

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health and Ageing

Private Health Insurance Act 2007

Private Health Insurance (Health Benefit Fund Policy) Rules 2007 (No.3)

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make *Private Health Insurance (Health Benefit Fund Policy) Rules* (the Rules) providing for matters required or permitted by Part 4-4 of the Act, or necessary or convenient in order to carry out or give effect to Part 4-4 of the Act.

Part 4-4 of the Act contains provisions relating to the operation of the private health insurers' health benefits funds.

The *Private Health Insurance (Health Benefits Fund Policy Rules) 2007 (No.3)* (the Rules) will commence on the day following registration on the Federal Register of Legislative Instruments.

The Rules revoke and replace the *Private Health Insurance (Health Benefits Fund Policy) Rules 2007 (No.2)*.

The Rules differ from the previous Rules by the insertion of rule 5 (Overseas treatment), rule 6 (Agency business) and rule 7 (Donating to medical research is a permitted purpose).

Rule 5 specifies for the purpose of paragraph 131-15(1)(d) of the Act, that the business of undertaking liability by way of insurance for the provision outside of Australia of certain overseas treatment is *health-related business*. The purpose of the change is to allow private health insurers, should they choose to offer this product, to also choose to include this business in their health benefits fund.

Rule 6 also specifies for the purpose of paragraph 131-15(1)(d) of the Act, that certain agency business undertaken by private health insurers is *health-related business*. This change will permit insurers, should they choose to engage in certain agency business, to also choose to include this business in their health benefits fund.

Rule 7 includes financial contributions to medical research as a purpose for which the assets of a health benefits fund may be applied.

Consultation

There has been consultation with the private health insurance industry and the Private Health Insurance Administration Council in relation to all of the changes made in the Rules. The changes to the Rules have all been made in response to concerns raised by the industry.

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

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 the day after these Rules are registered.

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

DETAILS OF THE *PRIVATE HEALTH INSURANCE (HEALTH BENEFITS FUND POLICY) RULES 2007 (No.3)*

PART 1 - Preliminary

1. Name of Rules

Rule 1 provides that the title of the Rules is the *Private Health Insurance (Health Benefits Fund Policy) Rules 2007(No 3)*.

2. Commencement

Rule 2 provides that the Rules commence on the day following registration on the Federal Register of Legislative Instruments.

3. Revocation

Rule 3 provides for the *Private Health Insurance (Health Benefits Fund Policy) Rules 2007 (No.2)* to be revoked and to be replaced by the Rules.

4. Definitions

Rule 4 provides that terms used in the Rules have the same meaning as in the Act. In addition, Rule 4 also defines the term 'Act' which is used in the Rules.

PART 2 – Meaning of Health-related Business

5. Overseas Treatment

Subrule 5(1) provides that the business described in subrule 5(2) is specified for the purpose of paragraph 131-15(1)(d) of the Act.

Subrule 5(2) provides that the business is the undertaking of liability by way of insurance for the provision outside Australia of treatment that is intended to manage a disease, injury or condition, but with some limitations.

Subrule 5(2)(a) provides that the disease, injury or condition must be chronic and permanent.

Subrule 5(2)(b) provides that the liability must be confined to treatment that would be required routinely, whether or not the person had remained in Australia.

Subrule 5(2)(c) provides that the amount of the liability incurred by the insurer for any particular treatment must not exceed the amount of the liability that would be incurred by the insurer for that treatment if it were provided in Australia.

Subrule 5(2)(d) provides that the liability must not extend to any treatment administered to a person more than 60 days after the person last departed from Australia.

6. Agency Business

Subrule 6(1) provides that for the purpose of paragraph 131-15(1)(d) of the Act, the business described in subrule 6(2) is specified.

Subrule 6(2) provides that the business is the offering of goods, services or benefits by a private health insurer under an agency arrangement.

Subrule 6(3) defines the term *agency arrangement* as being a written arrangement between a person (the *agent*) and another person (the *principal*) under which:

- the agent is permitted to act on behalf of the principal to create legal relations between the principal and a third person in transactions to provide goods or services or benefits; and
- the principal assumes liability for the transaction to the third person, including for the provision of the goods, services or benefits; and
- the agent assumes no liability in respect of the transaction, other than to perform its obligations under the arrangement for and on behalf of the principal.

The Note to rule 6 provides an example.

PART 3 – Expenditure and application of health benefits funds

7. Donating to medical research is a permitted purpose

Rule 7 provides that the assets of the health benefits fund may be applied for the purpose of donating to medical research.

PART 4 – Operation of health-related businesses through health benefits funds

8. Insurance for overseas or specified temporary visa holders

Subrule 8(1) provides that requirements are specified in subrule 5(2) for private health insurers who conduct business in respect of overseas students or specified temporary visa holders.

Subrule 8(2) provides that a private health insurer must not take or fail to take any action, or in making a decision have regard to or fail to have regard to any matter, that would result in the insurer discriminating between people who are, or wish to be insured, under an overseas student health insurance contract or a specified temporary visa holder health insurance contract.

Subrule 8(3) provides that the term *discriminating* relates to, for example, a person suffering from a chronic disease, illness or other medical condition, gender, race, sexual orientation or religious belief of a person and the frequency with which a person needs hospital treatment or general treatment.

Subrule 8(4) provides that the terms *overseas student*, *overseas student health insurance contract*, *specified temporary visa holder* and *specified temporary visa holder health insurance contract* have the same meaning as in the *Private Health Insurance (Health Insurance Business) Rules 2007*.

PRIVATE HEALTH INSURANCE BRANCH
DEPARTMENT OF HEALTH AND AGEING
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