



# **Health Legislation Amendment (Private Health Insurance) Act 2006**

**No. 83, 2006**

**An Act to amend legislation relating to health, and  
for related purposes**

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



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# Health Legislation Amendment (Private Health Insurance) Act 2006

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## An Act to amend legislation relating to health, and for related purposes

[Assented to 30 June 2006]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Health Legislation Amendment (Private Health Insurance) Act 2006*.

### 2 Commencement

This Act commences on 1 July 2006.

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### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments relating to the Health Insurance Ombudsman

### *National Health Act 1953*

#### **1 Before section 82ZQ**

Insert:

#### **82ZPA Principal object of this Part**

The principal object of this Part is to establish, and set out the powers and functions of, the Health Insurance Ombudsman so that the Health Insurance Ombudsman 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 and 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.

#### **2 Subsection 82ZQ(1)**

Omit “(1)” (first occurring).

#### **3 Subsection 82ZQ(1)**

Insert:

**broker** means a person:

- (a) who deals (otherwise than by carrying on health insurance business within the meaning of section 67) in insurance provided under contracts of insurance entered into by registered organizations; and
- (b) who acts on behalf of persons intending to become insured persons.

#### **4 Subsection 82ZQ(1)**

Insert:

***health care provider*** means:

- (a) a hospital or a day hospital facility; or
- (b) a medical practitioner; or
- (c) an accredited podiatrist; or
- (d) any other person who provides services or goods to, or manufactures or supplies goods that are provided to, insured persons, in circumstances in which the liability of insured persons to pay fees and charges in respect of the services or goods is capable of being insured by a registered organization.

## **5 Subsection 82ZQ(1)**

Insert:

***insured person*** means an individual who is covered by a contract of insurance entered into (whether or not by the individual) with a registered organization.

## **6 Subsection 82ZQ(1)**

Insert:

***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 registered organization—a person who is an officer of the organization within the meaning of subsection 66(1); 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.

## **7 Subsection 82ZQ(1) (at the end of the definition of *private health insurance arrangement*)**

Add:



- ; (g) an arrangement for the purposes of a gap cover scheme that is approved under section 73BDD;
- (h) an arrangement between a registered organization and a health care provider;
- (i) an arrangement between a registered organization and any other person in relation to insurance;
- (j) an arrangement between a broker and a person intending to become an insured person;
- (k) a determination under subsection 73AAG(6) or (7) in relation to prostheses;
- (l) a determination under paragraph (1)(bj) of Schedule 1 in relation to minimum levels of benefit for hospital treatment.

## 8 Subsection 82ZQ(1) (definition of *records*)

Repeal the definition, substitute:

*records*, of a subject of a complaint under Division 3 or an investigation under Division 4, includes any of the following 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 registered organization;
- (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 records relating to its dealings with that particular person including correspondence, internal memoranda, emails, and recordings of taped conversations;

whenever those records came into existence.

## 9 Subsection 82ZQ(1)

Insert:

*subject*:

- (a) of a complaint under Division 3, means the person or body against whom the complaint is made; or

- (b) of an investigation under Division 4, means the person or body being investigated.

**10 Subsection 82ZQ(2)**

Repeal the subsection.

**11 Paragraph 82ZRC(b)**

After “82ZTA”, insert “(including by mediating under section 82ZTBAB)”.

**12 Paragraph 82ZRC(cb)**

After “organizations”, insert “or brokers”.

**13 After paragraph 82ZRC(cb)**

Insert:

- (cc) to report to the Minister or to the Department, as part of reports about the practices of particular registered organizations, 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;

**14 Paragraph 82ZRC(d)**

After “organizations”, insert “or brokers”.

**15 After paragraph 82ZRC(d)**

Insert:

- (da) to make recommendations to the Minister or to the Department, together with recommendations about regulatory practices and/or industry practices relating to registered organizations, about regulatory practices and/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;

**16 Paragraph 82ZS(1)(a)**

Omit “covered by a private health insurance policy”, substitute “an insured person”.

**17 Paragraphs 82ZS(1)(b), (c), (ca) and (d)**

Repeal the paragraphs, substitute:

- (b) a registered organization;
- (c) a health care provider;
- (d) a broker.

**18 Subsection 82ZS(3)**

Repeal the subsection.

**19 After section 82ZS**

Insert:

**82ZSAAA Persons or bodies against whom complaints may be made**

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

- (a) a registered organization;
- (b) a health care provider;
- (c) a broker.

**20 Section 82ZSA**

Before “The complaint”, insert “(1)”.

**21 At the end of section 82ZSA**

Add:

- (2) For the purposes of subsection (1), a complaint against a health care provider is only about a matter mentioned in that subsection if, in addition to that subsection applying to the complaint:
  - (a) the complaint is also about either or both of the following:
    - (i) the application of a private health insurance arrangement to a service or good provided, or a good 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) unless paragraph (1)(e) applies to the complaint—at least one of the following applies:
    - (i) the complaint is also made against a registered organization;
    - (ii) the complainant is a registered organization or an insured person;
    - (iii) if the complainant is another health care provider or a broker—a registered organization or an insured person is also a complainant in relation to the complaint.
- (3) The regulations may prescribe matters about which complaints cannot be made.

**22 Subsection 82ZSAA(1)**

Omit “in relation to a registered organization”.

**23 Paragraph 82ZSAA(1)(a)**

Omit “inform the organization”, substitute “inform the subject of the complaint”.

**24 Subsection 82ZSAA(1)**

Omit “of the organization” (wherever occurring), substitute “ of the subject”.

**25 Paragraph 82ZSAA(2)(a)**

Omit “concerning a registered organization”.

**26 Subsection 82ZSAA(2)**

Omit “the organization”, substitute “the subject of the complaint”.

**27 Subsection 82ZSAA(2)**

Omit “that organization”, substitute “that subject”.

**28 Subsection 82ZSAA(3)**

Omit “a registered organization”, substitute “the subject of the complaint”.

**29 Subsection 82ZSAA(3)**

Omit “the organization” (wherever occurring), substitute “the subject”.

**30 Subsection 82ZSAA(5)**

Omit “registered organization”, substitute “subject”.

**31 Subsection 82ZSAA(7)**

Omit “registered organization’s”, substitute “subject’s”.

**32 Subsection 82ZSAA(8)**

Omit “registered organization”, substitute “subject”.

**33 Subsection 82ZSAA(10)**

Omit “registered organization”, substitute “subject”.

**34 After section 82ZSAA**

Insert:

**82ZSAB Disclosure of personal information to the Health Insurance Ombudsman**

(1) This section applies if:

- (a) a person provides a record to the Health Insurance Ombudsman in accordance with a request under subsection 82ZSAA(1), (2) or (3); or
- (b) a person provides information or a document to the Health Insurance Ombudsman, reasonably believing that this would assist the Health Insurance Ombudsman in:
  - (i) dealing with a complaint under section 82ZSB, 82ZSBA or 82ZSC; or
  - (ii) making a decision under section 82ZSG not to deal, or not to continue to deal, with a complaint.

(2) 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 the record, information or document may be disclosed if the disclosure is authorised by law;

the providing of the record, information or document to the Health Insurance Ombudsman is taken to be authorised by law.

**35 Paragraph 82ZSB(1)(a)**

Omit “person or body against whom the complaint was made”, substitute “subject of the complaint”.

**36 Paragraph 82ZSB(1)(b)**

Omit “a registered organization and requesting the organization”, substitute “the subject of the complaint and requesting the subject”.

**37 Paragraph 82ZSB(1A)(a)**

Omit “a registered organization”, substitute “the subject of the complaint”.

**38 Subsection 82ZSB(1A)**

Omit “the organization” (wherever occurring), substitute “the subject”.

**39 After subsection 82ZSB(2)**

Insert:

(2A) The Health Insurance Ombudsman must not take any action under subsection (1) if the complaint is about a matter prescribed by regulations made for the purposes of subsection 82ZSA(3).

**40 After section 82ZSB**

Insert:

**82ZSBAA Participation in mediation may be compulsory**

(1) The Health Insurance Ombudsman may, having regard to any guidelines under paragraph 82ZV(2)(a), direct the subject of a complaint to participate in mediation under paragraph 82ZSB(1)(a).

- (2) The direction must:
- (a) be in writing; and
  - (b) specify the individual or individuals who are subject to the direction; and
  - (c) be given to the individual or individuals; and
  - (d) specify the time of the mediation, which must not be earlier than 14 days after the day on which the direction is given to the individual or individuals; 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.

- (3) A person commits an offence if:
- (a) the person is an individual who is subject to a direction under subsection (1) to participate in mediation; and
  - (b) the complainant in relation to the complaint to be mediated 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 82ZSBAB, the person's representative, fails to participate in part or all of the mediation.

Penalty for an offence against this subsection: 10 penalty units.

### **82ZSBAB Medical practitioners may appoint representatives**

- (1) If the Health Insurance Ombudsman directs a medical practitioner under subsection 82ZSBAA(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.

### **82ZSBAC Conduct of compulsory mediation**

- (1) If the Health Insurance Ombudsman directs the subject of a complaint to participate in mediation, the mediation may be conducted by:

- (a) the Health Insurance Ombudsman; or
  - (b) a person appointed by the Health Insurance Ombudsman under section 82ZUH.
- (2) Mediation in which the subject is directed to participate ceases:
  - (a) if the parties agree to settle the complaint; or
  - (b) if, having regard to any guidelines under paragraph 82ZV(2)(b), the Health Insurance Ombudsman considers that the complaint cannot be settled by mediation.
- (3) A person appointed by the Health Insurance Ombudsman under section 82ZUH to conduct mediation must, as soon as practicable after the mediation is conducted or should have been conducted, report to the 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.

**82ZSBAD Admissibility of things said in mediation**

- (1) Evidence of anything said, or any admission made, during participation in mediation under paragraph 82ZSB(1)(a) 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 subject is directed to participate in the mediation.

**41 Subsection 82ZSD(1)**

Omit “from a registered organization”, substitute “from the subject of a complaint”.

**42 Paragraphs 82ZSD(1)(b) and (c)**

Omit “a hospital, day hospital facility or medical practitioner”, substitute “a health care provider or broker”.



**43 Paragraph 82ZSD(2)(b)**

Omit “a hospital, day hospital or medical practitioner”, substitute “a health care provider or broker”.

**44 Subsection 82ZSD(3)**

Omit “a hospital, day hospital or medical practitioner”, substitute “a health care provider or broker”.

**45 Subsection 82ZSD(3)**

Omit “that the hospital, day hospital or medical practitioner”, substitute “an officer of the health care provider or broker”.

**46 Subsection 82ZSD(3)**

Omit “report to”, substitute “to report to”.

**47 After subsection 82ZSD(4)**

Insert:

- (4A) An officer of whom a request is made under subsection (3) must not fail to report to the Health Insurance Ombudsman in accordance with the request.

Penalty: 10 penalty units.

**48 Subsection 82ZSD(5)**

After “subsection (4)”, insert “or (4A)”.

**49 At the end of section 82ZSD**

Add:

- (7) An officer of whom a request is made under subsection (3) must not make a report to the Health Insurance Ombudsman under that subsection knowing that the report is false or misleading in a material particular.

Penalty for an offence against this subsection: Imprisonment for 6 months.

**50 Subsection 82ZSDA(1)**

Omit “particular registered organization”, substitute “particular subject”.

**51 Paragraph 82ZSDA(1)(a)**

Omit “registered organization”, substitute “subject of the complaint”.

**52 Subparagraph 82ZSDA(1)(b)(i)**

Omit “registered organizations”, substitute “subjects of that kind”.

**53 Subparagraph 82ZSDA(1)(b)(ii)**

Omit “registered organization the”.

**54 After subsection 82ZSDA(1)**

Insert:

- (1A) The 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 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.

**55 Subsection 82ZSDA(2)**

Omit “particular registered organization”, substitute “particular subject”.

**56 Paragraph 82ZSDA(2)(a)**

Omit “registered organization concerned”, substitute “subject”.

**57 Paragraph 82ZSDA(2)(a)**

Omit “conduct of the registered organization”, substitute “subject’s conduct”.

**58 Paragraphs 82ZSDA(2)(b) and (c)**

Omit “registered organization”, substitute “subject”.

**59 Paragraph 82ZSE(1)(a)**

After “82ZSB”, insert “, 82ZSBAA”.

**60 Paragraphs 82ZSE(1)(c) and (2)(c)**

Omit “hospital, day hospital facility or medical practitioner”, substitute “health care provider or broker”.

**61 Subsection 82ZSG(1)**

Omit “not to investigate, or not to continue to investigate,”, substitute “not to deal, or not to continue to deal, with”.

Note: The heading to section 82ZSG is altered by omitting “investigate” and substituting “deal with complaint”.

**62 Paragraph 82ZSG(1)(a)**

Omit “the person or body against whom the complaint is made”, substitute “the subject of the complaint”.

**63 Paragraph 82ZSG(1)(aa)**

Omit “, or is dealing,”.

**64 At the end of subsection 82ZSG(1)**

Add:

- ; or (d) 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
- (e) 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.

**65 Subsection 82ZSG(1A)**

Omit “not to investigate, or not to continue to investigate,”, substitute “not to deal, or not to continue to deal, with”.

**66 Subsection 82ZSG(2)**

Omit “investigate”, substitute “deal with”.

**67 Subsection 82ZSG(2)**

Omit “person or body against whom the complaint is made”, substitute “subject of the complaint”.

**68 Subsection 82ZSG(4)**

Omit “not to investigate, or not to continue to investigate,”, substitute “not to deal, or not to continue to deal, with”.

**69 Subsection 82ZSG(5)**

Omit “not to investigate, or not to continue to investigate,”, substitute “not to deal, or not to continue to deal, with”.

**70 At the end of Division 3 of Part VIC**

Add:

**82ZSI Protection from civil actions**

- (1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because a statement was made in good faith to the Health Insurance Ombudsman in connection with the making of a complaint under this Division.
- (2) A reference in subsection (1) to making a statement includes a reference to giving a document or information.

**71 Section 82ZT**

Before “The”, insert “(1)”.

**72 Section 82ZT**

After “organization”, insert “or a broker”.

**73 At the end of section 82ZT**

Add:

- (2) The 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 registered organization under subsection (1), if:
  - (a) the investigation is to relate to a matter arising out of or connected with a private health insurance arrangement; and
  - (b) the health care provider’s 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 Health Insurance Ombudsman considers, having regard to the object of this Part, that investigation of the health care provider together with the registered organization is necessary or appropriate in order to consider the matter effectively.

**74 Subsection 82ZTA(1)**

After “organization”, insert “or a broker”.

**75 After subsection 82ZTA(1)**

Insert:

- (1A) The Minister may request the Health Insurance Ombudsman to investigate the practices and procedures of a health care provider together with an investigation of a registered organization under subsection (1), if:
  - (a) the investigation is to relate to a matter arising out of or connected with a private health insurance arrangement; and
  - (b) the health care provider’s 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 Minister considers, having regard to the object of this Part, that investigation of the health care provider together with the registered organization is necessary or appropriate in order to consider the matter effectively.

**76 Subsection 82ZTA(2)**

Omit “such a request”, substitute “a request under this section”.

**77 Subsection 82ZTB(1)**

Omit “a registered organization”, substitute “a subject of investigation”.

**78 Subsection 82ZTB(1)**

Omit “the organization” (wherever occurring), substitute “the subject”.

**79 Subsection 82ZTB(3)**

Omit “the registered organization”, substitute “the subject”.

**80 Subsection 82ZTB(5)**

Repeal the subsection, substitute:

- (5) The Health Insurance Ombudsman must not, under subsection (1), request from a registered organization:
  - (a) the giving of information; or
  - (b) the production of records;that relate to a particular individual or particular individuals who are, or who have sought to become, or who were during the period being investigated, insured persons, unless that individual or those individuals agree to the giving of the information or the production of the records.
- (5A) The Health Insurance Ombudsman must not, under subsection (1), request from a health care provider:
  - (a) the giving of information; or
  - (b) the production of records;that relate to a particular individual or particular individuals who are, or who were during the period being investigated, patients of the health care provider, unless that individual or those individuals agree to the giving of the information or the production of the records.
- (5B) The Health Insurance Ombudsman must not, under subsection (1), request from a broker:
  - (a) the giving of information; or
  - (b) the production of records;that relate to a particular individual or particular individuals who are, or who were during the period being investigated, clients of the broker, unless that individual or those individuals agree to the giving of the information or the production of the records.

**81 Subsections 82ZTB(6), (8) and (9)**

Omit “of a registered organization”.

**82 After section 82ZTB**

Insert:

**82ZTBAA Disclosure of personal information to the Health Insurance Ombudsman**

(1) This section applies if:

- (a) a person provides information or a record to the Health Insurance Ombudsman in accordance with a request under subsection 82ZTB(1); or
- (b) a person provides information or a document to the Health Insurance Ombudsman, reasonably believing that this would assist the Health Insurance Ombudsman in investigating a matter under section 82ZT or 82ZTA.

(2) 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 the record, information or document may be disclosed if the disclosure is authorised by law;

the providing of the record, information or document to the Health Insurance Ombudsman is taken to be authorised by law.

**82ZTBAB Health Insurance Ombudsman may mediate as part of investigation**

The Health Insurance Ombudsman may, if the Health Insurance Ombudsman considers it appropriate and consistent with the object of this Part, try to resolve a matter being investigated under this Division by mediating between a registered organization and a health care provider.

**82ZTBAC Participation in mediation may be compulsory**

- (1) The Health Insurance Ombudsman may, having regard to any guidelines under paragraph 82ZV(2)(a), direct:
  - (a) a registered organization; or

(b) a health care provider;  
to participate in mediation under section 82ZTBAB.

(2) The direction must:

- (a) be in writing; and
- (b) specify the individual or individuals who are subject to the direction; and
- (c) be given to the individual or individuals; and
- (d) specify the time of the mediation, which must not be earlier than 14 days after the day on which the direction is given to the individual or individuals; 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.

(3) A person commits an offence if:

- (a) the person is an individual who is subject to a direction under subsection (1) to participate in mediation; and
- (b) the person, or, if the person is a medical practitioner who has appointed a representative in relation to the mediation under section 82ZTBAD, the person's representative, fails to participate in part or all of the mediation.

Penalty for an offence against this subsection: 10 penalty units.

### **82ZTBAD Medical practitioners may appoint representatives**

- (1) If the Health Insurance Ombudsman directs a medical practitioner under subsection 82ZTBAC(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.



### **82ZTBAE Conduct of compulsory mediation**

- (1) If the Health Insurance Ombudsman directs someone to participate in mediation under section 82ZTBAC, the mediation may be conducted by:
  - (a) the Health Insurance Ombudsman; or
  - (b) a person appointed by the Health Insurance Ombudsman under section 82ZUH.
- (2) Mediation in which someone is directed to participate under section 82ZTBAC ceases:
  - (a) if the parties agree to settle the matter being mediated; or
  - (b) if, having regard to any guidelines under paragraph 82ZV(2)(b), the Health Insurance Ombudsman considers that the matter being mediated cannot be settled by mediation.
- (3) A person appointed by the Health Insurance Ombudsman under section 82ZUH to conduct mediation must, as soon as practicable after the mediation is conducted or should have been conducted, report to the 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 matter being mediated—the terms of the settlement, including any action to be taken.

### **82ZTBAF Admissibility of things said in mediation**

- (1) Evidence of anything said, or any admission made, during participation in mediation under section 82ZTBAB 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 someone is directed to participate in the mediation.

### **83 Paragraph 82ZTC(1)(b)**

Omit “a hospital, a day hospital facility or a medical practitioner”, substitute “a health care provider or broker”.

Note: The heading to section 82ZTC is altered by omitting “**to registered organizations**”.

**84 Subsection 82ZTC(3)**

Omit “a hospital, day hospital or medical practitioner”, substitute “a health care provider or broker”.

**85 Subsection 82ZTC(3)**

Omit “that the hospital, day hospital or medical practitioner”, substitute “an officer of the health care provider or broker”.

**86 Subsection 82ZTC(3)**

Omit “report to”, substitute “to report to”.

**87 After subsection 82ZTC(4)**

Insert:

- (4A) An officer of whom a request is made under subsection (3) must not fail to report to the Health Insurance Ombudsman in accordance with the request.

Penalty for an offence against this subsection: 10 penalty units.

**88 Subsection 82ZTC(5)**

After “subsection (4)”, insert “or (4A)”.

**89 At the end of section 82ZTC**

Add:

- (7) An officer of whom a request is made under subsection (3) must not make a report to the Health Insurance Ombudsman under that subsection knowing that the report is false or misleading in a material particular.

Penalty for an offence against this subsection: Imprisonment for 6 months.

**90 Subsection 82ZTCA(1)**

Omit “of the practices and procedures of a particular registered organization” (wherever occurring).

**91 Paragraph 82ZTCA(1)(a)**

After “investigation”, insert “and any mediation conducted as part of the investigation”.

**92 Paragraph 82ZTCA(1)(a)**

Omit “registered organization”, substitute “subject of the investigation”.

**93 Subparagraph 82ZTCA(1)(b)(i)**

Omit “registered organizations”, substitute “subjects of that kind”.

**94 Subparagraph 82ZTCA(1)(b)(ii)**

Omit “registered organization the”.

**95 After subsection 82ZTCA(1)**

Insert:

- (1A) The 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.

**96 Subsection 82ZTCA(2)**

Omit “registered organization” (wherever occurring), substitute “subject”.

**97 At the end of Division 5 of Part VIC**

Add:

**82ZUH Appointment of mediators**

- (1) The Health Insurance Ombudsman may, having regard to any guidelines under paragraph 82ZV(2)(c), appoint a person to

conduct mediation in which someone is or will be directed to participate under section 82ZSBAA or 82ZTBAC.

- (2) The person is appointed for the period specified by the Ombudsman in the instrument of appointment.
- (3) Subject to section 135A, 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.

#### **98 Subsection 82ZV(1)**

After “Minister may”, insert “, by legislative instrument,”.

#### **99 Subsection 82ZV(2)**

Repeal the subsection, substitute:

- (2) The Minister may, by legislative instrument, issue guidelines dealing with any or all of the following:
  - (a) the circumstances in which it is, or is not, appropriate for the Health Insurance Ombudsman to direct the subject of a complaint or an investigation to participate in mediation;
  - (b) circumstances in which a mediator might consider that a complaint, or matter being mediated under Division 4, cannot be settled by mediation;
  - (c) the appointment of mediators under section 82ZUH.

#### **100 Subsection 82ZVE(1)**

After “to be done”, insert “reasonably and”.

#### **101 At the end of Part VIC**

Add:

#### **82ZVF Reconsideration of requests for records**

- (1) A request for records given to:
  - (a) an officer of a subject of a complaint under subsection 82ZSAA(1), (2) or (3); or
  - (b) an officer of a subject of an investigation under subsection 82ZTB(1);must include notice of the officer’s rights under this section.

- (2) An officer to whom such a request is given, or another officer of the subject, may apply to the Health Insurance Ombudsman for reconsideration of:
  - (a) the decision to make the request; or
  - (b) the decision to request the records specified in the request; or
  - (c) the period specified in the request within which the records are to be provided; or
  - (d) a decision under subsection 82ZSAA(6) or 82ZTB(4) refusing to extend the time for provision of records.
- (3) The application must be made before the earlier of:
  - (a) the end of the 28th day after the day on which the request was given to the officer; and
  - (b) the end of the day before the last day of the period specified in the request as the period within which the records are to be provided.
- (4) If an application is made under subsection (2), the decision to which the application relates must be reconsidered by the Health Insurance Ombudsman or by his or her delegate under subsection 82ZVD(1). The person reconsidering the request must not be the person who made the request.
- (5) The person reconsidering the request must affirm, change or revoke the request, by notice in writing to the officer, before the end of the 28th day after the day on which the application for reconsideration was made.

**102 Paragraph 105AB(6AC)(a)**

Repeal the paragraph, substitute:

- (a) under subsection 82ZSAA(6) refusing to extend the time for provision of records, if the decision under that subsection has been affirmed on reconsideration under section 82ZVF; or

**103 Paragraph 105AB(6AC)(c)**

Repeal the paragraph, substitute:

- (c) under subsection 82ZTB(4) refusing to extend the time for provision of records, if the decision under that subsection has been affirmed on reconsideration under section 82ZVF.

**104 After subsection 135A(5C)**

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Insert:

- (5D) Nothing in this section prohibits the Private Health Insurance Ombudsman from referring information relating to a contravention or possible contravention of subsection 67(1) to the Minister or to an officer in the Department.

## **Schedule 2—Amendment relating to private health insurance rebates**

### ***Private Health Insurance Incentives Act 1998***

#### **1 Subsection 19-15(1)**

Omit “90”, substitute “120”.

#### **2 Application of amendment**

The amendment made by this Schedule applies in relation to the 2005-2006 financial year and later financial years.

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*[Minister’s second reading speech made in—  
House of Representatives on 31 May 2006  
Senate on 15 June 2006]*

(69/06)

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