



Private Health Insurance Amendment Act 2015

No. 57, 2015

**An Act to amend the *Ombudsman Act 1976*, and for
related purposes**

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

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**An Act to amend the *Ombudsman Act 1976*, and for
related purposes**

[Assented to 26 May 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Private Health Insurance Amendment Act 2015*.

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 May 2015
2. Schedule 1	As follows: (a) if this Act receives the Royal Assent before 1 July 2015—1 July 2015; (b) if this Act receives the Royal Assent on or after 1 July 2015—a single day to be fixed by Proclamation. However, if this Act receives the Royal Assent on or after 1 July 2015, and Schedule 1 does not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, it commences on the day after the end of that period.	1 July 2015 (paragraph (a) applies)
3. Schedule 2	The day this Act receives the Royal Assent.	26 May 2015

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule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—Private Health Insurance Ombudsman

Part 1—Main amendments

Ombudsman Act 1976

1 Title

Omit “**and an Overseas Students Ombudsman,**”, substitute “**, an Overseas Students Ombudsman and a Private Health Insurance Ombudsman,**”

2 Subsection 3(1)

Insert:

adult has the same meaning as in the *Private Health Insurance Act 2007*.

Chief Executive Medicare has the same meaning as in the *Private Health Insurance Act 2007*.

complying health insurance policy has the same meaning as in the *Private Health Insurance Act 2007*.

complying health insurance product has the same meaning as in the *Private Health Insurance Act 2007*.

health care provider has the same meaning as in the *Private Health Insurance Act 2007*.

Health Department means the Department administered by the Health Minister.

health insurance business has the same meaning as in the *Private Health Insurance Act 2007*.

Health Minister means the Minister administering the *Private Health Insurance Act 2007*.

medical practitioner has the same meaning as in the *Private Health Insurance Act 2007*.

personal information has the same meaning as in the *Private Health Insurance Act 2007*.

PHI records, of a subject of a complaint under Division 3 of Part IID or an investigation under Division 4 of Part IID, includes any of the following documents that are in the possession, or under the control, of the subject:

- (a) the constitution and rules of the subject, if the subject is a private health insurer;
- (b) the internal training manuals and related documents of the subject;
- (c) any documents relevant to a private health insurance arrangement to which the subject is a party or that applies to the subject;
- (d) to the extent that the complaint or investigation relates to the subject's dealings with a particular person—the subject's documents relating to its dealings with that particular person including correspondence, internal memoranda, emails, and recordings of taped conversations;

whenever those documents came into existence.

private health insurance arrangement has the same meaning as in the *Private Health Insurance Act 2007*.

private health insurance broker has the same meaning as in the *Private Health Insurance Act 2007*.

Private Health Insurance (Information Disclosure) Rules means rules mentioned in subsection 333-20(1), table item 16, of the *Private Health Insurance Act 2007*.

Private Health Insurance Ombudsman Rules means rules made under section 20ZJ.

private health insurance policy has the same meaning as in the *Private Health Insurance Act 2007*.

private health insurer has the same meaning as in the *Private Health Insurance Act 2007*.

product has the same meaning as in the *Private Health Insurance Act 2007*.

rules, of a private health insurer, has the same meaning as in the *Private Health Insurance Act 2007*.

3 Subsection 3(1) (note at the end of the definition of officer)

Repeal the note, substitute:

Note: For the meaning of *officer* in Parts IIB, IIC and IID, see sections 19G, 19ZF and 20A respectively.

4 At the end of paragraph 4A(e)

Add:

; and (v) the functions of the Private Health Insurance Ombudsman referred to in section 20D.

5 After Part IIC

Insert:

Part IID—Private Health Insurance Ombudsman

Division 1—Preliminary

20 Principal object of this Part

The principal object of this Part is to establish the office of, and set out the powers and functions of, the Private Health Insurance Ombudsman so that he or she may protect the interests of people who are covered by private health insurance by:

- (a) assisting people who have made complaints relating to private health insurance to resolve those complaints; and
- (b) investigating the practices and procedures of private health insurers, private health insurance brokers and health care providers; and
- (c) mediating between private health insurers and health care providers; and
- (d) disseminating information about private health insurance and the rights and obligations of privately insured people.

20A Definitions for this Part

In this Part:

officer, of a private health insurer, has the same meaning as in the *Private Health Insurance Act 2007*.

officer, of a subject of a complaint under Division 3 or an investigation under Division 4, means:

- (a) if the subject is an individual—the individual; or
- (b) if the subject is a private health insurer—a person who is an officer of the insurer; or
- (c) if the subject is a company within the meaning of the *Corporations Act 2001*—a director of the company; or
- (d) if the subject is an incorporated association—a member of the management committee of the association; or
- (e) if the subject is an unincorporated entity—a member of the governing body of the entity; or
- (f) if the subject is a partnership—a partner in the partnership.

20B Private Health Insurance Ombudsman Rules

Matters relevant to this Part are also dealt with in the Private Health Insurance Ombudsman Rules. The provisions of this Part indicate when a particular matter is or may be dealt with in these Rules.

Note: The Private Health Insurance Ombudsman Rules are made by the Ombudsman under section 20ZJ.

Division 2—Establishment and functions of the Private Health Insurance Ombudsman

20C Establishment of office of Private Health Insurance Ombudsman

- (1) For the purposes of this Act, there is to be a Private Health Insurance Ombudsman.
- (2) The office of Private Health Insurance Ombudsman is to be held by the person who holds the office of Commonwealth Ombudsman.
- (3) The reference in subsection (2) to the person who holds the office of Commonwealth Ombudsman includes a reference to a person

for the time being acting in that office because of an appointment under section 29 (acting appointments).

20D Functions of Private Health Insurance Ombudsman

The Private Health Insurance Ombudsman has the following functions:

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

practices relating to private health insurers or private health insurance brokers;

- (j) making recommendations (as part of recommendations mentioned in paragraph (i)) to the Health Minister or to the Health Department about regulatory practices or industry practices relating to health care providers, to the extent to which those practices relate to:
 - (i) the application of private health insurance arrangements or classes of private health insurance arrangements to services or goods provided, or to goods manufactured or supplied, by the health care providers; or
 - (ii) private health insurance arrangements or classes of private health insurance arrangements to which those kinds of health care providers may be party;
- (k) promoting a knowledge and understanding of the Private Health Insurance Ombudsman's functions;
- (l) any other functions that are incidental to the performance of any of the preceding functions.

Division 3—Complaints

Subdivision A—Relevant complaints

20E Who may make a complaint

- (1) A complaint may be made to the Private Health Insurance Ombudsman by any of the following:
 - (a) a person who is, or was at the time of the incident to which the complaint relates, insured or seeking to be insured under a private health insurance policy;
 - (b) a private health insurer;
 - (c) a health care provider;
 - (d) a private health insurance broker.

Note: Section 7 also deals with making complaints. For the application of section 7 to the Private Health Insurance Ombudsman, see section 20ZK.

- (2) A complaint may be made by a person on behalf of a person mentioned in subsection (1).

20F Persons against whom complaints may be made

A complaint may be made to the Private Health Insurance Ombudsman against any of the following:

- (a) a private health insurer;
- (b) a health care provider;
- (c) a private health insurance broker.

20G Grounds for complaint

- (1) The complaint may be about:
 - (a) any matter arising out of or connected with a private health insurance arrangement; or
 - (b) any matter arising out of or connected with Chapter 2 of the *Private Health Insurance Act 2007*.
- (2) A complaint against a health care provider must, in addition to being about a matter in subsection (1), also:
 - (a) be about either or both of the following:
 - (i) the application of a private health insurance arrangement to goods or a service provided, or goods manufactured or supplied, by the health care provider;
 - (ii) a private health insurance arrangement to which the health care provider is, or was at the time of the incident to which the complaint relates, a party; and
 - (b) satisfy at least one of the following:
 - (i) the complaint must also be made against a private health insurer;
 - (ii) the complainant must be a private health insurer or a person insured under a private health insurance policy;
 - (iii) if the complainant is another health care provider or a private health insurance broker—a private health insurer or a person insured under a private health insurance policy must also be a complainant in relation to the complaint.
- (3) The Private Health Insurance Ombudsman Rules may prescribe matters about which complaints cannot be made.

Subdivision B—Dealing with complaints

20H Initial receipt of complaint

On receiving a complaint, the Private Health Insurance Ombudsman may:

- (a) inform the subject of the complaint of the nature of the complaint; and
- (b) request or require information from the subject under Division 6.

20J Ways of dealing with complaints

- (1) The Private Health Insurance Ombudsman may deal with a complaint by:
 - (a) conducting mediation under Division 5; or
 - (b) referring the complaint to the subject of the complaint under Subdivision C; or
 - (c) if section 20P applies—investigating the complaint under Subdivision D.
- (2) The Private Health Insurance Ombudsman must not take any action mentioned in subsection (1) unless the complainant agrees to the action being taken.
- (3) The Private Health Insurance Ombudsman must not take, or continue to take, any action mentioned in paragraph (1)(a) or (c) if the complainant withdraws the complaint.
- (4) The Private Health Insurance Ombudsman must not take any action mentioned in subsection (1) if the complaint is about a matter prescribed by the Private Health Insurance Ombudsman Rules for the purposes of subsection 20G(3).

20K Referral to the Australian Competition and Consumer Commission

- (1) If, in the Private Health Insurance Ombudsman's opinion, a complaint raises a matter that could be dealt with more effectively or conveniently by the Australian Competition and Consumer Commission, the Private Health Insurance Ombudsman must,

subject to subsections (2) and (3), refer the matter to the Australian Competition and Consumer Commission.

- (2) The Private Health Insurance Ombudsman must not refer the matter to the Australian Competition and Consumer Commission unless the complainant agrees to the referral.
- (3) The Private Health Insurance Ombudsman must not refer the matter to the Australian Competition and Consumer Commission if the complainant withdraws the complaint.
- (4) If the Private Health Insurance Ombudsman refers the matter to the Australian Competition and Consumer Commission, the Private Health Insurance Ombudsman must:
 - (a) tell the complainant of the matter's referral; and
 - (b) give the Australian Competition and Consumer Commission any information or documents that relate to the complaint and that are in the Private Health Insurance Ombudsman's possession or under his or her control.
- (5) The Australian Competition and Consumer Commission may investigate the matter. If it does, it must, within 30 days after the referral, report to the Private Health Insurance Ombudsman on:
 - (a) the conduct of the investigation; and
 - (b) any findings that it has made as a result of the investigation.
- (6) If the Australian Competition and Consumer Commission decides not to investigate the matter, it must, within 30 days after the referral, give the Private Health Insurance Ombudsman a written notice informing the Private Health Insurance Ombudsman of its decision and of the reasons for its decision.

20L Referral to other bodies

- (1) If, in the Private Health Insurance Ombudsman's opinion, a complaint raises a matter that could be dealt with more effectively or conveniently by another body, the Private Health Insurance Ombudsman must, subject to this section, refer the matter to that body.
 - (2) The Private Health Insurance Ombudsman must not refer the matter to the other body unless the complainant agrees to the referral.
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- (3) The Private Health Insurance Ombudsman must not refer the matter to the other body if the complainant withdraws the complaint.
- (4) If the Private Health Insurance Ombudsman refers the matter to the other body, the Private Health Insurance Ombudsman must:
 - (a) tell the complainant of the matter's referral; and
 - (b) give the other body any information or documents that relate to the complaint and that are in the Private Health Insurance Ombudsman's possession or under his or her control.

20M Deciding not to deal with a complaint

- (1) The Private Health Insurance Ombudsman may decide not to deal, or not to continue to deal, with a complaint in accordance with this section. If the Private Health Insurance Ombudsman so decides, he or she must:
 - (a) tell the complainant of the decision and the reasons for the decision; and
 - (b) if requested by the complainant—give the complainant written notice of the decision and the reasons for the decision.
- (2) The Private Health Insurance Ombudsman may decide not to take any action in relation to a complaint if the incident to which the complaint relates occurred more than 12 months before the complaint is made.
- (3) The Private Health Insurance Ombudsman may decide not to deal with a complaint if he or she is satisfied that the complainant has not taken reasonable steps to negotiate a settlement of the complaint with the subject of the complaint.
- (4) The Private Health Insurance Ombudsman may decide not to deal, or not to continue to deal, with a complaint if the complainant does not agree to a matter relating to the complaint being referred to another body under section 20L.
- (5) The Private Health Insurance Ombudsman may decide not to deal, or not to continue to deal, with a complaint, if he or she believes that:

- (a) the subject of the complaint has dealt, or is dealing, adequately with the complaint, or has not yet had an adequate opportunity to do so; or
- (b) the Private Health Insurance Ombudsman has dealt adequately with the complaint; or
- (c) the complainant is capable of assisting the Private Health Insurance Ombudsman in dealing with the complaint but does not do so on request; or
- (d) the complainant does not have a sufficient interest in the subject matter of the complaint; or
- (e) the matter is trivial; or
- (f) the complaint is frivolous or vexatious or was not made in good faith; or
- (g) the complaint is mainly about commercial negotiations and, having regard to the object of this Part, it is not appropriate to deal, or to continue to deal, with the complaint; or
- (h) the complaint is mainly about clinical matters and, having regard to the object of this Part, it is not appropriate to deal, or continue to deal, with the complaint; or
- (i) the complainant has exercised, or exercises, a right to have the matter to which the complaint relates reviewed by a court or tribunal constituted by or under a law of the Commonwealth or of a State or Territory; or
- (j) both:
 - (i) the complainant has, or had, a right to have the matter to which the complaint relates reviewed by a court or by a tribunal constituted by or under a law of the Commonwealth or of a State or Territory, but has not exercised that right; and
 - (ii) it is, or would have been, reasonable for the complainant to exercise that right; or
- (k) to deal, or continue to deal, with the complaint is not warranted having regard to all the circumstances.

Subdivision C—Referral to subjects of complaints

20N Referral to the subject of the complaint

The Private Health Insurance Ombudsman may, at any time and whether or not mediation has been conducted under Division 5,

refer a complaint to the subject of the complaint and request the subject:

- (a) to investigate the complaint; and
- (b) to report to the Private Health Insurance Ombudsman on the outcome of the investigation and any action that the subject proposes to take as a result, before the end of the period specified in the request.

Note: The Private Health Insurance Ombudsman must have the complainant's agreement to act under this section (see subsection 20J(2)).

Subdivision D—Investigation of complaints

20P Investigation of complaint

The Private Health Insurance Ombudsman may investigate a complaint if:

- (a) the complaint is not resolved to the complainant's satisfaction by mediation under Division 5; or
- (b) the Private Health Insurance Ombudsman is not satisfied with the outcome of a referral under Subdivision C.

Note: The Private Health Insurance Ombudsman must have the complainant's agreement to act under this section and cannot continue if the complaint is withdrawn (see subsections 20J(2) and (3)).

Subdivision E—Recommendations and reports

20Q Recommendations as a result of referral or investigation

- (1) The Private Health Insurance Ombudsman may make recommendations under this section after:
 - (a) receiving a report from the subject of a complaint after referral under Subdivision C; or
 - (b) investigating a complaint under Subdivision D.
- (2) The Private Health Insurance Ombudsman may recommend any or all of the following:
 - (a) to a private health insurer, that the insurer take a specific course of action in relation to the complaint or make changes to its rules, or both;

- (b) to a private health insurer, that the insurer request a health care provider or private health insurance broker to take a specific course of action in relation to the complaint;
 - (c) to a health care provider or private health insurance broker, that the provider or broker take a specific course of action in relation to the complaint.
- (3) The Private Health Insurance Ombudsman may, by written notice given to the person to whom the recommendation was made, or an officer of that person, require the person to report to the Private Health Insurance Ombudsman, before action is taken to give effect to the recommendation, on the action proposed to be taken. The notice must specify the period within which the report is to be given.

20R Report to Health Minister on outcome of investigation under Subdivision D

- (1) The Private Health Insurance Ombudsman may report and make recommendations under this section after completing an investigation of a complaint against a particular subject under Subdivision D.
- (2) The Private Health Insurance Ombudsman may report to the Health Minister on the outcome of the investigation (including any recommendations made to the subject of the complaint and any responses to those recommendations).
- (3) The Private Health Insurance Ombudsman may recommend to the Health Minister either or both of the following:
 - (a) general changes in regulatory practice or industry practices relating to the kind of subject of complaint;
 - (b) possible means of dealing with specific problems arising in relation to the particular subject of the complaint.
- (4) The Private Health Insurance Ombudsman may make recommendations under paragraph (3)(b) concerning health care providers or a particular health care provider only to the extent to which the recommendations relate to:
 - (a) the application of a private health insurance arrangement or a class of private health insurance arrangements to services or

goods provided, or goods manufactured or supplied, by that kind of health care provider; or

- (b) a private health insurance arrangement or a class of private health insurance arrangements to which that kind of health care provider may be party.
- (5) Before reporting to the Health Minister under this section, the Private Health Insurance Ombudsman must:
- (a) inform the subject of the complaint that the Private Health Insurance Ombudsman proposes to make the report and of the nature of any criticism of the subject's conduct that will appear in the report; and
 - (b) invite the subject to comment on such criticism, before the end of the period specified in the invitation.

The Private Health Insurance Ombudsman must include in the report any comments made by the subject.

Subdivision F—Miscellaneous

20S Complainant to be kept informed

- (1) The Private Health Insurance Ombudsman must keep the complainant informed about the Private Health Insurance Ombudsman's handling of the complaint.
- (2) The Private Health Insurance Ombudsman must inform the complainant in writing of:
 - (a) any action taken by a private health insurer, a health care provider or private health insurance broker as a result of the Private Health Insurance Ombudsman's handling of the complaint; and
 - (b) any recommendations made by the Private Health Insurance Ombudsman under section 20Q;and the reasons for the action or recommendation.

Division 4—Investigations

Subdivision A—Investigations

20T Initiating investigations

- (1) The Private Health Insurance Ombudsman may, on his or her own initiative, investigate the practices and procedures of a private health insurer or a private health insurance broker.
- (2) The Private Health Insurance Ombudsman may, on his or her own initiative, investigate the practices and procedures of a health care provider together with an investigation of a private health insurer under subsection (1), if:
 - (a) the investigation relates to a matter arising out of or connected with a private health insurance arrangement; and
 - (b) the practices and procedures relate to either or both of the following:
 - (i) the application of a private health insurance arrangement to services or goods provided, or to goods manufactured or supplied, by the health care provider;
 - (ii) a private health insurance arrangement to which the health care provider is, or was in the period to be investigated, a party; and
 - (c) the Private Health Insurance Ombudsman considers, having regard to the object of this Part, that investigation of the health care provider together with the private health insurer is necessary or appropriate in order to consider the matter effectively.

Note: An investigation may include mediation (see section 20X).

Subdivision B—Recommendations and reports

20U Recommendations as a result of investigation

- (1) The Private Health Insurance Ombudsman may make recommendations under this section after conducting an investigation under this Division.
 - (2) The Private Health Insurance Ombudsman may recommend either or both of the following:
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- (a) to a private health insurer, that the insurer take a specific course of action or make changes to its rules, or both;
 - (b) to a health care provider or private health insurance broker, that the provider or broker take a specific course of action.
- (3) The Private Health Insurance Ombudsman may, by written notice given to the person to whom the recommendation was made, or an officer of that person, require the person to report to the Private Health Insurance Ombudsman, before action is taken to give effect to the recommendation, on the action proposed to be taken. The notice must specify the period within which the report is to be given.

20V Report to Health Minister on outcome of investigations under this Division

- (1) The Private Health Insurance Ombudsman may, after completing an investigation under section 20T:
- (a) report to the Health Minister on the outcome of the investigation and any mediation conducted as part of the investigation (including any recommendations made to the subject of the investigation); and
 - (b) make recommendations to the Health Minister:
 - (i) concerning general changes in regulatory practice or industry practices relating to that kind of subject of investigation; or
 - (ii) concerning possible means of dealing with specific problems arising in relation to the particular subject of the investigation.
- (2) The Private Health Insurance Ombudsman may make recommendations under paragraph (1)(b) concerning health care providers or a particular health care provider only to the extent to which the recommendations relate to:
- (a) the application of a private health insurance arrangement or a class of private health insurance arrangements to services or goods provided, or to goods manufactured or supplied, by that kind of health care provider; or
 - (b) a private health insurance arrangement or a class of private health insurance arrangements to which that kind of health care provider may be party.

- (3) Before reporting to the Health Minister under this section, the Private Health Insurance Ombudsman must:
- (a) inform the subject of the investigation that the Private Health Insurance Ombudsman proposes to make the report and of the nature of any criticism of the conduct of the subject that will appear in the report; and
 - (b) invite the subject to comment on such criticism, before the end of the period specified in the invitation.

The Private Health Insurance Ombudsman must include in the report any comments made by the subject.

20W Consultation with Australian Competition and Consumer Commission

If the Private Health Insurance Ombudsman considers, as a result of an investigation under this Division, that there might have been conduct in the nature of a restrictive trade practice for the purposes of the *Competition and Consumer Act 2010*, the Private Health Insurance Ombudsman must, before reporting on the matter under section 20V:

- (a) consult with the Australian Competition and Consumer Commission; and
- (b) have regard to the advice of the Australian Competition and Consumer Commission on the matter.

Division 5—Mediation

20X Conducting mediation

- (1) The Private Health Insurance Ombudsman may, at any time, try to settle a complaint made under Division 3 by mediating between the complainant and the subject of the complaint.
- (2) The Private Health Insurance Ombudsman may, if he or she considers it appropriate and consistent with the object of this Part, try to resolve a matter being investigated under Division 4 by mediating between a private health insurer and a health care provider.
- (3) A party's participation in the mediation may be:
 - (a) voluntary; or

(b) required by a direction given to the party by the Private Health Insurance Ombudsman under section 20Y.

Note: If mediating a complaint, the Private Health Insurance Ombudsman must have the complainant's agreement to act under this section and cannot continue if the complaint is withdrawn (see subsections 20J(2) and (3)).

20Y Participation in mediation may be compulsory

- (1) The Private Health Insurance Ombudsman may direct:
 - (a) the subject of a complaint made under Division 3; or
 - (b) a private health insurer that is the subject of an investigation under Division 4; or
 - (c) a health care provider that is the subject of an investigation under Division 4;to participate in mediation under section 20X.
- (2) The Private Health Insurance Ombudsman Rules may prescribe matters to which the Private Health Insurance Ombudsman is to have regard when deciding whether or not to give a direction under subsection (1).
- (3) The direction must:
 - (a) be in writing; and
 - (b) name either or both of the following:
 - (i) the subject of the complaint or investigation;
 - (ii) an officer, or officers, of that subject; and
 - (c) be given to those named in it; and
 - (d) specify the time of the mediation, which must not be earlier than 14 days after the day the direction is given; and
 - (e) specify the place of the mediation.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* has the effect that the direction may be varied or revoked.
- (4) A person commits an offence if:
 - (a) the person is directed under subsection (1) to participate in mediation; and
 - (b) the other party to the mediation attends, or was willing to attend, the mediation; and

- (c) the person, or, if the person is a medical practitioner who has appointed a representative in relation to the mediation under section 20Z, the person's representative, fails to participate in part or all of the mediation.

Penalty: 10 penalty units.

20Z Medical practitioners may appoint representatives

- (1) If the Private Health Insurance Ombudsman directs a medical practitioner under subsection 20Y(1) to participate in mediation, the medical practitioner may appoint an individual to participate in the mediation on the practitioner's behalf.
- (2) The appointment must be:
 - (a) in writing; and
 - (b) signed by the medical practitioner; and
 - (c) made before the mediation starts.

20ZA Conduct of compulsory mediation

- (1) If the Private Health Insurance Ombudsman directs a party to participate in mediation, the mediation may be conducted by:
 - (a) the Private Health Insurance Ombudsman; or
 - (b) a person appointed by the Private Health Insurance Ombudsman under section 20ZC.
- (2) Mediation in which a party is directed to participate ceases:
 - (a) if the parties agree to settle the matter; or
 - (b) if the Private Health Insurance Ombudsman concludes that the matter cannot be settled by mediation.
- (3) The Private Health Insurance Ombudsman Rules may prescribe matters to which the Private Health Insurance Ombudsman is to have regard before concluding that a matter cannot be settled by mediation.
- (4) A person appointed by the Private Health Insurance Ombudsman under section 20ZC to conduct mediation must, as soon as practicable after the mediation is conducted or should have been conducted, report to the Private Health Insurance Ombudsman about:

- (a) whether the mediation was conducted; and
- (b) if the mediation failed—the reasons for the failure; and
- (c) if the parties agreed to settle the complaint—the terms of the settlement, including any action to be taken.

20ZB Admissibility of things said in mediation

- (1) Evidence of anything said, or any admission made, during participation in mediation under section 20X is not admissible:
 - (a) in any court (whether exercising federal jurisdiction or not); or
 - (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.
- (2) This section applies whether or not a party is directed to participate in the mediation.

20ZC Appointment of mediators

- (1) The Private Health Insurance Ombudsman may appoint a person to conduct mediation in which a person is or will be directed to participate under section 20Y.
- (2) The Private Health Insurance Ombudsman Rules may prescribe matters to which the Private Health Insurance Ombudsman is to have regard when appointing a person under this section.
- (3) The person is appointed for the period specified by the Private Health Insurance Ombudsman in the instrument of appointment.
- (4) Subject to section 35, the person is not personally liable to an action or other proceeding for damages in relation to anything done or omitted to be done, reasonably and in good faith, in or in relation to the conduct of the mediation.

Division 6—Information-gathering

20ZD Information-gathering—requests for PHI records and information

- (1) The Private Health Insurance Ombudsman may, in accordance with this section, obtain such information, and make such inquiries, as he or she thinks fit.
- (2) The Private Health Insurance Ombudsman may request a person to give the Private Health Insurance Ombudsman a PHI record or information under this section only if the Private Health Insurance Ombudsman could require the person to give the PHI record or information to the Private Health Insurance Ombudsman under section 20ZE.

Note: Section 20ZF deals with matters such as the person's exposure to penalty and the admissibility of such information or PHI records.

20ZE Information-gathering—notices requiring PHI records and information

- (1) If the Private Health Insurance Ombudsman reasonably believes that a person is capable of giving information or PHI records relevant to:
 - (a) deciding if, and how, to deal with a complaint made under Division 3; or
 - (b) mediating a complaint made under Division 3; or
 - (c) investigating a complaint made under Division 3; or
 - (d) evaluating action proposed by the subject of a complaint after referral of the complaint to the subject under Subdivision C of Division 3; or
 - (e) an investigation under Division 4 (including mediating as part of the investigation under Division 5);

the Private Health Insurance Ombudsman may, by notice in writing given to the person, require the person to give the Private Health Insurance Ombudsman the information or the PHI records (relating to the complaint or the practices and procedures being investigated) that are specified in the notice, before the end of the period specified in the notice.

- (2) The Private Health Insurance Ombudsman may give one or more notices under subsection (1) in relation to a complaint or investigation, at any time while the Private Health Insurance Ombudsman is dealing with the complaint or investigation.

Self-incrimination

- (3) A person is not excused from giving information or a PHI record when required to do so under subsection (1) on the ground that the information or PHI record might tend to incriminate the person or expose the person to a penalty.

Note: Section 20ZF deals with matters such as the person's exposure to penalty and the admissibility of such information or PHI records.

20ZF Information-gathering—compliance with requests and notices

- (1) This section applies if a person gives information or a PHI record to the Private Health Insurance Ombudsman:
- (a) in compliance with a request under section 20ZD or a notice under section 20ZE; or
 - (b) reasonably believing that this would assist the Private Health Insurance Ombudsman in:
 - (i) mediating a complaint under Division 5 or otherwise dealing with it under Subdivision B or D of Division 3; or
 - (ii) referring a complaint under section 20K or 20L; or
 - (iii) making a decision under section 20M not to deal, or not to continue to deal, with a complaint; or
 - (iv) investigating a matter under section 20T.
- (2) The person is not liable to any penalty under the provisions of any other enactment by reason of his or her giving the information or PHI record to the Private Health Insurance Ombudsman.
- (3) For the purposes of:
- (a) the *Privacy Act 1988*; and
 - (b) any provision of a law of a State or Territory that provides that personal information contained in a record or information may be disclosed if the disclosure is authorised by law;

the giving of the information or PHI record to the Private Health Insurance Ombudsman is taken to be authorised by this Act.

- (4) This section does not otherwise affect a claim of legal professional privilege that anyone may make in relation to the information or PHI record.

Self-incrimination etc.

- (5) If the information or PHI record is given by an individual and, by giving the information or the PHI record, the individual:
- (a) contravenes any other enactment; or
 - (b) might tend to incriminate himself or herself or make himself or herself liable to a penalty; or
 - (c) discloses a legal advice given to the subject of a complaint made under Division 3 or an investigation under Division 4; or
 - (d) if the subject of a complaint made under Division 3 or an investigation under Division 4 is an individual—discloses a privileged communication between the subject and another person or body; or
 - (e) if the subject of a complaint made under Division 3 or an investigation under Division 4 is not an individual—discloses a privileged communication between:
 - (i) an officer of the subject and another person or body; or
 - (ii) a person who is employed in the service of, or engaged to provide services to, the subject, and another person or body; or
 - (f) otherwise acts contrary to the public interest;
- then none of the following are admissible in evidence against the individual in any proceedings, other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act:
- (g) the information or PHI record given;
 - (h) giving the information or PHI record;
 - (i) any information, document or thing obtained as a direct or indirect consequence of giving the information or PHI record.

- (6) In this section:
-

privileged communication means a communication protected against disclosure by legal professional privilege.

Division 7—Provisions relating to the Private Health Insurance Ombudsman

20ZG Reports of the Private Health Insurance Ombudsman

Annual reports

- (1) As soon as practicable after the end of each financial year, the Private Health Insurance Ombudsman must give an annual report to the Minister, for presentation to the Parliament, on the operations of the Private Health Insurance Ombudsman during the financial year.

Additional reports

- (2) The Private Health Insurance Ombudsman may, from time to time, give the Minister, for presentation to the Parliament, a report:
 - (a) on the operations of the Private Health Insurance Ombudsman during a part of a year; or
 - (b) in relation to any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the Private Health Insurance Ombudsman.
- (3) Subsections (1) and (2) do not affect the powers and duties of the Private Health Insurance Ombudsman under paragraph 20D(c) or (g) or section 20R or 20V.

Tabling and inclusion in other reports

- (4) If the Private Health Insurance Ombudsman gives a report to the Minister under subsection (1) or (2), the Minister must cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (5) A report relating to the operations of the Private Health Insurance Ombudsman during a period may be included in a report under:
 - (a) section 19; or
 - (b) section 46 of the *Public Governance, Performance and Accountability Act 2013*;

relating to the operations of the Ombudsman during that period.

Content of report

- (6) A report relating to the operations of the Private Health Insurance Ombudsman during a period must include the following:
- (a) the number and nature of complaints received under section 20E;
 - (b) the outcomes of any actions taken, recommendations made or investigations conducted in relation to such complaints;
 - (c) the outcomes in relation to complaints referred to another body under section 20L;
 - (d) the number and nature of investigations (if any) conducted by the Private Health Insurance Ombudsman under section 20T;
 - (e) the outcomes of investigations conducted under section 20T.

Division 8—Miscellaneous

20ZH Victimization

A person commits an offence if:

- (a) the person subjects, or threatens to subject, another person to detriment; and
- (b) the person does so because the other person has made, or proposes to make, a complaint under this Part.

Penalty: Imprisonment for 6 months.

20ZI Giving information about the Private Health Insurance Ombudsman

- (1) The Private Health Insurance Ombudsman may, by written notice given to private health insurers, require private health insurers:
 - (a) to give adults insured under the insurers' products the information specified in the notice, in the manner specified in the notice; or
 - (b) to publish the information specified in the notice, in the manner specified in the notice.
- (2) A notice must only specify information that relates to the functions of the Private Health Insurance Ombudsman.

- (3) If more than one adult is insured under a single complying health insurance policy of a private health insurer, the insurer is taken to comply with a notice if the insurer complies with the notice in relation to only one of those adults.

20ZJ Private Health Insurance Ombudsman Rules

- (1) The Ombudsman may, by legislative instrument (and subject to subsection (2)), make rules prescribing matters:
- (a) required or permitted by this Part to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty provision;
 - (b) provide:
 - (i) powers of arrest or detention; or
 - (ii) powers relating to entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) amend this Act.

20ZK Application of certain provisions of the Act

- (1) Subject to this section, the following provisions apply in relation to the Private Health Insurance Ombudsman as if a reference in any of those provisions to the Ombudsman were a reference to the Private Health Insurance Ombudsman:
- (a) the definition of *authorized person* in subsection 3(1);
 - (b) section 7 (complaints);
 - (c) section 11A (powers of Federal Court of Australia);
 - (d) subsection 31(1) (staff);
 - (e) section 33 (Ombudsman not to be sued);
 - (f) subsection 34(7) (delegation from State Ombudsman);
 - (g) section 35 (officers to observe confidentiality);
 - (h) section 35AA (disclosure of information and documents to Integrity Commissioner);

- (i) section 35A (disclosure of information by Ombudsman);
 - (j) section 35B (disclosure of ACC information);
 - (k) section 35C (disclosure of ACLEI information);
 - (l) section 36 (offences);
 - (m) section 37 (protection from civil actions).
- (2) The following provisions apply in accordance with this subsection:
- (a) section 7 applies as if a reference to investigating a complaint were a reference to dealing with a complaint as mentioned in subsection 20J(1);
 - (b) section 11A applies as if:
 - (i) the reference to a requirement made by the Ombudsman by notice under section 9 to furnish information, to produce documents or other records or to attend before the Ombudsman to answer questions in relation to an investigation under this Act were a reference to a requirement made by the Private Health Insurance Ombudsman by notice under section 20ZE to give information or PHI records in relation to a complaint made under Division 3 of Part IID or an investigation under Division 4 of Part IID; and
 - (ii) the reference to an order directing the person to furnish the information, produce the documents or attend before the Ombudsman to answer questions were a reference to an order directing the person to give the information or PHI records to the Private Health Insurance Ombudsman;
 - (c) subparagraph 35(3)(b)(i) applies, in relation to information relating to a complaint made under Division 3 of Part IID or an investigation under Division 4 of Part IID the subject of which is not an individual, as if:
 - (i) the reference to information given by an officer of a Department or prescribed authority in the performance of his or her duties were a reference to information given by an officer of the subject or a person employed in the service of, or engaged to provide services to, the subject; and
 - (ii) the reference to the principal officer of the Department or authority or the responsible Minister were a reference

- to the individual primarily responsible for the management of the subject;
- (d) subsection 35(6A) applies as if the reference to paragraph 6(4D)(e) or 6(18)(d) were a reference to paragraph 20K(4)(b) or 20L(4)(b) or section 20W;
 - (e) section 35AA applies as if the reference to the investigation of an action as mentioned in paragraph 5(1)(b) were a reference to an investigation under Division 4 of Part IID or mediation undertaken to try to resolve a matter being investigated under Division 4 of Part IID;
 - (f) section 35A applies as if a reference to an investigation were a reference to:
 - (i) dealing with a complaint as mentioned in subsection 20J(1); or
 - (ii) an investigation under Division 4 of Part IID or mediation undertaken to try to resolve a matter being investigated under Division 4 of Part IID;
 - (g) the definition of *listed disclosure method* in subsections 35B(2) and 35C(2) applies as if:
 - (i) a reference to Division 2 of Part II were a reference to section 20R, 20V or 20ZG; and
 - (ii) a reference to section 6 or 6A were a reference to section 20K or 20L;
 - (h) section 37 applies as if the reference to a requirement under section 9 were a reference to a requirement under section 20ZE.

6 Section 20

Re-number as section 20ZL.

7 Paragraph 34(1)(a)

Omit “17 and 19”, substitute “17, 19 and 20ZJ”.

8 After subsection 34(2B)

Insert:

- (2C) The Private Health Insurance Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a member of staff mentioned in

section 31 all or any of his or her powers or functions under this Act, other than his or her powers under section 20R and 20V.

9 At the end of subsection 35(1)

Add:

- ; or (f) a person appointed by the Private Health Insurance Ombudsman under section 20ZC (appointment of mediators).

10 After subsection 35(6A)

Insert:

Sharing information about private health insurers among agencies

- (6B) Subsections (2) and (5) do not prevent an officer, in the performance of his or her duties as an officer, from disclosing information mentioned in subsection (6C) in accordance with subsection (6D).
- (6C) For subsection (6B), the information is information that:
- (a) relates to any or all of the following:
 - (i) a private health insurer;
 - (ii) an applicant to become a private health insurer;
 - (iii) a person carrying on health insurance business;
 - (iv) a director or officer of a person mentioned in subparagraph (i), (ii) or (iii); and
 - (b) is not information of a kind specified in the Private Health Insurance (Information Disclosure) Rules as information that must not be disclosed under section 323-10 of the *Private Health Insurance Act 2007*.
- (6D) For subsection (6B), the officer may disclose the information to the following:
- (a) the Health Minister;
 - (b) the Secretary of the Health Department;
 - (c) an APS employee in, or a person holding or performing the duties of an office in, the Health Department;
 - (d) a member of the Council (within the meaning of the *Private Health Insurance Act 2007*);

(e) a person employed, or a consultant engaged, by the Council (within the meaning of the *Private Health Insurance Act 2007*);

(f) the Chief Executive Medicare;

(g) a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*);

if the disclosure is made in accordance with any requirements in the Private Health Insurance (Information Disclosure) Rules.

11 Subsection 35C(2) (paragraph (a) of the definition of *listed disclosure method*)

Omit “Part 2”, substitute “Part II”.

12 Paragraph 36(1)(ba)

After “furnish”, insert “or publish”.

13 After paragraph 36(1)(c)

Insert:

or (d) to give a report;

Private Health Insurance Act 2007

14 Paragraph 230-1(a)

Repeal the paragraph.

15 Part 6-2

Repeal the Part.

16 At the end of section 323-5

Add:

; or (d) for the purpose of enabling a person to perform functions under Part IID of the *Ombudsman Act 1976*.

17 Subsection 323-10(1)

Repeal the subsection, substitute:

(1) This section applies to information if the information:

(a) relates to any or all of the following:

- (i) a private health insurer;
 - (ii) an applicant to become a private health insurer;
 - (iii) a person carrying on *health insurance business;
 - (iv) a *director or *officer of a person mentioned in subparagraph (i), (ii) or (iii); and
- (b) is not information of a kind specified in the Private Health Insurance (Information Disclosure) Rules as information that must not be disclosed under this section.
- (1A) For the purposes of subsection 323-1(3), a person to whom subsection (2) applies may disclose the information to:
- (a) another person to whom subsection (2) applies; or
 - (b) the Private Health Insurance Ombudsman; or
 - (c) an APS employee in, or a person holding or performing the duties of an office in, the Statutory Agency of the Commonwealth Ombudsman;
- if the disclosure is made in accordance with any requirements in the Private Health Insurance (Information Disclosure) Rules.

18 Paragraphs 323-10(2)(f) and (g)

Repeal the paragraphs.

19 Section 328-1

Omit “the Council, the Minister and the Private Health Insurance Ombudsman”, substitute “the Council and the Minister”.

20 Section 328-5, table items 36 and 37

Repeal the items.

21 Subsection 333-20(1), table item 11

Repeal the item.

22 Clause 1 of Schedule 1 (definition of *officer*, second occurring)

Repeal the definition.

23 Clause 1 of Schedule 1 (definition of *Private Health Insurance Ombudsman*)

Repeal the definition, substitute:

Private Health Insurance Ombudsman means the Private Health Insurance Ombudsman established by section 20C of the *Ombudsman Act 1976*.

24 Clause 1 of Schedule 1 (definition of records)

Repeal the definition.

Part 2—Transitional provisions

25 Definitions

In this Part:

commencement day means the day this item commences.

Health Minister means the Minister administering the *Private Health Insurance Act 2007*.

26 Things done by, or in relation to, the Private Health Insurance Ombudsman before the commencement day

- (1) If, before the commencement day, a thing was done by, or in relation to, the Private Health Insurance Ombudsman under the *Private Health Insurance Act 2007*, then the thing is taken, on and after that day, to have been done by, or in relation to, the Private Health Insurance Ombudsman under the *Ombudsman Act 1976*.
- (2) The Health Minister may, by writing, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, the Private Health Insurance Ombudsman before the commencement day.
- (3) A determination made under subitem (2) is not a legislative instrument.

27 Things started but not finished by the Private Health Insurance Ombudsman before the commencement day

- (1) This item applies if:
 - (a) before the commencement day, the Private Health Insurance Ombudsman started doing a thing under the *Private Health Insurance Act 2007*; and
 - (b) immediately before that day, the Private Health Insurance Ombudsman had not finished doing that thing.
- (2) The Private Health Insurance Ombudsman may, on and after the commencement day, finish doing the thing under the *Ombudsman Act 1976*.
- (3) The Health Minister may, by writing, determine that subitem (2) does not apply in relation to a specified thing started by the Private Health Insurance Ombudsman before the commencement day.

- (4) A determination made under subitem (3) is not a legislative instrument.

28 Application of the *Safety, Rehabilitation and Compensation Act 1988*

- (1) This item applies if, before the commencement day, an employee of the Private Health Insurance Ombudsman suffered an injury resulting in an incapacity for work or an impairment.
- (2) Sections 36, 37, 38, 39, 41 and 41A of the *Safety, Rehabilitation and Compensation Act 1988* apply on and after the commencement day, in relation to the injury, as if the employee were employed by the Office of the Commonwealth Ombudsman.

Note: The main effect of subitem (2) is that sections 36, 37, 38, 39, 41 and 41A of the *Safety, Rehabilitation and Compensation Act 1988* apply in relation to the employee's injury as if the Commonwealth Ombudsman were the rehabilitation authority.

- (3) On and after the commencement day, the Office of the Commonwealth Ombudsman is, for the purposes of section 40 of the *Safety, Rehabilitation and Compensation Act 1988*, taken to be the relevant employer of the employee.
- (4) For the purposes of this item, ***employee of the Private Health Insurance Ombudsman*** means a member of the staff assisting the Private Health Insurance Ombudsman referred to in subsection 253-45(1) of the *Private Health Insurance Act 2007*.

29 Transfer of records

- (1) This item applies to any records or documents that, immediately before the commencement day, were in the possession of the Private Health Insurance Ombudsman or a member of the staff assisting the Private Health Insurance Ombudsman referred to in subsection 253-45(1) of the *Private Health Insurance Act 2007*.
- (2) The records and documents are to be transferred to the Office of the Commonwealth Ombudsman on or after the commencement day.

Note: The records and documents are Commonwealth records for the purposes of the *Archives Act 1983*.

30 Disclosure of information

For sections 323-1 and 323-40 of the *Private Health Insurance Act 2007*, a disclosure of information is an **authorised disclosure** if the disclosure is:

- (a) made in the course of performing a duty or function, or exercising a power, under Part IID of the *Ombudsman Act 1976*; or
- (b) one that the person would have been able to make under the *Ombudsman Act 1976*, had the information been obtained in the course of performing a duty or function, or exercising a power, under the *Ombudsman Act 1976*.

31 Transitional rules

- (1) The Health Minister may, by legislative instrument (and subject to subitem (2)), make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty provision;
 - (b) provide:
 - (i) powers of arrest or detention; or
 - (ii) powers relating to entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) amend this Act.
- (3) This Act (other than subitem (2)) does not limit the rules that may be made for the purposes of subitem (1).

Schedule 2—Base premium measure

1 Non-commencement of certain items

Items 1, 2, 3, 6 and 13 of Schedule 1 to the *Private Health Insurance Legislation Amendment (Base Premium) Act 2013* are taken never to have commenced.

Note: The items are superseded by the amendments made by the *Private Health Insurance Legislation Amendment Act 2014*.

2 Validation of certain payments

Scope

- (1) This item applies if:
- (a) during the period starting on 1 April 2014 and ending immediately before the commencement of this item, an amount was purportedly paid to a private health insurer under a provision (the **payment provision**) of Part 6-4 of the *Private Health Insurance Act 2007*; and
 - (b) the amount paid exceeded the amount that, disregarding item 1, was payable to the private health insurer under the payment provision; and
 - (c) the amount paid equalled the amount that, taking account of item 1, was payable to the private health insurer under the payment provision.

Recovery of excess

- (2) The excess referred to in paragraph (1)(b):
- (a) is a debt due to the Commonwealth by the private health insurer; and
 - (b) may be recovered by action in a court of competent jurisdiction.

Substitute payment

- (3) There is payable to the private health insurer an amount equal to the excess referred to in paragraph (1)(b).
- (4) The payment under subitem (3) is taken to be a payment to which section 282-40 of the *Private Health Insurance Act 2007* applies.

- (5) The payment under subitem (3) is taken to satisfy any obligation to make a payment to the same private health insurer of the amount that was payable as described in paragraph (1)(c).

Set-off

- (6) The amount payable by the private health insurer under subitem (2) may be recovered by deduction from the amount payable to the private health insurer under subitem (3).

3 Application of amendments made by the *Private Health Insurance Legislation Amendment Act 2014* to adjustment year starting on 1 April 2014

Despite the fact that the *Private Health Insurance Legislation Amendment Act 2014* commenced on 9 April 2014, the amendments made by that Act apply to the whole of the adjustment year (within the meaning of the *Private Health Insurance Act 2007*) starting on 1 April 2014.

[Minister's second reading speech made in—
House of Representatives on 4 December 2014
Senate on 26 March 2015]

(267/14)
