

EXPLANATORY STATEMENT

Issued by the Authority of the Private Health Insurance Administration Council

Private Health Insurance Act 2007

Private Health Insurance (Insurer Obligations) Amendment Rule 2013 (No.1)

Authority for the Rules

The Private Health Insurance Administration Council (the Council) is empowered by section 163-1 of the *Private Health Insurance Act 2007* (the Act) and under item 2 of the table in section 333-25 of the Act to make the *Private Health Insurance (Insurer Obligations) Rules*.

Section 163-1 of the Act provides that:

- (1) The Private Health Insurance (Insurer Obligations) Rules may establish prudential standards relating to *prudential matters for private health insurers.
- (2) Prudential matters are matters relating to:
 - (a) the conduct by private health insurers of any of their affairs in such a way as:
 - (i) to keep themselves in a sound financial position; or
 - (ii) not to cause or promote instability in the Australian private health insurance system; or
 - (b) the conduct by private health insurers of any of their affairs with integrity, prudence and professional skill; but does not include matters relating to the solvency or capital adequacy of *health benefits funds.
- (3) A *prudential standard may impose different requirements to be complied with:
 - (a) by different classes of private health insurers; or
 - (b) in different situations; or
 - (c) in respect of different activities.
- (4) A *prudential standard may provide for the Council to exercise powers and discretions under the standard, including but not limited to discretions to approve, impose, adjust or exclude specific prudential requirements in relation to a particular private health insurer or a particular class of private health insurers.
- (5) A *prudential standard takes effect on the day on which it is established in the Private Health Insurance (Insurer Obligations) Rules, or on such later day as is specified in the Private Health Insurance (Insurer Obligations) Rules.

The *Private Health Insurance (Insurer Obligations) Amendment Rule 2012 (No. 1)* (the Amendment Rule) amends the *Private Health Insurance (Insurer Obligations) Rules 2009* (the Rules).

The Amendment Rule is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

All legal and other requirements for making the Amendment Rule have been met.

Purpose of the Rules

The purpose of the Amendment Rule is to make minor and machinery consequential amendments to the reporting and notification requirements contained in Part 2 of the Rules and the appointed actuaries standard contained in Schedule 2 of the Rules. The consequential amendments are a result of changes to the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007* by the *Private Health Insurance (Health Benefits Fund Administration) Amendment Rules 2013 (no. 1)*.

An explanation of each of the rules is set out in the **Attachment**.

Summary of impact of the Rules

These Rules were prepared under Office of Best Practice Regulation RIS ID No. 2012 14174. All the amendments are in essence minor and machinery consequential amendments.

The impact of the changes to the reporting and notification requirements is minor as it simply removes redundant requirements for the Board of an insurer to make statements in relation to margins used to calculate capital requirements and for an insurer to make certifications in relation to the veracity of certain accounts and statements given to the Council.

The likely impact of the changes to the appointed actuaries standard contained in the Rule is minor, as the provisions in question merely update the definitions section and one provision to reflect changes to the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007* by the *Private Health Insurance (Health Benefits Fund Administration) Amendment Rule 2013 (No. 1)*.

Consultation

As these amendments are consequential arising from changes to the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007* by the *Private Health Insurance (Health Benefits Fund Administration) Amendment Rule 2013 (No. 1)* consultation was undertaken as part of the significant and comprehensive consultation as set out in the explanatory statement to the *Private Health Insurance (Health Benefits Fund Administration) Amendment Rule 2013 (No. 1)*.

Documents incorporated by reference

The Amendment Rule incorporates no other documents by reference.

ATTACHMENT

DETAILS OF THE *PRIVATE HEALTH INSURANCE (INSURER OBLIGATIONS) AMENDMENT RULE 2013 (NO.1)*

1. Name of rule

Rule 1 provides that the title of the Rule is the *Private Health Insurance (Insurer Obligations) Amendment Rule 2013 (No. 1)* (the **Amendment Rule**).

2. Commencement

Section 2 provides details in relation to the commencement of the provisions of the Amendment Rule. The section stipulates that the provision of the Amendment Rule specified in column 1 of the table commences in accordance with column 2 of the table. In effect the table results in the following commencement:

1. Sections 1 to 3 of the Amendment Rule and anything else not covered by the table commence the day after the rule is registered on the federal register of legislative instruments;
2. Schedule 1 of the Amendment Rule Items [1] to [4] commence on 31 March 2014.

3. Amendment of Private Health Insurance (Insurer Obligations) Rule 2009

Section 3 provides that Schedule 1 amends the *Private Health Insurance (Insurer Obligations) Rule 2009*.

SCHEDULE 1 – AMENDMENTS

Item [1] Part 1, Preliminary, Rule 4 Definitions, after the definition of related person

This item provides that the Amendment Rule inserts a new definition being the definition of the “stress test amount”. The definition indicates that the stress test amount has the meaning given by subclause 10 (1) of Schedule 3 of the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007*.

This new definition supports the interpretation of the substitution of subrule 7 (2) (c) of the *Private Health Insurance (Insurer Obligations) Rule 2009* affected by Item [4] of the Amendment Rule.

Item [2] Part 2, Reporting and notification requirements, Rule 6 Information to be given annually to the Council

This item repeals Rule 6, which in effect, removes the obligation for the private health insurer to provide Council with a number of different pieces of information, within 3 months after the end of each financial year, or within such further time as the Council allows.

Item [3] Part 2, Reporting and notification requirements, Rule 7 Certification requirements

This item repeals Rule 7, which in effect, removes the obligation for private health insurers to certify accounts or statements to be provided to Council under subsection 169-5(2) of the Act.

Item [4] Schedule 2 Appointed Actuaries Standard, Part 2 Duties and powers of appointed actuaries, subrule 7 (2) (c)

This item provides that the Amendment Rule repeals and substitutes a new subrule 7 (2) (c) of the *Private Health Insurance (Insurer Obligations) Rule 2009*. The new subrule 7 (2) (c) is a consequential amendment arising from the amendments to the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007* by the *Private Health Insurance (Health Benefits Fund Administration) Amendment Rule 2013 (no. 1)*.

The new subrule 7 (2) (c) specifies a duty of appointed actuaries and which includes the duty to assess the reasonableness of the amount of uncertainty allowed for by the insurer in calculating the stress test amount in the capital adequacy standard.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Private Health Insurance (Insurer Obligations) Amendment Rule 2013 (No.1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Private Health Insurance (Insurer Obligations) Amendment Rule 2013 (No. 1)* comprises four amendments to the *Private Health Insurance (Insurer Obligations) Rules 2009* (the Rules). The provisions in question merely update the definitions section to support the interpretation of one substituted substantive and removes two redundant provisions. In essence the amendments simply reflects amendments to the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007* by the *Private Health Insurance (Health Benefits Fund Administration) Amendment Rule 2013 (No. 1)*.

The ultimate purpose of this amendment is to bring the Rules into line with the changes to the capital adequacy and solvency standards introduced by these abovementioned amendments to the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007*, by clarifying definitions and their use, and to remove redundant provisions. The amendments are of a minor and technical nature, and do not materially alter the substance of the appointed actuaries standard, or workloads and obligations of individuals subject to it.

The effect of the amendment is threefold.

The first item provides that the Amendment Rule inserts a new definition being the definition of the “stress test amount”. The definition indicates that the stress test amount has the meaning given by subclause 10 (1) of Schedule 3 of the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007*.

Under this amendment, private health insurers and their appointed actuaries will use the term “stress test amount” for the purposes of making calculations relating to the financial standing of the private health insurer.

This new definition supports the interpretation of the substitution of subrule 7 (2) (c) of the *Private Health Insurance (Insurer Obligations) Rule 2009* affected by Item [2] of the Amendment Rule.

This second repeals the Rule relating to “information to be given annually to the Council”, which in effect, removes the obligation for the private health insurer to provide Council with a number of different pieces of information, within 3 months after the end of each financial year, or within such further time as the Council allows. This amendment removes an obligation on private health insurers, and so does not materially affect the rights of any individual subject to the Rules.

The third item repeals the Rule relating to “certification requirements”, which in effect, removes the obligation for private health insurers to have accounts or statements due to Council under subsection 169-5(2) of the Act.

The fourth item provides that the Amendment Rule repeals and substitutes a new subrule 7 (2) (c) of the *Private Health Insurance (Insurer Obligations) Rule 2009*. The new subrule 7 (2) (c) is a consequential amendment arising from the amendments to the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007* by the *Private Health Insurance (Health Benefits Fund Administration) Amendment Rules 2013 (no. 1)*. The effect of this amendment is to ensure that appointed actuaries and the private health insurers they work for apply the newly inserted “stress test” and notions of “reasonableness” in assessing their compliance under the capital adequacy standard.

The new subrule 7 (2) (c) specifies a duty of appointed actuaries and specifies the duty to assess the reasonableness of the amount of uncertainty allowed for by the insurer in calculating the stress test amount in the capital adequacy standard. It is important to note that this provision does not impose additional or strenuous obligations on those individuals holding the position of Appointed Actuary – rather, it focuses the conversation they will be having with the private health insurers they work with. As such, this provision will not directly impact on the human rights Appointed Actuaries.

Human rights implications

The appointed actuaries standard places restrictions and requirements on private health insurance businesses. All of these businesses are, subject to the registration provisions of the *Private Health Insurance Act 2007* (Cth),¹ companies or constitutional corporations.² As human rights are inherent in human beings, as opposed to corporate entities, this part of the instrument will not directly engage human rights.

The amendment to the standard does, however; indirectly promote the human rights of private health insurance consumers. Paradoxically, assurance in relation to the prudential status of private health insurance promotes the use of the private health system and thus reduces the impact on the public system thereby allowing the public system to focus on servicing those in economic need or clinical need.

Right to health

The right to health appears in a number of treaties under the definition of ‘human rights’ in the Human Rights (Parliamentary Scrutiny) Act, most notably in Article 12 of the *International Covenant on Economic, Social and Cultural Rights* which protects “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.³

¹ S 126-10 *Private Health Insurance Act 2007* (Cth).

² As defined in the *Private Health Insurance Act 2007* (Cth).

³ Article 12, *International Covenant on Economic, Social and Cultural Rights*, done at New York on 16 December 1966 ([1976] ATS 5).

By placing particular restrictions and obligations on insurers to ensure that they act with prudence in conducting business operations, PHIAC aims to protect the private health insurance industry and its consumers from potential financial and information losses.

In providing this consumer protection in a strong and stable industry, the amended appointed actuaries standard will work to indirectly promote the right to health of private health insurance consumers. The standard will do this by ensuring that the systems through which consumers of private health insurance access the Australian health system are financially sound and efficient.

The Office of the United Nations High Commissioner for Human Rights explains that some key freedoms and entitlements comprised in the right to health are:

- the right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health;
- access to essential medicines;
- equal and timely access to basic health services;
- the provision of health-related education and information;
- participation of the population in health-related decision-making at the national and community levels; and
- all health services, goods and facilities must be available, accessible, acceptable and of good quality.⁴

The appointed actuaries standard will promote these key aspects of the right to health by making sure private health insurers effectively manage the risks associated with their capital arrangements. In turn, this practice provides people who choose to access the health system with the assistance of a private health insurer, with financial protections.

Conclusion

The *Private Health Insurance (Insurer Obligations) Amendment Rule 2013 (No. 1)* is compatible with human rights because:

- a) it does not directly engage human rights, as it applies substantively only to companies and constitutional corporations; and
- b) where it indirectly engages with the human rights of consumers of private health insurance, it promotes these rights.

⁴ Office of the United Nations High Commissioner for Human Rights and World Health Organisation, *The Right To Health – Fact Sheet No. 31*, <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>