# EXPLANATORY STATEMENT

**Select Legislative Instrument 2013 No. 84**

## Issued by authority of the Assistant Treasurer

Subject - *Income Tax Assessment Act 1997*

*Income Tax Assessment Amendment (Private Health Insurance Statement) Regulation 2013*

Subsection 909-1(1) of the *Income Tax Assessment Act 1997* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulation is to:

* update the requirements in the *Income Tax Assessment Regulations 1997* (the Principal Regulation) relating to private health insurance statements (PHI statement) as a consequence of the enactment of the *Fairer Private Health Insurance Incentives Act 2012*;
* simplify the process of updating the requirements of PHI statements for the Australian Taxation Office (ATO) and the private health insurance industry by removing the specification of the details of the statement and instead making it an approved form; and
* remove redundant penalty provisions in the Principal Regulation and instead rely on the existing penalty provisions that operate across the taxation laws.

Currently, the Principal Regulation operates so that private health insurers provide a policy holder with one annual PHI statement for each policy that taxpayers then use to complete their income tax returns each year. The PHI statement is used by the policy holder to determine whether they can claim the private health insurance tax offset.

The content of the PHI statement is specified in the Principal Regulation and amendments are often needed to reflect amendments to private health insurance legislation, the needs of the private health insurance industry and the needs of the ATO. These changes are minor and ensure that the information provided to the policy holder is useful and enables them to complete their income tax return.

Recently, there have been changes introduced by the *Fairer Private Health Insurance Incentives Act 2012* which need to be reflected in PHI statements. The *Fairer Private Health Insurance Incentives Act 2012* introduced the concept of a private health insurance incentive beneficiary (PHIIB) (a new term for the individual that primarily benefits from the private health insurance policy) and amended Subdivision 61-G of the Act to restrict eligibility for the private health insurance tax offset to people who are PHIIBs of that policy.

In order to remove the need to amend the Principal Regulation every time the content of the PHI statement requires a minor change, the Regulation specifies that the statement be in an approved form (as defined in section 388-50 of Schedule 1 to the *Taxation Administration Act 1953* (TAA)). This means that the Commissioner of Taxation can determine the contents of the PHI statement in consultation with the private health insurers, as currently occurs, without the need to amend the Principal Regulation.

The Regulation also removes the ‘strict liability’ offences in the Principal Regulation. The reason for this is because the penalties are impractical to apply due the low value of the penalty (which makes it uneconomical to pursue) and the existence and application of the broader penalty regime that operate across the taxation laws provide a more appropriate penalty.

In particular, section 8C of the TAA 1953 applies a penalty for entities that fail to comply with requirements under taxation law which applies at the same time as the ‘strict liability’ offences in the Principal Regulation, so there is no need to have the ‘strict liability’ offences within the Principal Regulations.

Further details of the Regulation are in the Attachment A.

Pursuant to section 18 of the *Legislative Instruments Act 2003*, no public consultation was undertaken on the Regulation as it is both minor and machinery in nature. However, in the development of the Regulation the ATO undertook considerable targeted consultation with stakeholders in the private health insurance industry.

The Act specifies no conditions that need to be met 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*.

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

A Statement of Compatibility with Human Rights has been completed for the Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement’s assessment is that the measures in the Regulation are compatible with human rights. A copy of the Statement is at Attachment B.

**ATTACHMENT A**

**Details of the *Income Tax Assessment Amendment (Private Health Insurance Statement) Regulation 2013***

**Section 1 – Name of Regulation**

Section 1 of the Regulation provides that the title of the Regulation is the *Income Tax Assessment Amendment (Private Health Insurance Statement) Regulation 2013*.

**Section 2 – Commencement**

Section 2 of the Regulation provides that the Regulation will commence on the day after it is registered.

**Section 3 – Authority**

Section 3 of the Regulation provides that the Regulation is made under the *Income Tax Assessment Act 1997* (the Act).

**Section 4 – Schedule(s)**

Section 4 of the Regulation provides that each instrument that is specified in the Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule to the Regulation has effect according to its terms.

Schedule 1 – Amendments

Item 1 repeal Division 61 which currently provides that a health insurance business must, before 15 July in each income year, issue a written statement for the previous income year to each individual (other than a dependent child) who was the policy holder of a complying health insurance policy at any time in the previous income year.

The Division specifies the content that must be included in the statement and provides for penalties where these requirements are not complied with.

Item 1 inserts a new Division 61, and introduces a new heading, ‘Subdivision 61‑G – Private health insurance offset complementary to Part 2-2 of the *Private Health Insurance Act 2007’*.

*Regulation 61-220.01 - Definitions for Subdivision 61-G*

This regulation provides that the terms ‘complying health insurance policy’, ‘PHIIB’ (Private Health Insurance Incentive Beneficiary) and ‘private health insurer’ have the meaning given to them by the *Private Health Insurance Act 2007*.

*Regulation 61.220.02 - Private health insurer to provide annual statement to PHIIB*

Subregulation 61.220.02(1) provides that a private health insurer for a complying health insurance policy must provide to each PHIIB insured under the policy during a financial year, a statement in the approved form about the policy before 15 July of the following financial year.

Section 995-1 of the Act provides that the ‘approved form’ has the meaning given by section 388-50 in Schedule 1 to the *Taxation Administration Act 1953*.

This allows the Commissioner of Taxation to approve in writing the contents of the statement in consultation with private health insurers, and ongoing amendments to the Principal Regulation to give effect to legislative changes will not be required.

This simplifies the process of updating the requirements of the PHI statement for the ATO and the private health insurance industry by removing the specification of the details of the statement and will then enable the ATO to liaise with private health insurance industry and health officials about what is needed in the statement to provide policy holders with a better user experience.

Subregulation 61.220.02(2) provides that the statement may include information in relation to:

* the complying health insurance policy held by the PHIIB and payments made under the policy;
* the premium, or amounts in respect of the premium, paid during the financial year in relation to the policy;
* any reductions of the premium payable, or an amount payable during the financial year.

*Removal of the ‘strict liability’ offences*

With the repeal of the current Division 61 in item 1 of the Regulation the existing penalty provisions have been removed. These existing penalty provisions included ‘strict liability’ offences that applied to a failure of the private health insurer to provide the PHI statement to a policy holder and failure to take all reasonable care to produce an accurate statement.

The existing penalty provisions have been removed from the Regulation because the low value of the current PHI statement penalties (only 5 penalty units which is currently equal to $550) makes the penalties uneconomical to pursue for the ATO and Commonwealth Director of Public Prosecutions (CDPP).

Instead, it is more likely that the ATO and CDPP would seek to utilise the general offence provisions that operate across the taxation laws when a private health insurer fails to comply with the PHI statement requirements.

In particular, section 8C of the *Taxation Administration Act 1953* (TAA) – ‘failure to comply with requirements under taxation law’ is a general offence provision which would currently apply to a private health insurer for a failure to meet the PHI statement requirements and it is an absolute liability penalty that is punishable on conviction by a fine not exceeding 20 penalty units (which is currently equal to $2200) for the first offence. This penalty then increases for additional offences.

### ATTACHMENT B

### Statement of Compatibility with Human Rights

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

**Income Tax Assessment Amendment (Private Health Insurance Statement) Regulation 2013**

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**

The purpose of the Legislative Instrument is to:

* update the requirements in the *Income Tax Assessment Regulations 1997* (the principal regulation) relating to the private health insurance statements as a consequence of the enactment of the *Fairer Private Health Insurance Incentives Act 2012*;
* simplify the process of updating the requirements of the statement for the Australian Taxation Office and the private health insurance industry by removing the specification of the details of the statement and instead making it an approved form; and
* remove redundant penalty provisions in the Principal Regulation and instead rely on the existing penalty provisions that operate across the taxation laws.

**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.

## Assistant Treasurer, the Hon David Bradbury