

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health and Ageing

*Private Health Insurance Act 2007*

*Private Health Insurance (Health Benefits Fund Policy) Rules 2015*

Section 333-20 of the *Private Health Insurance Act 2007* (the Act) provides that the Minister may make Private Health Insurance (Health Benefits Fund Policy) 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) 2015* (the Rules) will commence on 1 July 2015.

The Rules revoke and replace the *Private Health Insurance (Health Benefits Fund Policy) Rules 2007 (No.3)* (the Previous Rules).

The Rules differ from the Previous Rules by repealing rule 7 (Donating to medical research is a permitted purpose) and replacing it with a new rule 7 which lists the areas that are risk equalisation jurisdictions for the purposes of subsection 131-20(1) of the Act. The ability for private health insurers to donate to medical research from their health benefits fund has been removed as section 137-10 of the Act has been remade under section 28 of the *Private Health Insurance (Prudential Supervision) Act 2015*.

### **Consultation**

Treasury, APRA and select industry stakeholders were consulted on the drafting of these rules.

### **Regulation Impact Statement**

The Office of Best Practice Regulation has advised that no Regulatory Impact Statement is required.

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*.

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

**DETAILS OF THE *PRIVATE HEALTH INSURANCE (HEALTH BENEFITS FUND POLICY) RULES 2015*****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 2015*.

**2. Commencement**

Rule 2 provides that the Rules commence on 1 July 2015.

**3. Revocation**

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

**4. Authority**

Rule 4 states that the *Private Health Insurance Act 2007* is the authority under which these Rules are made.

**5. Definitions**

Rule 5 provides that terms used in the Rules have the same meaning as in the Act. In addition, Rule 5 also defines the term 'Act' which is used in the Rules.

**PART 2 – Meaning of Health-related business****6. Overseas Treatment**

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

Subrule 6(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 6(2)(a) provides that the disease, injury or condition must be chronic and permanent.

Subrule 6(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 6(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 6(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.

## **7. Agency Business**

Subrule 7(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 7(2) provides that the business is the offering of goods, services or benefits by a private health insurer under an agency arrangement.

Subrule 7(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 7 provides an example.

## **PART 3 – Risk equalisation jurisdictions**

### **8. Areas that are risk equalisation jurisdictions**

Rule 8 provides that the following areas are each a risk equalization jurisdiction:

- (a) Australian Capital Territory and New South Wales;
- (b) Northern Territory;
- (c) Queensland;
- (d) South Australia;
- (e) Tasmania;
- (f) Victoria;
- (g) Western Australia and the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

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

### **9. Insurance for overseas students or specified temporary visa holders**

Subrule 9(1) provides that rule 9 applies if a private health insurer has a health benefits fund in respect of its health insurance business and some or all of its health-related businesses.

Subrule 9(2) provides that requirements are specified in subrule (3) for how private health insurers must conduct their health-related business.

Subrule 9(3) 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 9(4) 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 9(5) 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 made under the Act, as in force from time to time.

## Statement of Compatibility with Human Rights

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

### Private Health Insurance (Health Benefit Fund Policy) Rules 2015

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 (Health Benefits Fund Policy Rules) 2015* (the Rules) revoke and replace the *Private Health Insurance (Health Benefits Fund Policy) Rules 2007 (No.3)* (the Previous Rules).

The Rules differ from the Previous Rules by repealing rule 7 (Donating to medical research is a permitted purpose) and replacing it with a new rule 7 which lists the areas that are risk equalisation jurisdictions for the purposes of subsection 131-20(1) of the *Private Health Insurance Act 2007* (the Act). The ability for private health insurers to donate to medical research from their health benefits fund has been removed as section 137-10 of the Act has been remade under section 28 of the *Private Health Insurance (Prudential Supervision) Act 2015*.

#### Human rights implications

This legislative instrument engages Articles 2 and 12 of the International Covenant on Economic, Social and Cultural Rights by assisting with the progressive realisation by all appropriate means of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Private health insurance regulation assists with the advancement of these human rights by improving the governing framework for private health insurance in the interests of consumers. Private health insurance regulation aims to encourage insurers and providers of private health goods and services to provide better value for money to consumers, to improve information provided to consumers of private health services to allow consumers to make more informed choices when purchasing services and requires insurers not to differentiate the premiums they charge according to individual health characteristics such as poor health.

#### Conclusion

This legislative instrument is compatible with human rights because it advances the protection of human rights.

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