1999

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

HEALTH LEGISLATION AMENDMENT BILL (NO. 2) 1999

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Health and Aged Care, the Hon. Michael Wooldridge, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE HOUSE OF REPRESENATIVES TO THE BILL AS INTRODUCED

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EXPLANATORY MEMORANDUM

HEALTH LEGISLATION AMENDMENT ACT (NO.2) 1999

OUTLINE

This Bill makes a number of amendments to the *National Health Act 1953* and the *Health Insurance Act 1973*. These reforms will improve the efficiency of the private health insurance industry and make private health insurance more attractive to consumers by enabling greater product flexibility.

Schedule 1

The main items contained in this Schedule to the Bill will:

(a) allow registered organizations ("health funds") to offer discounted premiums to contributors based on administrative savings;

(b) allow health funds to offer loyalty bonus schemes to contributors in recognition of the period of time over which contributions have been paid by or on behalf of the contributor;

(c) allow waiting periods to be modified for certain conditions, ailments or illnesses;

(d) allow health funds to cover the patient co-payment for prescribed pharmaceutical benefits for in-hospital treatment; and

(e) allow health funds to pay benefits for 'out-of-hospital procedures' which are undertaken in 'approved procedures facilities'.

Schedule 2

The main items contained in this Schedule to the Bill will:

(f) make consequential amendments to the *Health Insurance Act 1973* to allow 'simplified billing' arrangements to apply with respect to (e) above;

(g) make minor consequential amendments to the *National Health Act 1953* with respect to (a), (b), and (e) above.

(h) modify the definitions of 'accident and sickness insurance business' and 'health insurance business' to ensure that only health funds may provide insurance with respect to (e) above;

(i) modify the scope of services that may be contracted for through medical purchaser-provider agreements to enable such agreements to cover services referred to in (e) above.

Schedule 3

The main items contained in this Schedule to the Bill will:

(j) broaden the Minister's power to monitor changes to health fund rules relating to contribution rates (i.e. premiums) of health funds so that the Minister can look beyond the impact of those rule changes upon the individual health fund or its members – the existing grounds - and allow the Minister to consider the interests of the health insurance industry and the overall public interest;

(k) transfer the premium monitoring provisions from the Minister to Private Health Insurance Administration Council within two years;

(l) increase, at an appropriate time, the independence and flexibility that health funds have with respect to premium increases.

FINANCIAL IMPACT STATEMENT

The *Health Legislation Amendment Bill (No. 2) 1999* will have no significant impact on the finances of the Commonwealth.

REGULATION IMPACT STATEMENT

Background / Objectives

The amendments in this Bill aim to:

- improve the efficiency of the private health insurance industry; and
- introduce a number of measures to make private health insurance more attractive to consumers.

These objectives are consistent with a number of recommendations of the 1997 Industry Commission report on Private Health Insurance.

The Commission's recommendations were intended to enhance community welfare by increasing the efficiency and equity of the private health care system. At the same time pressure would be taken of the public system and health fund premiums stabilised.

The Government's position on the role of private health insurance is to maintain it as an essential feature of the mixed public/private health financing framework, with Medicare's ability to deliver being dependant on a stable and viable private health sector.

Impact Analysis

Impact on consumers of private health insurance: Increasing the attractiveness of the private health insurance product by allowing funds to offer cover for the 'out of pocket' costs associated with:

- the Pharmaceutical Benefits Scheme co-payment for in-hospital treatment for certain consumers; and
- out-of-hospital procedures' rendered in 'approved procedures facilities'.

Impact on health funds: Increasing the flexibility of funds to improve the efficiency of their operations, the attractiveness of their products and better market their health insurance products by allowing them:

- to offer discounted premiums for group memberships, payments made at least 6 months in advance, and direct debit from a bank account or payroll;
- to offer loyalty bonuses linked to length of membership;
- to protect themselves financially from 'hit and run' members by carefully applying waiting periods (while not exceeding the maximum periods determined by regulations);
- to utilise 'simplified billing' arrangements and medical purchaser-provider agreements when implementing an expand product range (i.e., 'out-of-hospital procedures' rendered in 'approved procedures facilities'); and
- at a time determined by the Government, to increase their independence and flexibility with respect to premium increases.

Impact on private hospitals and day hospital facilities: Hospitals and day hospital facilities will benefit financially from an increase (on what would otherwise have been the case) in the number of private patients utilising their facilities because of the increased the attractiveness of the private health insurance product for consumers.

Impact on medical practitioners: Doctor's will benefit financially from measures to make private health insurance more attractive through the ability to perform 'out-of-hospital procedures' in 'approved facilities'.

Consultation

The *Health Legislation Amendment Bill (No. 2) 1999* supports changes to existing legislation which were agreed by Cabinet on 4 August 1998. All relevant Departments were consulted in the process of taking the Submission to Cabinet. This included the Departments of the Prime Minister and Cabinet, Treasury and Finance and Administration.

In addition, the key industry associations plus major funds and consumer representatives have been consulted. Those associations are the Australian Private Hospitals Association, Australian Health Insurance Association, Health Insurance Restricted Membership Association of Australia, Medibank Private, Medical Benefits Fund, Australian Consumers Association, Australian Catholic Health Care Association, State based health insurance councils and State based private hospital associations.

Other agencies affected by the legislation have also been consulted. These are the Private Health Insurance Ombudsman and the Private Health Insurance Administration Council.

Administration

These amendments will be implemented in the time frame set out in the Commencement section (page 2) of the Bill.

Review

The amendments made to the *National Health Act 1953* will be given sufficient time to have full effect before consideration is given to further review.

HEALTH LEGISLATION AMENDMENT BILL (NO. 2) 1999

Section 1: Short title

This section cites the short title of the proposed legislation as the *Health Legislation Amendment Act (No. 2) 1999.*

Section 2: Commencement

This section provides that, except for the particular commencement days in this Section, the Act commences on the day on which the legislation receives Royal Assent. Items with commencement dates specified as being other than the day of Royal Assent are as follows:

1. items of Schedule 1 commence on a day to be proclaimed or otherwise on a day six months from the day of Royal Assent;

2. items of Schedule 2 commence on a day to be proclaimed or otherwise on a day six months from the day of Royal Assent;

3. items 1 to 7 of Schedule 3 commence on a day to be proclaimed; and

4. items 8 to 15 of Schedule 3 commence on a day to be proclaimed or otherwise on a day not more than 24 months after the commencement of items 1 to 7 referred to in (3) above.

Section 3: Schedule(s)

This section notes that each Act that is specified in the Schedules is to be as set out in the applicable items in the Schedule concerned.

SCHEDULE 1 – AMENDMENT OF THE NATIONAL HEALTH ACT 1953 TO ALLOW REGISTERED ORGANIZATIONS GREATER PRODUCT FLEXIBILITY

PART 1 – AMENDMENTS RELATING TO DISCOUNTED RATES OF CONTRIBUTIONS

Introduction

This part allows health funds to offer discounted premiums to contributors based on the administrative savings of health funds. The amendment allows the Minister to determine the maximum percentage of discount that a health fund can offer contributors. Further, the Minister may request documentary evidence from health funds so that they might justify the level of discount offered with respect to administrative savings.

Item 1

This item inserts two new subsections at the end of section 73BA of *the National Health Act 1953* (the Act). These new subsections allow the Minister to make a determination in writing of the maximum percentage of discount that health funds may offer to contributors for each payment class. The Minister, in making a determination in regard the maximum percentage of discount that health funds may offer, is required to look to the cost of health fund administration across the industry. Any determination made by the Minister is a disallowable instrument.

Item 2

This item repeals paragraph (q) of Schedule 1 of the Act and inserts seven new paragraphs; paragraphs (q), (r), (s), (t), (u), (v), and (w).

Paragraph (q) (i.e. insurable) of a health fund defines the membership categories available within each applicable benefits arrangement. Subparagraph (q)(i) provides a 'family' category; subparagraph (q)(ii) provides a 'single parents' category; subparagraph (q)(iii) provides a 'singles' category; and subparagraph (q)(iv) provides a 'couples' category. Except to the extent that paragraph (q) refers to the provision of a discount, the conditions of registration captured by this paragraph are currently imposed upon health funds through powers granted to the Minister under subsections 73 and 73B of the Act. The imposition of such conditions through the Act is now the preferred approach.

Paragraph (r) defines dependent child for the purposes of each membership category spelt out in paragraph (q). The conditions of registration captured by this paragraph are currently imposed upon health funds through powers granted to the Minister under subsections 73 and 73B of the Act.

Paragraph (s) determines who will be eligible for a discounted rate of contribution (i.e. premium). There are four payment circumstances for which a person is eligible for a discounted premium. These four circumstances are: payment of a contribution at least 6 months in advance; payment through a payroll deduction; payment through a direct debit from an account at a bank or other financial institution; and payment on behalf of the contributor when the contributor is deemed to belong to a particular contribution group. Note that subparagraph (s)(iv) allows health funds to determine those groups who will be eligible for discounted premiums (because payment are made on their behalf). Thus, for example, a health fund may (through its rules) allow discounts to be provided to a group of employees where the premiums are payed for those employees through one regular payment made on their behalf.

Paragraph (t) defines the pre-requisites for the provision of a discount. Subparagraph (t)(i) stipulates that the discounted premium must not exceed the ministerial maximum. Subparagraph (t)(ii) requires discounts to be available to each membership categories (e.g. 'family' etc) spelt out in paragraph (q). Subparagraph (t)(iii) states that the discount must not be for a period greater than 12 months. Subparagraph (t)(iv) stipulates that the fund must be able to justify the amount of discount offered in respect of each payment circumstance.

Paragraph (u) requires health funds to distinguish in their rules the undiscounted rates of contribution (i.e. base premiums) and discounted rates of contribution (i.e. base premium less discount). Further, funds are also required to clearly identify each respective discounted premium and the corresponding payment circumstance. Lastly, it shall not be possible for cumulative discounts to apply in respect of the same purchase of health insurance. For example, a person who has payed their premiums 12 months in advance and via direct debit from a financial institution may only receive the discount for paying 12 months in advance or for paying through a financial institution (but not both).

Paragraph (v) allows the Minister to request documentary evidence from health funds in regard to how they have determined the level of discount and whether such a discount is justifiable with respect to any reductions in management expenses.

Paragraph (w) obliges the health fund to follow any direction of the Minister served on it under the Act. This paragraph is a restatement of the original paragraph (q).

Item 3

This is a transitional provision. This item makes provision for the continuation of a discount in respect to an applicable benefit arrangement (insurance table) that was in force before the commencement of items 1 and 2, notwithstanding the fact that the original discount may have been unlawful.

PART 2 – AMENDMENTS RELATING TO LOYALTY BONUS SCHEMES

Introduction

This part allows health funds to offer loyalty bonus schemes to contributors in recognition of the period of time over which rates of contributions (i.e. premiums) have been paid by or on behalf of the contributor. Loyalty bonuses offered by health funds may be pecuniary in nature or may be provided through goods and services, irrespective of whether those goods and services are provided by the health fund or by a third party. A loyalty bonus cannot be offered by health funds on any other basis other than the period of time over which premiums have been paid by or on behalf of the contributor. This Part also ensures that health funds uphold the principle of "community rating" with respect to the provision of a loyalty bonus scheme to persons covered under a given insurance table.

Item 4

This items inserts two subsections after subsection 73BA(2). The new 73BA(2A) subsection allows the Minister to issue guidelines relating to loyalty bonus schemes. The new subsection 73BA(2B) specifies those matters that may be included in the Minister's guidelines. Any guidelines made by the Minister are disallowable instruments.

Items 5

This item inserts two paragraphs after paragraph (m) of Schedule 1, paragraphs (ma) and (mb).

Paragraph (ma) creates a condition allowing health funds to implement a loyalty bonus scheme. All loyalty bonus schemes must relate to the period of time that a contribution has been paid by or on behalf of such a contributor. There are no other grounds under which a loyalty bonus may be offered.

Paragraph (mb) requires of the health fund that they uphold the principle of "community rating" with respect to all persons covered under a given applicable benefits arrangement (i.e. health insurance table). For example, with respect to a "100% cover" insurance table, all contributors and dependents who are covered by the same "100% cover" insurance table, and who have been covered by that table over the same period of time, must be equally eligible to participate in the loyalty bonus scheme.

PART 3 – AMENDMENTS RELATING TO WAITING PERIODS

Introduction

This part allows for waiting periods to be extended for certain conditions, ailments or illnesses. The definition of pre-existing ailment continues unchanged. Health funds are able under this amendment to waiver waiting periods established either before, on or after the day on which this Part commences.

Item 6

This item inserts a new section after section 73BA to allow health funds to waiver waiting periods, whether those waiting periods were established before, on or after the day on which the item commences.

Item 7

This item allows reference to paragraph (j) [where paragraph (j) is to be the common reference point in the Act for waiting periods]. This item also repeals reference to the now redundant paragraph (bc) in paragraph (bb) of Schedule 1 of the Act.

Item 8

This item repeals the now redundant paragraph (bc) of Schedule 1.

Item 9

This item repeals paragraph (j) and replaces it with a new paragraph (j). The new paragraph (j) removes the legislatively prescribed waiting periods and allows these periods to be determined by regulation, thus allowing greater flexibility with respect to the application and duration of waiting times.

Item 10

This item repeals the redundant paragraph (k) of Schedule 1 of the Act.

Item 11

This item amends paragraph (ka) so that it no longer refers to the now redundant paragraph (k) of Schedule 1 of the Act.

Item 12

This item amends paragraph (kc) and allows reference to paragraph (j) (which, as noted above, is to be the common reference point in the Act for waiting periods). This item also repeals reference to the now redundant paragraph (k) in (kc) of Schedule 1 of the Act.

Item 13

This item amends paragraph (kd) to remove reference to the now redundant paragraph (bc).

Item 14

This is a transitional provision. The item ensures the continuation of a waiting period that was in force before the commencement of items 6 to 13 of Schedule 1.

PART 4 AMENDMENTS RELATING TO COVERAGE OF PHARMACEUTICAL BENEFITS COSTS

Introduction

This part allows health funds to cover the Pharmaceutical Benefits Scheme patient co-payment for prescribed pharmaceutical benefits for in-hospital treatment. This part will only apply to situations where a health fund purports that they are providing 100% cover for in-hospital care.

Item 15

This item amends paragraph 73A(1)(a) to allow an exception to the general prohibition against pharmaceutical benefit refund agreements.

Item 16

This item repeals section 92B, which is the general prohibition against pharmaceutical benefit refund agreements. The item reinserts a new section 92B. The new section 92B reasserts the general prohibition but provides for an exception to the general prohibition, that is, an exception is provided where a contributor to a health fund has purchased cover which purports to provide 100% cover for hospital treatment. In this situation health funds are lawfully able to pay the pharmaceutical benefits co-payment on behalf of the contributor. This provision is strictly controlled and only relates to those Pharmaceutical Benefits Scheme pharmaceuticals that are dispensed while the contributor is in hospital.

PART 5 – AMENDMENTS RELATING TO CERTAIN PROCEDURES RENDERED IN APPROVED PROCEDURES FACILITIES

Introduction

These amendments are made in response to the advancement of medical technology. The development of medical technology and anaesthetics has enabled procedures to be undertaken safely outside of the hospital or day hospital setting.

The amendments allow procedures which would otherwise have been performed in a hospital or day hospital facility to be performed in an 'approved procedures facility' (i.e. in an appropriately equipped and staffed facility which is based within a medical practitioners rooms or suite).

The amendments also allow the Minister to specify which Medicare Benefit Schedule items are appropriate to performed as an 'out-of-hospital procedure' and to approve the 'approved procedures facility.' This dual approval process allows the Minister to guarantee that minimum safety and like requirements are adhered to in the rendering of these services.

However, changing methods of providing medical procedures that would otherwise have been provided in hospital or day hospital. This amendment allows those out-of-hospital procedures determined by the Minister, which are professional services in respect of which a medicare benefit is payable, to be undertaken in approved procedures facilities.

Item 17

This item inserts a new definition into subsection 4(1) of the Act for an 'approved procedures facility.'

Item 18

This item amends subsection 5A(1) of the Act. A new paragraph is inserted to allow a health fund to contract with contributors to cover liabilities arising from those professional services to which the paragraph is expressed to extend. One such circumstance to which this paragraph is expressed to extend is the rendering of 'out-of-hospital procedures' in 'approved procedures facilities.'

Item 19

This item inserts a new subsection 5A(1A) and 5A(1B) into the Act. The new subsection 5A(1A) extends those professional services referred to in item 19 to include those procedures that Minister has determined (through a new subsection 5A(2C)) to be out-of- hospital procedures. The new subsection (1B) states that any additional charges arising because of the operation of the new subsection (1A) may also be covered by the health fund.

Thus, it is anticipated that if a medical practitioner is to be able to provide 'out-of-hospital procedures' outside of a hospital or day hospital facility, the practitioner may be required to make a significant investment in capital and additional staffing to ensure that such procedures are carried out safely and in accordance with acceptable medical practice. The additional charges alluded to above would be necessary to recover (over time) any capital or staffing expenditure made by the practitioner.

Item 20

This item inserts a new section 5C into the Act. The new section allows the Minister to declare in writing that selected premises are 'approved procedures facilities.' The Minister may make guidelines for the purposes of declaring 'approved procedures facilities.' Any guidelines made by the Minister are disallowable instruments.

Thus, for example, a group of specialists may establish an 'approved procedures facility' within their rooms. And, assuming the 'approved procedures facility' meets the Minister's guidelines (which, it is anticipated, will require compliance with relevant local government laws, State and Territory laws and other safety and professional practice requirements) and gains Ministerial approval, those specialists will be able to perform 'out-of-hospital procedures' in their 'approved procedures facility' and attract both relevant Medicare benefits and payments from a health fund.

Item 21

This item inserts new subsections (2C) and (2D) before subsection 73BA(3). Subsection (2C) allows the Minister to determine those 'out-of-hospital procedures' that may be performed in an 'approved procedures facility.' Subsection (2C) only allows the Minister to determine that a procedures is an 'out-of-hospital procedure' if the performance of that procedure would otherwise have required admission to a hospital or day hospital facility.

This subsection also allows the Minister to determine a minimum 'facility benefit' payable with respect to those services. The Minister's determinations of 'out-of-hospital procedures' and the minimum 'facility benefit' are disallowable instruments. As noted above, the 'facility benefit' is a payment made in recognition of the investment a medical practitioner would have been required to make in order to allow such an 'out-of-hospital procedure' to be performed safely in an 'approved procedures facility.'

Item 22

This items inserts new paragraphs (bka) and (bkb) after paragraph (bk) of Schedule 1. Paragraph (bka) determines the minimum level of benefit a health fund must pay in respect of an out-of-hospital procedure undertaken in an approved procedures facility. The minimum level of benefit in respect of any given procedure will equal 25% of the Medicare Benefits Schedule fee and the 'facility benefit' determined by the Minister. Paragraph (bkb) states that benefits payable by the health fund in respect to a professional service must not exceed 25% of the Schedule fee unless the health fund has entered into a medical purchaser-provider agreement with the medical practitioner providing the service at the 'approved procedures facility.'

SCHEDULE 2 CONSEQUENTIAL AMENDMENTS OF VARIOUS ACTS RELATED TO THE AMENDMENTS IN SCHEDULE 1

Introduction

These are incidental amendments to both the *Health Insurance Act 1973* and the *National Health Act 1953* which are required to appropriately implement the scheme outlined in Part 5 of Schedule 1 of this Bill.

Health Insurance Act 1973

Item 1

This item repeals paragraph 20A(2A)(a) and replaces it with a new paragraph. The new paragraph 20A(2A)(a) incorporates the new scheme outlined in Part 5 of Schedule 1 and allows Medicare benefits in respect of the professional services provided under that scheme to be assigned to the health fund (thus, allowing one form of 'simplified billing'). 'Simplified billing' with respect to health funds may therefore be utilised in all circumstances where a person receives a professional service in a hospital, day hospital facility or an 'approved procedures facility'.

Item 2

This item repeals paragraph 20A(2C)(a) and replaces it with a new paragraph. The new paragraph 20A(2C)(a) incorporates the new scheme outlined in Part 5 of Schedule 1 and allows Medicare benefits in respect of the professional services provided under that scheme to be assigned to an approved billing agent (thus, allowing another form of 'simplified billing'). 'Simplified billing' handled by approved billing agents may therefore be utilised in all circumstances where a person receives a professional service in a hospital, day hospital facility or an 'approved procedures facility'.

National Health Act 1953

Item 3

This item inserts a new subsection (2A) after section 5A(2). This subsection confirms that when a contributor and health fund contract to cover the liability arising from the provision of professional services the contract can also extend to one or more of the types of services to which paragraph (1)(ba) is expressed to extend. That is, a person may (whether or not they are also covered for liabilities arising in respect to hospital treatment and/or professional services related to that hospital treatment) also obtain coverage for 'out-of-hospital procedures' rendered in an 'approved procedures facility'.

Item 4

This item inserts a new section 5AB after section 5A. This new section 5AB ensures that changes to health fund constitutions, articles or rules that relate to either discounting and/or loyalty bonus schemes are not to be considered to be changes related to rates of contributions changes (i.e. premium changes).

Item 5

This item repeals paragraph (a) of the definition of 'accident and sickness insurance business' in subsection 67(4) and replaces it. The new paragraph (a) incorporates the scheme referred to in Part 5 of Schedule 1, thus ensuring that a person carrying on accident and sickness insurance business may not cover those types of services.

Item 6

This item repeals paragraph (a) of the definition of 'health insurance business' in subsection 67(4) and replaces it. The new paragraph (a) incorporates the scheme referred to in Part 5 of Schedule 1, thus ensuring that a person carrying on a health insurance business may cover those types of services.

Item 7

This item repeals subsection 73BDA(6) and replaces it. The new subsection (6) expands the type of services to which a medical purchaser-provider agreement may apply. Thus, a medical purchaser-provider agreement may now relate to: professional services provided to a patient in a hospital or day hospital facility; and professional services, being 'out-of-hospital procedures' determined by the Minister, provided in an 'approved procedures facility'.

Item 8

This amendment to subsection 73BDA ensures that every person has the right to individually contract for services from any medical practitioner, notwithstanding the fact that the medical practitioner may have entered into a medical purchaser-provider agreement with one or more health funds.

Item 9

Item 9 amends (bf) of Schedule 1. This amendment limits the requirement that health funds include within any contract for the provision of hospital treatment, treatment in respect of palliative care, psychiatric or rehabilitation care. Those products related exclusively to 'out-of-hospital procedures' undertaken in 'approved procedures facilities' are not required to cover liabilities arising form the provision of palliative care, psychiatric care or rehabilitation care.

SCHEDULE 3 – AMENDMENTS RELATING TO MONITORING OF CHANGES IN CONTRIBUTION RATES OF ORGANIZATIONS

Introduction

Health funds specify both their premium levels and benefits for a particular insurance product in health fund rules. (Note that, historically, the constitution and articles of some health funds have also included clauses relating to premium levels and benefits. Consequently changes to the constitution or articles of the heath fund relating to premium levels and benefits are, for the purposes of these provisions, to be considered equivalent to rule changes.)

A change to any health fund rule is subject to Ministerial scrutiny. These amendments establish separate provisions to deal with rule changes that relate to a change in the rates of contribution of contributors (i.e. change in premium levels) and all other rule changes. Further, the Minister has two additional grounds upon which to base a decision to disallow any given rule change (both of these additional grounds allow the Minister to look beyond the impact of those rule changes upon the health fund or its members – the existing grounds – and allow the Minister to consider the broader interests of the health insurance industry and the overall public interest). These amendments commence on a day to be proclaimed.

In addition, these amendments allow, on a day to be proclaimed (but not longer than 24 months after the proclamation referred to above) the transfer of rates of contribution rule change provisions from the Minister to the Private Health Insurance Administration Council.

Lastly, these amendments will, on a day to be proclaimed (but no longer than 24 months after the transfer of the rates of contribution rule change provisions to the Private Health Insurance Administration Council) provide increased independence and flexibility to health funds with respect to rates of contribution rule changes.

Item 1

Items 1 to 7 commence on a day to be proclaimed.

Item 1 amends subsection 78(1) of the Act to allow health fund rule changes relating to rates of contribution (premiums) to be dealt with in the new section 78A (see below). All rule changes not relating to premium changes will be dealt with through the modified section 78 of the Act.

Item 2

Subsection 78(1A) is repealed and replaced. The new subsection 78(1A) simply reiterates the original restrictions related to non-premium rule changes. That is, health funds must provide non-premium rules changes to the Secretary of the Department (to allow scrutiny by the Minister) not later than 60 days (or such other period as determined by the Minister) before the change is to come into operation.

Item 3

Subsection 78(2A) is amended. The amendment demands that, if the Minister wishes to vary the 60 day limit (referred to in item 2), the variation is to be a disallowable instrument.

Item 4

Subsection 78(4) is repealed and replaced. The new subsection 78(4) reiterates the original three grounds for disallowing a rule change (would or might result in a breach of the Act or condition of registration; imposes an unreasonable or inequitable condition upon the health fund's members; might, having regard to the advice of the Private Health Insurance Administration Council, adversely affect the financial stability of the health fund). However, two additional grounds are added.

The first additional ground allows the Minister to disallow the rule change where he or she is of the opinion that it might, if the substance of the change were adopted by other health funds, adversely affect the interests of the private health insurance industry. The phrase 'interests of the private health insurance industry' is intended to include all aspects of the health insurance industry including the number of people who subscribe to health insurance, the confidence the community has in the viability of the private health insurance industry and the financial sustainability of the industry.

The second additional ground allows the Minister to disallow a rule change where he or she is of the opinion that the rule change is contrary to the public interest. The 'public interest' is intended to include the impact upon the Commonwealth Government's financial position due to changes in the level of coverage of private health insurance, the viability of private health care service providers, and the viability of public insurance mechanisms including Medicare and the public hospital funding arrangements between the Commonwealth and the States and Territories.

In addition, the new subsection 78(4) puts beyond doubt the fact that the Minister may only declare a rule change be disallowed (or, as the Bill describes, "declare in writing that the change is not to come into operation") within the 60 day (or other) period noted above.

Note that a decision to disallow a rule change under section 78 may be reviewed by the Administrative Appeals Tribunal (see subsection 105AB(5)).

Item 5

A new section 78A is inserted after section 78 (as modified). The new section 78A only deals with health fund rule changes that are changes in the rates of contribution paid by contributors (i.e. premium changes). Section 78A mirrors the original section 78 (as modified) in terms of process and grounds upon which a rule change may be disallowed (see item 4 above). However, section 78A contains a shorter notification period (14 days rather than 60 days).

Item 6

Inserts a new subsection 105(5A) after subsection 105(5) of the Act. The new subsection 105(5A) allows a decision to disallow a rule change that changes the rates of contribution paid by contributors (ie premium changes) to be reviewed by the Administrative Appeals Tribunal. Thus, decisions to disallow a rule change made under the new section 78A are reviewable, as are decisions made under the original section 78 (as modified).

Item 7

This item contains two transitional provisions related to rule changes. The first transitional provision states the new provisions in items 1 to 6 only relate to notifications of rule changes submitted to the Secretary of the Department after those provisions commence. The second transitional provision states that where a notification of a rule change was made to the Secretary of the Department prior to the commencement of the provisions in items 1 to 6, those changes are to be dealt with under the original rule change scheme.

Item 8

Items 8 to 15 relate to the transfer of functions to the Private Health Insurance Administration Council. Items 8 to 15 commence on a day to be proclaimed, not being a day longer than 24 months from the day items 1 to 7 of Schedule 3 are proclaimed.

Item 8 repeals paragraph 73BE(1)(a) of the Act. This paragraph allows the Minister to make a direction to health funds with respect to rates of contribution paid by contributors (i.e. premium changes). Such a power is inappropriate once the premium related rule change disallowance powers are transferred to the Private Health Insurance Administration Council.

Item 9

This item amends subsections 78A(1), (2) and (3) to transfer functions carried out by the Secretary (with respect to a rule change that changes the rates of contribution paid by contributors) to the Private Health Insurance Administration Council. Item 9 commences on a day to be proclaimed, not being a day longer than 24 months from the day items 1 to 7 of Schedule 3 are proclaimed.

Item 10

This item amends paragraph 78A(2)(a) and (b) and subsection 78A(4) and (8) to transfer functions carried out by the Minister (with respect to a rule change that changes the rates of contribution paid by contributors) to the Private Health Insurance Administration Council. Item 10 commences on a day to be proclaimed, not being a day longer than 24 months from the day items 1 to 7 of Schedule 3 are proclaimed.

Item 11

This item amends paragraph 78A(8)(c). This amendment means that the Private Health Insurance Administration Council is not required to undertake the anachronistic task of advising itself with respect to the impact of a rule change upon the financial stability of a health fund. Item 11 commences on a day to be proclaimed, not being a day longer than 24 months from the day items 1 to 7 of Schedule 3 are proclaimed.

Item 12

This items repeals subsections 78A(9) and (10) and replaces them with subsections that are substantially the same in nature but that now require the Private Health Insurance Administration Council, where they make a declaration to disallow a rule change that changes the rates of contribution paid by contributors (ie premiums) they are to communicate their decision to both the health fund and the Secretary of the Department. In addition, the Private Health Insurance Administration Council is required, at least once each financial year, to provide a report on all rule changes (and, where applicable, changes to constitutions and articles) that relate to premium increases. Item 12 commences on a day to be proclaimed, not being a day longer than 24 months from the day items 1 to 7 of Schedule 3 are proclaimed.

Item 13

This item inserts a new paragraph 82G(1)(da) after paragraph 82G(1)(d) in the Act. Subsection 82G(1) lists the functions of the Private Health Insurance Administration Council. The insertion of the new paragraph 82G(1)(da) allows the Private Health Insurance Administration Council to disallow rule changes that change health fund premiums (and all related tasks). Item 13 commences on a day to be proclaimed, not being a day longer than 24 months from the day items 1 to 7 of Schedule 3 are proclaimed.

Item 14

This item repeals subsection 105(5A) and replaces it with a new provision. The new subsection 105(5A) allows a decision by the Private Health Insurance Administration Council to disallow a rule change that changes the rates of contribution paid by contributors (ie premium changes) to be reviewed by the Administrative Appeals Tribunal. Thus, decisions to disallow a rule change made under the new section 78A continue to be reviewable (notwithstanding the transfer of the function to the Private Health Insurance Administration Council from the Minister). Item 14 commences on a day to be proclaimed, not being a day longer than 24 months from the day items 1 to 7 of Schedule 3 are proclaimed.

Item 15

This item contains two transitional provisions related to rule change that changes the rates of contribution paid by contributors (ie premiums). The first transitional provision states that the provisions in items 8 to 14 only relate to notifications of rule changes submitted to the Private Health Insurance Administration Council after those provisions commence. The second transitional provision states that where a notification of a rule change was made to the Secretary of the Department, prior to the commencement of the provisions in items 8 to 14, those changes are to be dealt with by the Private Health Insurance Administration Council.

Item 15 commences on a day to be proclaimed, not being a day longer than 24 months from the day items 1 to 7 of Schedule 3 are proclaimed.

Item 16

This item increases the flexibility and independence of health funds with respect to rates of contribution rule changes (i.e. premium rule changes). The item achieves this increased flexibility by repealing section 78A of the Act.

Item 17

This item removes from the Private Health Insurance Administration Council their ability to monitor rates of contribution rule changes.

Item 18

This item repeals the now redundant Administrative Appeals Tribunal review mechanism for rates of contribution rule change decisions made by the Private Health Insurance Administration Council.