times during so much of the holding period as occurs during whichever of the following periods is applicable:

- (f) the period of 90 days beginning when the security was enforced;
- (g) if the Minister for Finance, by written notice given to the person, allows a longer period—the end of that longer period.

(3) For the purposes of this Part, if:

- (a) a person acquires an interest in a share in a Medibank Private company; and
- (b) the interest was acquired in the person's capacity as an underwriter or a sub-underwriter under a Medibank Private sale scheme;

the person's interest in the share must be disregarded at all times during whichever of the following periods is applicable:

- (c) the period of 90 days beginning when the person acquired the interest;
- (d) if the Minister for Finance, by written notice given to the person, allows a longer period—that longer period.

- (4) Applications may be made to the Administrative Appeals Tribunal for review of decisions made by the Minister for Finance under subitem (2) or (3).
- (5) In subitem (4):  
*decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

#### **40 Voting power**

- (1) A reference in this Part to the *voting power* in a company is a reference to the total rights of shareholders to vote, or participate in any decision-making, concerning any of the following:
- (a) the making of distributions of capital or profits of the company to its shareholders;
  - (b) the constituent document of the company;
  - (c) any variation of the share capital of the company.
- (2) A reference in this Part to *control of the voting power* in a company is a reference to control that is direct or indirect, including control that is exercisable as a result of or by means of arrangements or practices:
- (a) whether or not having legal or equitable force; and
  - (b) whether or not based on legal or equitable rights.
- (3) If the percentage of total rights to vote or participate in decision-making differs as between different types of voting or decision-making, the highest of those percentages applies for the purposes of this item.
- (4) If a company:
- (a) is limited both by shares and by guarantee; or
  - (b) does not have a share capital;
- this item has effect as if the members or policy holders of the company were shareholders in the company.

#### **41 Stake in a company**

- (1) For the purposes of this Part, a particular type of *stake* that a person holds in a company at a particular time is the aggregate of:
- (a) the direct control interests in the company of that type that the person holds at that time; and
  - (b) the direct control interests in the company of that type held at that time by associates of the person.
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- (2) In calculating the stake that a person holds in a company, a direct control interest held because of subitem 42(6) is not to be counted under paragraph (1)(a) to the extent to which it is calculated by reference to a direct control interest in the company that is taken into account under paragraph (1)(b).

#### **42 Direct control interests in a company**

- (1) For the purposes of this Part, a person holds a *direct control interest* in a company at a particular time equal to the percentage of the total paid-up share capital of the company in which the person holds an interest at that time.
- (2) For the purposes of this Part, a person also holds a *direct control interest* in a company at a particular time equal to the percentage of the voting power in the company that the person is in a position to control at that time.
- (3) For the purposes of this Part, a person also holds a *direct control interest* in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders on winding-up.
- (4) For the purposes of this Part, a person also holds a *direct control interest* in a company at a particular time equal to the percentage that the person holds, or is entitled to acquire, at that time of the total rights to distributions of capital or profits of the company to its shareholders, otherwise than on winding-up.
- (5) In determining the direct control interest of a particular type that a person holds in a Medibank Private company, it is to be assumed that the only shares in that company are the shares held by persons other than the Commonwealth. For this purpose, *share* does not include an interest in a share.
- (6) For the purposes of this Part, if:
- (a) a person holds a particular type of direct control interest (including a direct control interest that is taken to be held because of one or more previous applications of this subitem) in a company (the *first level company*); and
  - (b) the first level company holds the same type of direct control interest in another company (the *second level company*);
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the person is taken to hold that type of direct control interest in the second level company equal to the percentage worked out using the formula:

First level percentage  $\times$  Second level percentage

where:

***first level percentage*** means the percentage of the direct control interest held by the person in the first level company.

***second level percentage*** means the percentage of the direct control interest held by the first level company in the second level company.

## **Part 5—Australian identity of Medibank Private companies**

### **43 Sunset provision**

This Part ceases to have effect at the end of the period of 5 years beginning at the start of the designated sale day declared under section 3.

### **44 Head office to be in Australia**

- (1) A Medibank Private company must ensure that the central management and control of the company is ordinarily exercised at a place in Australia.
- (2) A contravention of subitem (1) is not an offence. However, it is a ground for obtaining an injunction under Part 7.
- (3) A contravention of subitem (1) does not affect the validity of any transaction.

### **45 Base of operations to be in Australia**

- (1) A Medibank Private company must ensure that the company maintains a substantial business and operational presence in Australia.
- (2) This item does not limit a Medibank Private company's capacity to engage in activities outside Australia.
- (3) A contravention of subitem (1) is not an offence. However, it is a ground for obtaining an injunction under Part 7.
- (4) A contravention of subitem (1) does not affect the validity of any transaction.

### **46 Medibank Private company to remain incorporated in Australia**

- (1) A Medibank Private company must ensure that it is incorporated under the *Corporations Act 2001*.
- (2) A contravention of subitem (1) is not an offence. However, it is a ground for obtaining an injunction under Part 7.

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- (3) A contravention of subitem (1) does not affect the validity of any transaction.

#### **47 Majority of directors must be Australian citizens**

- (1) A Medibank Private company must ensure that a majority of its directors are Australian citizens.
- (2) A contravention of subitem (1) is not an offence. However, it is a ground for obtaining an injunction under Part 7.
- (3) A contravention of subitem (1) does not affect the validity of any transaction.

#### **48 Application to the holding company**

This Part applies in relation to the holding company even if the holding company ceases to be a wholly-owned Commonwealth company after the commencement of this item.

#### **49 Winding-up of Medibank Private company not prevented by this Part**

This Part does not, by implication, prevent a Medibank Private company being wound up in accordance with the *Corporations Act 2001*.



## **Part 6—Restrictions on transfer of assets and liabilities of the Medibank Private fund**

### **50 Sunset provision**

This Part ceases to have effect at the end of the period of 5 years beginning at the start of the designated sale day declared under section 3.

### **51 Restrictions on transfer of assets and liabilities of the Medibank Private fund**

- (1) The regulations may provide that Medibank Private must not transfer specified assets, or specified liabilities, of the Medibank Private fund.
- (2) Medibank Private must comply with regulations made for the purposes of subitem (1).
- (3) A contravention of subitem (2) is not an offence. However, it is a ground for obtaining an injunction under Part 7.

## **Part 7—Injunctions**

### **52 Injunctions**

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of Part 2, 3, 4, 5 or 6, the Federal Court may, on the application of the Minister for Finance, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

#### *Performance injunctions*

- (2) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of Part 2, 3, 4, 5 or 6;
- the Federal Court may, on the application of the Minister for Finance, grant an injunction requiring the person to do that act or thing.

### **53 Interim injunctions**

#### *Grant of interim injunction*

- (1) If an application is made to the Federal Court for an injunction under item 52, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that item.

#### *No undertakings as to damages*

- (2) The Federal Court is not to require an applicant for an injunction under item 52, as a condition of granting an interim injunction, to give any undertakings as to damages.

### **54 Discharge etc. of injunctions**

The Federal Court may discharge or vary an injunction granted under this Part.

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## **55 Certain limits on granting injunctions not to apply**

### *Restraining injunctions*

- (1) The power of the Federal Court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
- (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

### *Performance injunctions*

- (2) The power of the Federal Court under this Part to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

## **56 Other powers of the Federal Court unaffected**

The powers conferred on the Federal Court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Part or otherwise.

## **Part 8—Miscellaneous**

### **57 Retained earnings**

- (1) For the purposes of item 20 of this Schedule, section 254T of the *Corporations Act 2001* and section 73AAD of the *National Health Act 1953*, an amount shown in Medibank Private's accounts as retained earnings is taken to be profits of Medibank Private.
- (2) Subitem (1) is enacted for the avoidance of doubt.
- (3) Disregard subitem (1) in determining the application of section 254T of the *Corporations Act 2001* or section 73AAD of the *National Health Act 1953* to a company other than Medibank Private.
- (4) This item ceases to have effect at the end of the period of 12 months beginning on the designated sale day declared under section 3.

### **58 Compensation for acquisition of property**

#### *Part 2*

- (1) If the operation of Part 2 would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

#### *Payment of dividend, or return of capital, to the Commonwealth etc.*

- (3) If:
    - (a) a Medibank Private company:
      - (i) pays a dividend to the Commonwealth; or
      - (ii) returns capital to the Commonwealth; or
      - (iii) buys back one or more shares in the company held by the Commonwealth; or
      - (iv) reduces its share capital, and pays or gives consideration to the Commonwealth in relation to that reduction; and
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- (b) the payment of the dividend, the return of capital, the buy back or the payment or giving of consideration, as the case may be, would result in an acquisition of property from a person otherwise than on just terms;

the Commonwealth is liable to pay a reasonable amount of compensation to the person.

- (4) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

*Item 20 or 57*

- (5) If:

- (a) the operation of item 20 or 57 would result in an acquisition of property from a person otherwise than on just terms; and
- (b) subitem (3) does not apply in relation to that operation;

Medibank Private is liable to pay a reasonable amount of compensation to the person.

- (6) If Medibank Private and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from Medibank Private of such reasonable amount of compensation as the court determines.
- (7) Medibank Private may make a payment from the Medibank Private fund for the purpose of paying compensation under subitem (5) or (6).
- (8) A payment, or a decision to make a payment, under subitem (7) does not contravene section 73AAC or 73AAD of the *National Health Act 1953*.

*Definitions*

- (9) In this item:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

## **59 Delegation**

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The Minister for Finance may, by writing, delegate to:

- (a) the Secretary of the Department administered by the Minister for Finance; or
- (b) an SES employee or acting SES employee in the Department administered by the Minister for Finance;

all or any of the powers conferred on the Minister for Finance by this Schedule.

## **60 Provision to attract the insurance power and the corporations power**

This Schedule does not apply in relation to a Medibank Private company unless Medibank Private:

- (a) provides insurance to which paragraph 51(xiv) of the Constitution applies; or
- (b) is a corporation to which paragraph 51(xx) of the Constitution applies.

## **61 Appropriation**

The Consolidated Revenue Fund is appropriated for the purposes of making payments under the following provisions:

- (a) subitem 11(2);
- (b) subitem 16(3);
- (c) subitem 21(3).
- (d) subitem 23(3);
- (e) subitem 58(1);
- (f) subitem 58(2);
- (g) subitem 58(3);
- (h) subitem 58(4).

## **62 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
    - (a) required or permitted by this Schedule to be prescribed; or
    - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
  - (2) The regulations may make further provision in relation to the formulation, entering into, or carrying out, of a Medibank Private sale scheme.
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- (3) The regulations may prescribe matters of a transitional nature relating to the consequences of the carrying out of a Medibank Private sale scheme.
- (4) Subitems (2) and (3) do not, by implication, limit subitem (1).

## **Schedule 3—Amendments commencing on the designated sale day**

### ***Commonwealth Borrowing Levy Act 1987***

#### **1 Item 15 of the Schedule**

Repeal the item.

#### **2 Transitional—levy imposed by the *Commonwealth Borrowing Levy Act 1987***

- (1) Subject to subitem (2), Medibank Private Limited is not liable after the commencement of this item to pay an amount of levy imposed by the *Commonwealth Borrowing Levy Act 1987* on a borrowing undertaken before that commencement.
- (2) Subitem (1) does not apply in relation to an amount of levy that was paid or payable before the commencement of this item.

### ***Health Insurance Commission (Reform and Separation of Functions) Act 1997***

#### **3 Section 45**

Repeal the section.

### ***Remuneration Tribunal Act 1973***

#### **4 Subsection 3(1) (paragraph (i) of the definition of *principal executive office*)**

Repeal the paragraph.



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*[Minister's second reading speech made in—  
House of Representatives on 18 October 2006  
Senate on 6 November 2006]*

(151/06)