

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health and Ageing

*Private Health Insurance Act 2007*

*Private Health Insurance (Health Benefits Fund Enforcement) Rules 2007*

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make Private Health Insurance (Health Benefit Fund Enforcement) Rules (the Rules) providing for matters required or permitted by Part 5-3 of the Act, or necessary or convenient in order to carry out or give effect to Part 5-3 of the Act.

Part 5-3 Division 217 of the Act, and these Rules, deal with the external management of health benefits funds.

Section 217-45, Division 217, of the Act allows the Rules to provide for procedural matters relating to voluntary deeds of arrangement, the recommendations that can be made in reports to the Private Health Insurance Administration Council (the Council), and the actions that the Council can taken in response. In addition to Division 217 of the Act, Part 2 of the Rules deals with these matters.

Sections 217-5 and 217-30, Division 217, of the Act apply certain provisions of the *Corporations Act 2001* (the Corporations Act), subject, in their application to health benefits funds, to the Act and the Rules. In addition to Division 217 of the Act, Parts 3, 4 and 5 of the Rules provides for certain modifications to provisions of the Corporations Act in their application to health benefits funds.

Private health insurers were extensively consulted and provided with opportunities to comment upon the new Private Health Insurance legislative package.

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.

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

Details of the Rules are set out in the Attachment.

These 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 day 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 (HEALTH BENEFITS FUND ENFORCEMENT) RULES 2007*****1. Name of Rules**

Rule 1 provides that the title of the Rules is the *Private Health Insurance (Health Benefits Fund Enforcement) 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 day the Act commences, the Rules commence on the day they are registered.

**3. Definitions**

Rule 3 notes that the terms used in these Rules have the same meaning as in the *Private Health Insurance Act 2007*. In these Rules, the *Act* means the *Private Health Insurance Act 2007*. Rule 3 also defines *Corporations Act*.

**Part 2 Procedure relating to voluntary deeds of arrangement****4. Interpretation**

Rule 4 provides that in Part 2 a reference to a creditor of a health benefits fund includes a policy holder of the fund.

**5. Convening of meetings**

Rule 5 provides that the external manager of a health benefits fund may convene a meeting of the creditors of the fund to consider the possibility of the responsible insurer executing a deed of arrangement proposed by the external manager.

**6. Procedure for convening of the meeting**

Rule 6 provides for the procedure that the external manager must follow when convening a meeting to consider the possibility of the responsible insurer executing a deed of arrangement proposed by the external manager.

Subrule 6 (1) provides that the external manager must give notice to the Council and as many of the creditors as reasonably practicable, and that notice of the meeting must be published in national and daily newspapers.

Subrule 6 (2) provides that the notice given to creditors and the Council of the intention to convene a meeting must include a report by the external manager, a statement setting out details of the proposed deed of arrangement, and a statement by the external manager setting out the reasons why it would be in the interests of creditors for the responsible insurer to execute such a deed of arrangement.

Subrule 6 (3) sets other requirements such as contact details and proxy requirements.

## **7. Conduct of the meeting**

Rule 7 provides for matters such as quorum and requirements for resolutions.

Subrule 7 (1) provides that the external manager is to preside at the meeting.

Subrule 7 (2) provides that a meeting may not be adjourned to a day more than 30 days after the first day on which the meeting was held.

Subrules 7 (3), (4) and (5) provide for rules about participation in the meeting, including by proxies.

Subrules 7 (6), (8) and (10) provide for rules about quorum requirements and adjournment.

Subrule 7 (7) provides that a meeting may be held if all the persons who are entitled to attend, and to vote at the meeting, agree, even if it has not been convened in accordance with these Rules.

Subrule 7 (9) provides that the external manager must give written notice of the adjournment of a meeting to the relevant persons entitled to attend.

Subrule 7 (10) provides that within 30 minutes after the time appointed for an adjourned meeting, if a quorum is not present or the meeting is not otherwise sufficiently constituted, the meeting lapses.

Subrule 7 (11) provides for the conditions of carrying a resolution as follows. A resolution is carried if the majority of the creditors voting vote in favour of the resolution, and, the value of the debts owed by the fund to those voting in favour of the resolution is more than half the total debts owed to all the creditors voting.

## **8. Matters that may be decided at the meeting**

Rule 8 provides that at a meeting convened by the external manager, the creditors must resolve : that the responsible insurer execute the deed of arrangement proposed by the external manager; or, that the responsible insurer execute a different deed of arrangement than originally proposed by the administrator; or, to reject the deed.

## **9. External managers recommendations to the Council**

Subrule 9 (1) provides that, unless subrule 9 (2) applies, following a resolution by creditors for the execution of a deed of arrangement proposed by the external manager or a different deed of arrangement as that originally proposed by the administrator, the external manager must recommend in a report to the Council under section 217-50 of the Act that the Council approve the execution of the deed of arrangement.

Subrule 9 (2) provides that the external manager must not make a recommendation to the Council for approval if the deed has been varied by the meeting and the external manager is not satisfied that the varied deed protects the interests of the policy holders of the fund, or if

the deed limits the rights of a creditor or creditors unless, in the opinion of the external manager, the fund is insolvent or likely to become insolvent at some future time

Subrule 9 (3) provides that a deed will be taken to limit the rights of a creditor or creditors if it removes or limits the right of a creditor to the payment of a debt or other liability, or a creditor's entitlement to an asset. In addition, subrule 9 (3) provides that a deed will be taken to limit the rights of a creditor or creditors if it delays the right of a creditor to make or enforce a claim for the payment of a debt or other liability, or the enforcement of the creditor's entitlement to an asset.

### **10. Actions the Council may take**

Subrule 10 (1) provides that if the Council is satisfied that the execution of the deed that is recommended in the report of the external manager will, in the circumstances, be in the interests of policy holders of the fund, the Council must by written notice inform the external manager that it approves the execution of the deed and request the preparation of the deed for execution.

Subrule 10 (2) provides that if the Council is not satisfied that the execution of the deed as recommended in the report will be, in the circumstances, in the interest of policy holders of the fund, the Council must by written notice inform the external manager to that effect, and request the external manager seek another meeting to consider a further voluntary deed of arrangement, or examine other possible courses of action, and report back to the Council.

Subrule 10 (3) provides that Rule 10 applies to any further report provided by the external manager, except for the reference to seeking another meeting of creditors to consider a further voluntary deed of arrangement

## **Part 3 Modifications of terms in the applied provisions**

### **11. Modifications**

Rule 11 provides, for subparagraphs 217-5(1)(b)(ii) and subsection 217-30(2) of the Act, that where applied provisions of the Corporations Act include terms specified in Rule 12, those provisions apply as if a reference to the specified term in Rule 12 were a reference to the term as modified by Rule 12.

### **12. Specified terms**

Rule 12 sets out the specified terms and their modifications.

Subrule 12 (2) provides that references in the applied provisions to Parts or Divisions of the Corporations Act are taken to also include a reference to the *Private Health Insurance Act 2007* and the *Private Health Insurance (Health Benefits Fund Enforcement) Rules 2007*.

## **Part 4 Modifications of Part 5.3A and Division 7A of Part 5.6**

### **13. Modifications for subparagraph 217-5 (1) (b) (ii) of the Act**

Rule 13 provides that for subparagraph 217-5 (1) (b) (ii) of the Act, the applied provisions mentioned in Part 4 are modified as set out in Part 4.

**14. Subsection 440D (1)**

Rule 14 provides that despite subsection 217-5(3) of the Act, the reference to ‘the company’ in subsection 440 (1) of the Corporations Act is not to be taken as a reference to ‘the fund’.

**15. Subsections 440J (2) and (3)**

Rule 15 makes provision to modify the Corporations Act by omitting subsections 440J (2) and (3) which imposes a ‘stay’ on any enforcement action under a guarantee against a director or relatives, while a company is under administration, except with the leave of the court.

**16. Subsection 441B (2)**

Rule 16 makes provision to modify subsection 441B(2) of the Corporations Act, by omitting reference to ‘437C or 440B’ and inserting the words ‘440B, or section 290-5 of the *Private Health Insurance Act 2007*’. Subsection 441B applies where enforcement of charge begins before administration.

**17. Subsection 441B (3)**

Rule 17 makes provision to modify subsection 441B (3) of the Corporations Act by omitting reference to ‘437D’ and inserting the words ‘section 293-10 of the *Private Health Insurance Act 2007*’.

**18. Section 441C**

Rule 18 make provision to modify the Corporations Act by omitting section 441C. Section 441C relates to perishable property (of a company under administration) that is subject to a charge.

**19. Section 441E**

Rule 19 makes provision to modify the Corporations Act by omitting the reference to ‘437C or 440B’ and inserting the words ‘440B, or section 290-5 of the *Private Health Insurance Act 2007*’. Section 437C prevents a person from giving a notice under the provisions of a charge.

**20. Subsection 441F (2)**

Rule 20 makes provision to modify subsection 441F (2) of the Corporations Act by omitting reference to ‘437C or 440C’ and inserting the words ‘section 440C or section 290-5 of the *Private Health Insurance Act 2007*’. Section 437C operates to suspend the powers of officers of a company under administration, but allows officers to remain in office.

**21. Subsection 441F (3)**

Rule 21 makes provision to modify subsection 441F (3) of the Corporations Act by omitting reference to ‘437D’ and inserting, ‘293-10 of the *Private Health Insurance Act 2007*’. Subsection 441F(3) provides for the circumstances where recovery of property begins before

administration.

## **22. Subsection 441G(2)**

Rule 22 makes provision to modify subsection 441G of the Corporations Act, which concerns the recovery of perishable property, by omitting subsection(2).

## **23. Section 441J**

Rule 23 makes provision to modify the Corporations Act by omitting the reference to ‘437C or 440C’ and inserting the words ‘440C or 290-5 of the *Private Health Insurance Act 2007*’. Section 441J relates to giving notice under an agreement about property.

## **24. Subsection 442D (2)**

Rule 24 makes provision to omit subsection 442D (2) of the Corporations Act, which concerns perishable property of a company.

## **25. Subsection 442F (1)**

Rule 25 makes provision to modify the Corporations Act by replacing the words ‘this Act’ with the words ‘the *Private Health Insurance Act 2007* and the applied provisions’, in subsection 442F (1). Subsection 442F(1) concerns the protection of persons dealing with an administrator.

## **26. Subsection 442F (2)**

Rule 26 modifies the Corporations Act by omitting subsection 442F (2). Subsection 442F(2) provides for the protection of persons dealing with an administrator.

## **27. Subsection 444A (1), (2) and (3)**

Rule 27 modifies the Corporations Act by omitting subsections 444A (1), (2) and (3). These subsections concern the effect of creditors' resolutions. The following is substituted:

‘(1) This section applies where, at a meeting of creditors convened under the *Private Health Insurance (Health Benefits Fund Enforcement) Rules 2007*, a fund’s creditors resolve that the responsible insurer execute a voluntary deed of arrangement.

(2)The external manager of the fund is to be the administrator of the deed, unless the creditors, by resolution passed at the meeting, appoint someone else to be administrator of the deed, and the Private Health Insurance Administration Council, by notice in writing, approves the resolution.

(3)If the Council, by notice in writing, has approved the execution of the deed, the administrator of the deed must prepare an instrument setting out the terms of the deed.’

## **28. Paragraph 444A (4) (b)**

Rule 28 provides that, despite subsection 217-5(3) of the Act, the second occurring reference in paragraph 444A(4)(b) of the Corporations Act to ‘the company’ is not to be taken as a reference to ‘the fund’. Paragraph 444A (4) (b) of the Corporations Act refers to ‘the property of the company (whether or not already owned by the company when it executes the

deed) that is to be available to pay creditors' claims'.

### **29. Paragraph 444A (4) (d)**

Rule 29 omits paragraph 444A (4) (d) of the Corporations Act and replaces it with a new paragraph (d) with the words 'to what extent the company is to be released from its debts in so far as the debts are debts of the fund'.

Despite subsection 217-5 (3) of the Act, the reference in section 444A (4) (d) of the Corporations Act to 'the company' is not to be taken as a reference to 'the fund'.

### **30. Paragraph 444A (4) (i)**

Rule 30 modifies paragraph 444A (4) (i) of the Corporations Act by omitting the reference to the word 'deed' and inserting the following:

'deed;

(j) the number of policy holders of the fund, and the total amount owing to policy holders.'

Paragraph 444A(4)(i) of the Corporations Act sets out the requirements of an instrument.

### **31. Subsection 444A (5)**

Rule 31 modifies the Corporations Act by omitting subsection 444A(5).

### **32. Section 444B**

Rule 32 provides that despite subsection 217-5 (3) of the Act, the references in section 444B of the Corporations Act to 'the company', are not to be taken as references to 'the fund'.

### **33. Subsection 444B (2)**

Rule 33 makes provision to modify section 444B (2) of the Corporations Act by replacing the words 'The company' with the words 'If the Private Health Insurance Administration Council, by notice in writing, has approved the execution of the deed, the company'.

### **34. Subsection 444B (4)**

Rule 34 makes provision to modify subsection 444B (4) of the Corporations Act which concerns functions and powers of the administrator of the company. Reference to '437C' is omitted and the words '290-5 of the *Private Health Insurance Act 2007*' are inserted.

### **35. Subsection 444B (5)**

Rule 35 provides that despite subsection 217-5 (3) of the Act, the reference in subsection 444B (5) of the Corporations Act to 'the administrator' is not to be taken as a reference to 'the external manager'.

### **36. Subsection 444B (7)**

Rule 36 makes provision to modify the Corporations Act by omitting subsection 444B (7).



**37. Subsection 444C (1)**

Rule 37 makes provision to modify subsection 444C (1) of the Corporations Act which concerns the inconsistent actions of creditors before the execution of a deed. Reference to 'section 439A' is to be omitted and the words 'the *Private Health Insurance (Health Benefits Fund Enforcement) Rules 2007*' inserted.

The rules also provide that despite subsection 217-5 (3) of the Act, the reference in paragraph 444C (1) of the Corporations Act to 'the company' is not to be taken as a reference to 'the fund'.

**38. Paragraph 444D (2) (a) and (3) (a)**

Rule 38 provides that despite subsection 217-5 (3) of the Act, the references in paragraphs 444D (2) (a) and (3) (a) of the Corporations Act to 'the company' are not to be taken as references to 'the fund'.

**39. Subsection 444E (4)**

Rule 39 makes provision to modify subsection 444E (4) of the Corporations Act which concerns the protection of company property from persons bound by a deed, by omitting the words '*property*', in relation to the company, includes property used or occupied by, or in the possession of, the company.', and substituting the words '*property*, in relation to the fund, includes property used for the purposes of the business of the fund.'

**40. Subsection 444F (1) and (2)**

Rule 40 provides that despite subsection 217-5 (3) of the Act, the references in subsections 444F (1) and (2) of the Corporations Act to 'the company' are not to be taken as references to 'the fund'.

**41. Subsection 444F (2)**

Rule 41 makes provision to modify subsection 444F (2) of the Corporations Act by omitting the words 'Subject to subsection 441A (3), the' and inserting the word 'The'. Subsection 444F(2) protects company property through Court orders that may limit the rights of a secured creditor to deal with the company property.

**42. Subsection 444F (4)**

Rule 42 makes provision to modify section 444F (4) of the Corporations Act which concerns the protection of company property from persons bound by deed, by omitting the reference to the subsection and substituting the words 'The Court may order the owner or lessor of property that is used for the purpose of the business of the fund not to take possession of the property or otherwise recover it.'

**43. Section 444G**

Rule 43 provides that despite subsection 217-5 (3) of the Act, the reference in section 444G of the Corporations Act to 'the company' is not to be taken as a reference to 'the fund'.

#### 44. Section 444H

Rule 44 makes provision to modify section 444H of the Corporations Act which concerns the extent of release of company debts, by inserting the words ‘that is a debt of the fund’ after the word ‘debt’.

Rule 44 also provides that despite subsection 217-5 (3) of the Act, the first occurring reference in section 444H of the Corporations Act to ‘the company’ is not to be taken as reference to ‘the fund’.

#### 45. Section 445A

Rule 45 makes provision to modify section 445A of the Corporations Act which concerns variation of a deed by creditors, by omitting the section and substituting the following:

- ‘(1) A deed of company arrangement may be varied by a resolution passed at a meeting of the company’s creditors convened under section 445F, but only if:
- (a) the variation is not materially different from a proposed variation set out in the notice of the meeting; and
  - (b) the Private Health Insurance Administration Council, having regard to a recommendation of the administrator of the deed given to the Council, and any other information the Council thinks relevant, approves the variation.
- (2) In deciding whether to approve the variation, the Council may:
- (a) request the administrator to provide further information relating to the variation or the recommendation; and
  - (b) engage any person to assist it in evaluating assessments made, or projections relied on, by the administrator in relation to the recommendation.
- (3) In this rule, despite paragraph 217-5 (3) (a) of the *Private Health Insurance Act 2007*:
- (a) references to ‘the administrator’ are not to be taken as references to ‘the external manager’; and
  - (b) **administrator** means the administrator of the voluntary deed of arrangement agreed on under the *Private Health Insurance (Health Benefits Fund Enforcement) Rules 2007*.’

#### 46. Paragraph 445D (1) (b)

Rule 46 makes provision to modify section 445D (1) (b) of the Corporations Act which concerns the circumstances when a Court may terminate a deed, by omitting the words ‘subsection 439A (4)’ and inserting the words ‘the *Private Health Insurance (Health Benefits Fund Enforcement) Rules 2007*’.

#### 47. Paragraph 445D (2) (b)

Rule 47 makes provision to modify the Corporations Act by omitting paragraph 445D (2) (b) which concerns the circumstances when a Court may terminate a deed.

**48. Section 445E**

Rule 48 makes provision to modify the Corporations Act by omitting section 445E which concerns the circumstances where creditors may terminate a deed and resolve that the company be wound up.

**49. Subsection 445G (1)**

Rule 49 makes provision to modify subsection 445G (1) of the Corporations Act which concerns the circumstances when a court may void or validate a deed, by omitting the reference to 'ASIC' and inserting the words 'the Private Health Insurance Administrative Council'.

**50. Subsection 447A (2)**

Rule 50 makes provision to modify the Corporations Act by omitting subsection 447A (2) which provides general power to the Court to make orders if the Court is satisfied that the administration of a company should end.

**51. Paragraph 447A (4) (a) and (d)**

Rule 51 provides that despite subsection 217-5 (3) of the Act, references in paragraphs 447A (4) (a) and (d) of the Corporations Act to 'the company' are not to be taken as references to 'the fund'.

**52. Paragraph 447A (4) (e)**

Rule 52 makes provision to modify subsection 447A (4) (e) of the Corporations Act which concerns the general power to make orders, by omitting the reference to 'ASIC' and inserting the words 'the Private Health Insurance Administrative Council'.

**53. Subsection 447B (1)**

Rule 53 makes provision to modify subsection 447B (1) of the Corporations Act. Subsection 447B(1) provides for the circumstances in which the court may make orders to protect the interests of creditors of a company under administration. Rule 53 omits the reference to 'ASIC' and inserts the words 'the Private Health Insurance Administrative Council'.

**54. Sections 447D and 447E**

Rule 54 provides that despite subsection 217-5 (3) of the Act, references in sections 447D and 447E of the Corporations Act to the administrator of a voluntary deed of arrangement, including a deed varied in accordance with the applied provisions, are to be read as referring to the administrator of the deed.

**55. Subsection 447E (3)**

Rule 55 makes provision to modify subsection 447E (3) of the Corporations Act which concerns the circumstances of making an order by a Court, by omitting the reference to 'ASIC' and inserting the words 'the Private Health Insurance Administrative Council'.

**56. Subsection 450A (1)**

Rule 56 makes provision to modify subsection 450A (1) of the Corporations Act which concerns the appointment of an administrator, by omitting reference to '436A, 436B or 436C' and inserting the words '217-10 of the *Private Health Insurance Act 2007*'.

**57. Subsection 450A (2)**

Rules 57 makes provision to omit subsection 450A (2) of the Corporations Act which concerns the appointment of an administrator, and substitute the following:

(2) As soon as practicable, and in any event before the end of the next business day, after appointing an external manager under section 217-10 of the *Private Health Insurance Act 2007*, the Private Health Insurance Administration Council must give written notice of the appointment to the responsible insurer.'

**58. Subsection 450A (3)**

Rule 58 makes provision to modify subsection 450A (3) of the Corporations Act which concerns the appointment of an administrator, by omitting '426A, 436B or 436C' and inserting the words '217-10 of the *Private Health Insurance Act 2007*'.

**59. Subsection 450A (4)**

Rule 59 makes provision to omit subsection 450A (4) of the Corporations Act which concerns the appointment of an administrator.

**60. Paragraph 450C (b)**

Rule 60 makes provision to modify subsection 450C (b) of the Corporations Act which concerns the failure by a company to execute a deed of company arrangement, by omitting the word 'prescribed' and inserting the words 'prescribed, and sent to each policy holder'.

Despite subsection 217-5 (3) of the Act, a reference in section 450C of the Corporations Act to 'the company' is not to be taken as a reference to 'the fund'.

**61. Subsection 568 (1)**

Rule 61 provides that despite subsection 217-5 (3) of the Act, the second reference in subsection 568 (1) of the Corporations Act to 'the company' is not to be taken as a reference to 'the fund'.

**62. Paragraph 568 (1) (h)**

Rule 62 provides that despite subsection 217-5 (3) of the Act, the reference in paragraph 568 (1)(h) of the Corporations Act to 'the company' is not to be taken as a reference to 'the fund'.

**63. Subsection 568 (1AA) and 568 (9)**

Rule 63 provides that despite subsection 217-5 (3) of the Act, references in subsection 568 (1AA) and subsection 568 (9) of the Corporations Act to 'the company' are not to be taken as references to 'the fund'.

#### **64. Subsection 568D (1)**

Rule 64 provides that despite subsection 217-5 (3) of the Act, the reference in paragraph 568D (1) of the Corporations Act to 'the company' is not to be taken as a reference to 'the fund'.

### **Part 5 Modifications of sections 128 and 129**

#### **65. Modifications for subsection 217–30 (2) of the Act**

Rule 65 provides that for subsection 217-30 (2) of the Act, the applied provisions mentioned in Part 5 are modified as set out in Part 5.

#### **66. Sections 128 and 129**

Rule 66 provides that in sections 128 and 129 of the Corporation Act the word *company* means a private health insurer. The Rule also provides a definition of *officer*.

#### **67. Subsection 129 (2)**

Rule 67 makes provision to modify subsection 129 (2) of the Corporations Act, which concerns the assumptions that can be made under section 128, by omitting the words 'from ASIC'.

#### **68. After subsection 129 (5)**

Rule 68 makes provision to modify section 129 of the Corporations Act, which concerns assumptions that can be made under section 128, by inserting after subsection 129 (5) the following:

‘(5A) For a private health insurer that is not a company within the meaning of the Corporations Act, a person may assume that a document has been duly executed by the insurer if the document appears to have been signed in accordance with subsection 129A (1).’

#### **69. After subsection 129 (6)**

Rule 69 makes provision to modify section 129 of the Corporations Act, which concerns assumptions that can be made under section 128, by inserting after subsection 129 (6) the following:

‘(6A) For a private health insurer that is not a company within the meaning of the Corporations Act, a person may assume that a document has been duly executed by the insurer if:

- (a) the common seal of the insurer appears to have been fixed to the document in accordance with subsection 129A (2); and

(b) the fixing of the common seal appears to have been witnessed in accordance with that subsection.’

**70. After section 129**

Rule 70 makes provision to modify the Corporations Act, by inserting after subsection 129 the following:

**‘129A Execution of documents (including deeds) by a private health insurer that is not a company**

(1) A private health insurer that is not a company within the meaning of the Corporations Act may execute a document without using a common seal if the document is signed by 2 directors or by 2 members of the management committee, or other governing body, of the insurer.

(2) A private health insurer that is not a company within the meaning of the Corporations Act and that has a common seal, has executed a document if the seal is fixed to the document and the fixing of the seal is witnessed by 2 directors or by 2 members of the management committee, or other governing body, of the insurer.’