EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Ageing

Private Health Insurance Act 2007

Private Health Insurance (Ombudsman) Rules 2007

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make *Private Health Insurance (Ombudsman) Rules* (the Rules) providing for matters required or permitted by Part 6-2 of the Act, or necessary or convenient in order to carry out or give effect to Part 6-2 of the Act.

As part of reforms to private health insurance announced by the Australian Government on 26 April 2006, regulation of private health insurance was moved from the *National Health Act 1953* (NHA) (and regulations under the NHA), into the new *Private Health Insurance Act 2007* (PHI), (and Private Health Insurance Rules made under the PHI).

The principal object of Part 6-2 of the Act is to establish the office of the Private Health Insurance Ombudsman (PHIO), and to set out the PHIO's powers and functions. The principal object of the PHIO is to protect the interests of people who are covered by private health insurance by:

- assisting people to resolve complaints;
- investigating the practices of private health insurers, private health insurance brokers and health care providers;
- mediating between private health insurers and health care providers; and
- disseminating information about private health insurance and the rights and obligations of privately insured people.

The Rules deal with requirements in relation to the appointment of the PHIO and with requirements relating to mediation, including the appointment of mediators. Part 6-2 of the Act contains specific authority for rules to be made in relation to particular matters. The Rules are made for the purpose of subsections 247-5(2), 247-15(3), 247-25(2), and 253-1(1) of the Act.

The Rules provide that when deciding whether or not to give a direction for a party to participate in mediation, the PHIO must consider whether non-compulsory participation in mediation has broken down and whether, if there are avenues for dispute resolution contained in contractual agreements, these avenues for dispute resolution have been utilised.

The Rules provide that the PHIO must have regard to the report of a mediator before deciding that the matter cannot be settled by mediation.

The Rules also provide that the PHIO, when appointing a person to conduct mediation, is to have regard to whether the person has recognised alternative dispute resolution qualifications and whether the person has experience in commercial mediation.

The Rules provide that the PHIO is to be appointed for a period not exceeding three years, but is eligible for re-appointment.

Part 6-2 of the Act also provides that PHIO is the Head of a Statutory Agency for the purposes of the *Public Service Act 1999*. Currently, the PHIO is a Commonwealth authority under the *Commonwealth Authorities and Companies Act 1997*. The PHIO will remain a Commonwealth authority until the 'Ombudsman conversion time', which is 1 July 2007, or such later day as is set in the Private Health Insurance (Transitional) Rules.

The Act does not specify any conditions that need to be met before the power to make the Rules may be exercised.

Private health insurers were extensively consulted and provided with opportunities to comment upon the new Private Health Insurance legislative package. Draft Rules were published on the Departmental website for comment, and information sessions were held to provide industry stakeholders with the opportunity to be consulted on the making of the Rules.

Consultations were attended by representatives from individual private health insurers and peak industry bodies (the Australian Health Insurance Association and Health Insurance Restricted Membership Association members funds), private hospitals and their industry representatives (Australian Private Hospitals Association and Catholic Health Australia), the Australian Medical Association, the Private Health Insurance Administration Council, the Private Health Insurance Ombudsman, Consumers' Health Forum of Australia and central agencies. All of the industry representatives have expressed strong support for the proposed legislative framework including the Private Health Insurance Rules.

The Office of Best Practice Regulation has advised that no additional Regulation Impact Statement (RIS) is required. A RIS that was prepared for the Private Health Insurance Bill 2006 (PHI Bill) which analysed the options associated with the Australian Government's recent initiatives to improve the attractiveness of and participation in private health insurance for consumers. The measures include those under the *Private Health Insurance Act 2007* and associated legislative instruments.

Details of the Rules are set out in the Attachment.

The Rules are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Rules commence at the same time as the Act commences if they are registered before the Act commences; or, if the Rules are registered on or after the Act commences, the Rules commence on the day they are registered.

Authority: Section 333-20 of the *Private Health Insurance Act 2007*.

ATTACHMENT

DETAILS OF THE *PRIVATE HEALTH INSURANCE (OMBUDSMAN) RULES 2007*

1. Name of Rules

Rule 1 provides that the title of the Rules is the *Private Health Insurance (Ombudsman) Rules 2007.*

2. Commencement

Rule 2 provides for the Rules to commence at the same time as the Act commences if they are registered before the Act commences; or, if the Rules are registered on or after the Act commences, the Rules commence on the day they are registered.

3. Definitions

Rule 3 provides for the definitions in these Rules. The terms used in the Rules have the same meaning as in the Act. *Act* means the *Private Health Insurance Act 2007*, and *Ombudsman* means the Private Health Insurance Ombudsman.

4. Participation in mediation may be compulsory

Rule 4 sets out matters to which the Ombudsman is to have regard when deciding whether or not to give a direction under subsection 247-5(1) of the Act. The Ombudsman may try to settle a relevant complaint through a process of compulsory participation in mediation. In these circumstances, the Ombudsman must have regard to whether a previous mediation was unsuccessful, and if there are avenues for dispute resolution contained in contractual arrangements, whether these avenues have been utilised.

Subrule 4 (2) provides that the contractual avenues for dispute resolution are taken to be utilised when parties to the dispute have satisfied all relevant contractual obligations relating to dispute resolution.

Subrule 4 (3) provides that Rule 4 does not limit the matters that the Ombudsman may take into account when deciding whether or not to give a direction under subsection 247-5 (1) of the Act.

5. Conduct of compulsory mediation

Rule 5 provides that the Ombudsman is to have regard to a report of a mediator appointed under section 247-25 of the Act before concluding that a matter cannot be settled by mediation.

Subrule (2) defines ***mediator*** for the purpose of Rule 5.

6. Appointment of mediators

Rule 6 sets out matters to which the Ombudsman is to have regard when appointing mediators. When considering whether to appoint a person as a mediator the Ombudsman is to have regard to whether the person has suitable qualifications and experience in commercial

mediation.

Subrule 6 (2) defines suitable qualification as experience in a business or profession relevant to the subject of mediation, and including either alternative dispute resolution accreditation or successful completion of a formal training course in mediation. A Note to the Rule provides examples of agencies that conduct alternative dispute resolution accreditation and formal training courses.

7. Appointment of the Ombudsman

Rule 7 provides that the Ombudsman is to be appointed for a term not exceeding three years, but is eligible for reappointment.