

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 128, 2014**

#### **Issued by authority of the Minister for Finance**

##### *Medibank Private Sale Act 2006*

##### *Medibank Private Sale (Interests in Shares) Regulation 2014*

Item 62 of Schedule 2 to the *Medibank Private Sale Act 2006* (the Act) allows the Governor-General to make regulations under the Act, including regulations prescribing matters required or permitted by Schedule 2 to be prescribed.

The Act imposes limits on the ownership of Medibank Private Limited or any holding company which has taken ownership of the whole of the shares in Medibank Private Limited for the purposes of the sale of its equity by the Commonwealth.

The ownership rules in Part 4 of Schedule 2 to the Act provide for a number of measures that will ensure that (for a five year period after the Commonwealth has sold the whole of its equity in a Medibank Private company) the Medibank Private company maintains a broad ownership base, by fixing a maximum limit of a 15 per cent stake that anyone can hold in that company during that five year period. “Stake” is defined broadly. It is not limited to direct shareholdings and takes into account various interests of a person and also of their associates. The Act provides that, in determining the interest that a person holds in a Medibank Private company, the only shares in that company are the shares held by persons other than the Commonwealth.

The Act provides that an interest of a prescribed kind held by such a prescribed person must be disregarded for the purposes of the ownership restrictions in Part 4 of Schedule 2 to the Act. Regulations can effectively provide for exemptions from the ownership provisions of the Act by allowing for certain interests in shares, and the holders of those interests, to be prescribed.

The *Medibank Private Sale (Interests in Shares) Regulation 2014* (the Regulation) disregards:

- temporary interests that may arise while carrying out the transfer of the Commonwealth’s equity in a Medibank Private company; and
- certain technical interests to accommodate the ordinary activities of depositaries, custodians, nominees and brokers that do not involve any substantive ownership interest in shares in a Medibank Private company.

Specifically, the Regulation prescribes that the following kinds of interests and persons who hold these interests must be disregarded for the purposes of Part 4 of Schedule 2 to the Act:

- temporary interests arising solely in connection with the process for completing the transfer of the Commonwealth’s equity in a Medibank Private company to other persons if those interests no longer exist at 11.00 pm on the first day on which shares are transferred from the Commonwealth or instalment receipts are issued;

- interests of a lead manager to the offer by the Commonwealth of its equity in a Medibank Private company, or a related company of the lead manager, existing solely for the purpose of performing the functions and meeting the obligations of the lead managers within the first 37 days after shares or instalment receipts are first quoted on the securities exchange of a listing market (such as purchases of shares or instalment receipts in the first 30 days after quotation for market stabilisation purposes), provided those interests are disposed of within 90 days after their acquisition;
- interests existing solely as depositary, custodian or nominee for another person without a beneficial interest in or the authority to exercise in a discretionary way voting rights attaching to the shares; and
- interests existing solely as a result of an action as a broker in securities in the ordinary course of business and on the express instruction of a client without a beneficial interest in or the authority to exercise in a discretionary way voting rights attaching to the shares.

Prescribing these supports the impending sale of Medibank Private Limited.

Details of the Regulation are set out in [Attachment A](#). A Statement of Compatibility with Human Rights is at [Attachment B](#).

The *Medibank Private Sale Act 2006* does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

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

This Regulation commences on the day after it is registered in the Federal Register of Legislative Instruments.

## **Consultation**

In accordance with section 17 of the *Legislative Instruments Act 2003*, consultation has taken place with the Prime Minister, the Treasurer, Department of the Prime Minister and Cabinet, The Treasury and Medibank Private Limited. External advisers have been consulted including Joint Lead Managers, the legal adviser and the business adviser assisting with the sale of Medibank Private Limited. A regulation impact statement is not required as the Regulation does not have a regulatory impact on business, community organisations or individuals.

**Details of the *Medibank Private Sale (Interests in Shares) Regulation 2014***

**Part 1**

Section 1 – Name of Regulation

This section provides that the name of the Regulation is the *Medibank Private Sale (Interests in Shares) Regulation 2014* (the Regulation).

Section 2 – Commencement

This section provides that the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

This section provides that the Regulation is made under the *Medibank Private Sale Act 2006*.

Section 4 – Definitions

This section sets out definitions used in the Regulation.

**Part 2**

Section 5 – Purpose of this Part

This section provides that the purpose of the Regulation is to prescribe interests in shares in a Medibank Private company that must be disregarded for the purposes of determining whether an unacceptable ownership situation exists in relation to the company.

Section 6 – Settlement Process

This section prescribes an interest in a share in a Medibank Private company if the interest in the share is held by a person solely in connection with the settlement process under which shares are transferred from the Commonwealth or instalment receipts (if any) are issued as part of a Medibank Private sale scheme that no longer exists at 11.00 pm on the first day on which shares are transferred from the Commonwealth or instalment receipts (if any) are issued for the Medibank Private sale scheme.

As noted above, the ownership limits are framed in terms of percentages of shares a Medibank Private company in which persons have an interest assuming that the only shares in the Medibank Private company are the shares held by persons other than the Commonwealth. Because of this, the order in which shares are transferred to purchasers or to an instalment receipt trustee (if any) for the benefit of purchasers on settlement of a sale might, in the absence of the Regulation, give rise to inevitable momentary breaches of the ownership limits during the course of the settlement process.

Persons that facilitate the settlement of the offer, without themselves being ultimate purchasers of shares in the Medibank Private company or subscribers for instalment receipts (if any) over those shares, may acquire temporary interests in the shares as a result of the performance of those functions. Such persons may include one or more of the lead managers for the offer or their related companies acting in a capacity as settlement agent, and ASX Settlement Pty Limited in facilitating settlement of some of the sale shares or instalment receipts (if any) through the facility known as the CHESS DvP Primary Market Facility. The Regulations will in particular ensure that the lead managers' interests are disregarded if they are intermediary purchasers of shares or subscribers for instalment receipts (if any) for on-sale to applicants in any international offer (as is customary for the settlement process in relation to the United States and other jurisdictions).

The section overcomes these potential issues (which could otherwise render impracticable or complicate customary settlement mechanics) by disregarding all interests in shares arising solely in connection with the settlement process that no longer exist at 11.00 pm on the first day on which shares are transferred from the Commonwealth or instalment receipts (if any) are issued for the Medibank Private sale scheme. This section ceases to have effect at that time.

### Section 7 – Lead Manager

Section 7 prescribes an interest in a share in a Medibank Private sale company of a lead manager or its related company that exists solely as a result of an action taken for the purposes of carrying out its functions or assisting another lead manager to carry out its functions, or meeting an obligation arising from those functions, until the end of 37 days after shares or instalment receipts (if any) are first quoted on the securities exchange of a listing market for a Medibank Private sale scheme.

The Commonwealth may agree with the lead managers to a Medibank Private sale scheme to over-allocate shares or instalment receipts (if any) to institutional investors. If shares or instalment receipts (if any) are over-allocated, a lead manager or its related company acting as stabilisation manager may initially satisfy these over-allocations by borrowing an equivalent number of shares or instalment receipts (if any) from the Commonwealth. Ultimately, the over-allocations would be satisfied either by:

- requiring the Commonwealth to transfer shares or instalment receipts (if any) under the terms of an over-allocation option (which is then set-off against the obligation to return borrowed shares or instalment receipts); or
- purchasing shares or instalment receipts (if any) on a listing market after trading commences and returning those to the Commonwealth to discharge obligations under the borrowing arrangement; or
- by a combination of these means,

any time within the period of up to 30 days following the first quotation of those shares or instalment receipts (if any) on a listing market. The purchase of shares or instalment receipts during that 30 day period may have the effect of stabilising the trading price for shares or instalment receipts in circumstances where the trading price is at or below the sale price to counter imperfections in the allocation process. The potential for such stabilisation activity may encourage more confident bidding for the shares or instalment receipts and may improve the price at which they are sold by the Commonwealth.

If it is decided to include an over-allotment option as part of a Medibank Private sale scheme, this section ensures that the lead managers do not have an interest in shares, or shares underlying instalment receipts, that they purchase in the secondary market as part of such stabilisation activities. The exemption provided by this regulation ceases to apply 90 days after the relevant purchase (or longer if the Secretary for the Department of Finance allows).

#### Section 8 – Agent

This section prescribes an interest in a share in a Medibank Private company held by a person (the agent) as depositary, custodian or nominee for another person, if the agent does not have a beneficial interest in the share or the authority to exercise in a discretionary way the voting rights attaching to the share.

Depositories, custodians and nominees commonly hold legal title to financial products for and at the direction of their beneficiaries without having any substantive interest in the financial products. This section also facilitates, as part of a Medibank Private sale scheme, the use of instalment receipts and the engagement of an instalment receipt trustee.

#### Section 9 – Broker

This section prescribes a person's interest in a share in a Medibank Private company if the interest exists solely as a result of an action taken by the person in the capacity as a broker in securities in the ordinary course of business and on the express instruction of a client, if the broker does not have a beneficial interest in the share or the authority to exercise in a discretionary way the voting rights attaching to the share.

## **Statement of Compatibility with Human Rights**

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

### ***Medibank Private Sale (Interests in Shares) Regulation 2014***

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 *Medibank Private Sale (Interests in Shares) Regulation 2014* (the Regulation) prescribes that the following kinds of interests and persons who hold those interests must be disregarded for the purposes of Part 4 of Schedule 2 to the Act:

- temporary interests arising solely in connection with the process for completing the transfer of the Commonwealth's equity in a Medibank Private company to other persons if those interests no longer exist at 11.00 pm on the first day on which shares are transferred from the Commonwealth or instalment receipts are issued;
- interests of a lead manager to the offer by the Commonwealth of its equity in a Medibank Private company, or a related company of the lead manager, existing solely for the purpose of performing the functions and meeting the obligations of the lead managers within the first 37 days after shares or instalment receipts are first quoted on the securities exchange of a listing market (such as purchases of shares or instalment receipts in the first 30 days after quotation for market stabilisation purposes), provided those interests are disposed of within 90 days after their acquisition;
- interests existing solely as depositary, custodian or nominee for another person without a beneficial interest in or the authority to exercise in a discretionary way voting rights attaching to the shares; and
- interests existing solely as a result of an action as a broker in securities in the ordinary course of business and on the express instruction of a client without a beneficial interest in or the authority to exercise in a discretionary way voting rights attaching to the shares.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann  
Minister for Finance**