

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Health

*Private Health Insurance Act 2007*

*Private Health Insurance Legislation Amendment (Risk Equalisation Jurisdiction)  
Rules 2016*

### **Authority**

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 and Private Health Insurance (Risk Equalisation Policy) Rules providing for matters required or permitted by Part 4-4 and Part 6-7, respectively, of the Act, or necessary or convenient to be provided in order to carry out or give effect to Parts 4-4 and 6-7 of the Act.

### **Purpose**

The *Private Health Insurance Legislation Amendment (Risk Equalisation Jurisdiction) Rules 2016* (the Amendment Rules) amend the *Private Health Insurance (Health Benefits Fund Policy) Rules 2015* and *Private Health Insurance (Risk Equalisation Policy) Rules 2015*. The amendment to the *Private Health Insurance (Health Benefits Fund Policy) Rules 2015* adds Norfolk Island into the risk equalisation jurisdiction (REJ) that covers New South Wales (NSW) and the Australian Capital Territory (ACT).

### **Background**

The *Norfolk Island Legislation Amendment Act 2015* will amend the Act on 1 July 2016 to extend its operation to Norfolk Island. This will mean that Norfolk Islanders will be able to purchase, should they chose, Australian private health insurance from 1 July 2016.

Under the Act, the same product's price can vary depending on the REJ in which the insured lives (see subsections 66-10(2) and 63-5(2A)). The amount of benefits paid for a particular type of treatment under complying health insurance policies in the same insurance product can also vary depending on the REJ in which the insured live (see section 66-20). REJs are defined in the *Private Health Insurance (Health Benefits Fund Policy) Rules 2015* and are as follows:

- 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.

The Amendment Rules will amend the *Private Health Insurance (Health Benefits Fund Policy) Rules 2015* to add Norfolk Island to the same REJ as NSW and the ACT. Reasons for including Norfolk Island to this REJ are:

- a) there are existing direct air links between Norfolk Island and Sydney;
- b) under new governance arrangements in place on Norfolk Island from 1 July 2016, the *Norfolk Island Act 1979* will:
  - i. allow NSW laws to be applied in Norfolk Island;
  - ii. allow the Commonwealth to enter into arrangements with the NSW Government for the delivery of state level services, including health services, to Norfolk Island.

The REJs are relevant for the distribution of amounts to private health insurers from the Private Health Insurance Risk Equalisation Special Account (PHI RESA). The PHI RESA, funded through a levy imposed on insurers, redistributes levied amounts to ensure that no particular insurer is unduly affected by the risk profile of its members. This process is known as risk equalisation and assists insurers to comply with community rating, which prevents improper discrimination by insurers when offering insurance.

Distributions to insurers from the PHI RESA are made by the Australian Prudential Regulation Authority (APRA), in accordance with the *Private Health Insurance (Risk Equalisation Policy) Rules 2015*. The Amendment Rules amend a note to the *Private Health Insurance (Risk Equalisation Policy) Rules 2015* to reflect the addition of Norfolk Island to the REJ of NSW and the ACT.

REJs require a large population for risk equalisation to be effective. As many of the claimable health services provided to Norfolk Islanders are likely to occur in NSW, Norfolk Island was included in the same REJ as NSW and the ACT.

#### Details

Details of the Amendment Rules are set out in the **Attachment**.

#### Consultation

APRA was consulted in the preparation of these Amendment Rules.

#### Regulation Impact Statement

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

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

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

MEDICAL BENEFITS DIVISION  
DEPARTMENT OF HEALTH  
APRIL 2016

**DETAILS OF THE PRIVATE HEALTH INSURANCE LEGISLATION  
AMENDMENT (RISK EQUALISATION JURISDICTION) RULES 2016**

**1 Name of Rules**

Rule 1 provides that the title of the Rules is the *Private Health Insurance Legislation Amendment (Risk Equalisation Jurisdiction) Rules 2016* (the Amendment Rules).

**2 Commencement**

Rule 2 provides that the Amendment Rules commence on 1 July 2016.

**3 Authority**

Rule 3 provides that the Amendment Rules are made under items 8 and 15 of the table in section 333-20 of the *Private Health Insurance Act 2007*.

**4 Schedule**

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

**Schedule**

Item 1 of the Amendment Rules amends paragraph 8(a) of the *Private Health Insurance (Health Benefits Fund Policy) Rules 2015* to add Norfolk Island into the risk equalisation jurisdiction that covers NSW and the ACT.

Item 2 of the Amendment Rule amends Note 1 in subrule 3(1) of the *Private Health Insurance (Risk Equalisation Policy) Rules 2015* to reflect the amendments made by Item 1.

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

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

### ***Private Health Insurance Legislation Amendment (Risk Equalisation Jurisdiction)***

#### ***Rules 2016***

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 *Norfolk Island Legislation Amendment Act 2015* will amend the *Private Health Insurance Act 2007* (the Act) on 1 July 2016 to extend its operation to Norfolk Island. This will mean that Norfolk Islanders will be able to purchase, should they chose, Australian private health insurance from 1 July 2016.

Premiums for the private health insurance product can vary depending on the risk equalisation jurisdiction (REJ) in which the insured lives. The amount of benefits paid for a particular type of treatment under complying health insurance policies in the same product can also vary depending on the REJ in which the insureds live. REJs are defined in the *Private Health Insurance (Health Benefits Fund Policy) Rules 2015*. Western Australia, the Territory of the Cocos (Keeling) Islands and the Territory of Christmas Island form one REJ, and New South Wales (NSW) and the Australian Capital Territory (ACT) another. The remaining states and territories of Australia each form separate REJs.

The *Private Health Insurance Legislation Amendment (Risk Equalisation Jurisdiction) Rules 2016* will amend the *Private Health Insurance (Health Benefit Fund Policy) Rules 2015* to add Norfolk Island to the same REJ as NSW and the ACT.

The REJs are relevant for the distribution of amounts to insurers from the Private Health Insurance Risk Equalisation Special Account (PHI RESA). The PHI RESA, funded through a levy imposed on insurers, redistributes levied amounts to ensure that no particular insurer is unduly affected by the risk profile of its members. This process is known as risk equalisation and assists insurers to comply with community rating, which prevents improper discrimination by insurers when offering insurance. Distributions from the PHI RESA are made in accordance with the *Private Health Insurance (Risk Equalisation Policy) Rules 2015*.

The *Private Health Insurance Legislation Amendment (Risk Equalisation Jurisdiction) Rules 2016* will also amend a Note to the *Private Health Insurance (Risk Equalisation Policy) Rules 2015* to reflect the addition of Norfolk Island to the same REJ as NSW and the ACT.

#### **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, without discrimination, 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.

The specification of Norfolk Island in the REJ of NSW and ACT best enables Norfolk Island residents to enjoy their right to health, free from discrimination based on their small population.

The amendment to the Note to the *Private Health Insurance (Risk Equalisation Policy) Rules 2015* has no operative legal effect and engages no human rights.

### **Conclusion**

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

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