



Discussion Paper

Proposed amendments to the
Private Health Insurance Act 2007
to assist the Private Health Insurance
Administration Council in its regulatory
oversight of the industry

17 June 2011

Disclaimer

This discussion paper is not legal advice and the Private Health Insurance Administration Council disclaims any liability for any loss or damage arising out of any use of this paper. The Private Health Insurance Administration Council encourages private health insurers to seek independent advice and to exercise care in relation to any material contained in this paper.

Foreword

The Private Health Insurance Administration Council (**the Council**) is committed to a transparent and consultative process for introducing possible amendments to the *Private Health Insurance Act 2007 (the Act)*. The Act has now been in operation for four years and certain areas of the Act that could operate more efficiently or better protect consumers of private health insurance have drawn the Council's focus.

This paper is not intended to examine every facet of the Council's operations. It discusses four areas of the Act where the Council is seeking stakeholder views to determine what impacts may arise if the legislation is amended. The issues which the Council is seeking to address include:

- A proposal to broaden the Council's ability to impose a fee in certain circumstances
- **Section 126-42 Conversion to for profit status:** amendments to assist the Council in its consideration of conversion applications
- **Section 146-5 Merger and acquisition of health benefits funds:** amendments to better protect consumer interests during a merger
- **Section 264-1 Continuation of Council and section 267-15 Delegation by the Council:** removal of the requirement that the Council have a common seal.

The paper provides an opportunity for the industry and other interested stakeholders to comment on each proposal. At this preliminary stage of consultation, the Council is particularly interested in receiving advice as to what impact these amendments may have on the industry, in particular compliance costs. Where a stakeholder can identify an alternative means of achieving the Council's objective, Council would also be interested in hearing that option.

After comments on the discussion paper have been received, a report will be prepared for consideration by the Minister. If, having considered the industry's views, the Minister is supportive of the proposed amendments, a more detailed second round of industry consultation will occur.

Written submissions should be addressed to:

The Director, Industry Policy and Enforcement
Private Health Insurance Administration Council
PO Box 4549
KINGSTON ACT 2604

Or by email to: phiac@phiac.gov.au marked 'PHI Legislative Review'.

Written submissions should be received by close of business **Wednesday, 17 August 2011**.

As submissions may be the subject of a request for access made under the *Freedom of Information Act 1982 (the FOI Act)*, submissions will be treated as public unless clearly marked confidential and the confidential information contained in the submission identified.

The Council will deal with any information requests in accordance with the provisions of the Act and the FOI Act.

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1. Purpose of this paper

This paper provides the private health insurance industry and other key stakeholders with an opportunity to comment on four proposed amendments to the Act which if implemented, the Council believes will:

- promote efficiency in the industry by making a more equitable use of industry monies to regulate the industry through the imposition of fees in those instances where the action can be readily costed and the beneficiaries are a narrow and identifiable group
- facilitate better decision making by improving the quality of the information provided by insurers to the Council when applying to convert to for-profit status
- support high quality regulation by assisting the Council's decision-making processes when considering conversion and merger applications
- remove an administrative anomaly from the Act, specifically, the unnecessary requirement that the Council maintain a common seal.

The paper is intended to generate discussion, to identify regulatory impacts which the proposed amendments may have on the industry and consumers of private health insurance (refer **Attachment A**), and assist in identifying alternative options which may achieve the Council's objectives.

All information provided to the Council on the discussion paper will be compiled to assist the Council in preparing either a Regulatory Impact Statement or Cost Recovery Impact Statement.

2. About the Council

The Council is an independent statutory authority primarily responsible for ensuring that registered private health insurers in Australia are well-run and prudentially sound. The Council was established in 1989 as a body corporate under section 82B of the *National Health Act 1953* and continues to be in existence by force of section 264-1 of the Act.

The Council's functions are set out in section 264-10 of the Act (**Attachment B** details). They include monitoring and regulating the industry and providing information to Government and other stakeholders on private health insurance membership and utilisation, risk equalisation and gap cover. The performance of its functions also requires periodic collection of financial and statistical returns from each insurer.

For further information regarding the Council's functions and publications refer to www.phiac.gov.au.

3. The Council's role

The Council is responsible for overseeing the prudential affairs of registered private health insurers (**insurers**). This role is presently discharged in a number of ways, including:

- the creation and imposition of capital adequacy and solvency standards made under Divisions 140 and 143 of the Act, which require insurers to hold a certain amount of capital to ensure their long-term viability
- the ability under section 163-1 of the Act to make prudential standards which ensure that insurers conduct their affairs "*with integrity, prudence and professional skill*"
- a program of insurer reviews in which key aspects of the operations of each insurer are examined
- a program of education seminars designed to ensure that the industry has a good understanding of its obligations under the Act
- a requirement to provide the Council with financial and other prudential information on a quarterly or annual basis.

If an insurer breaches a Council supervised obligation (as defined in section 185-10 of the Act), or the Council has reasonable grounds to believe a breach of the Act is likely which may give rise to a prudential risk, the Council has a range of regulatory responses at its disposal, including: accepting an enforceable undertaking from an insurer, the issuing of notices or directions, instigating a formal investigation into the affairs of an insurer and the appointment of an external manager.

In discharging its responsibilities, section 264-5 of the Act instructs the Council to have regard to three objectives:

- fostering an efficient and competitive health insurance industry
- protecting the interests of consumers
- ensuring the prudential safety of individual private health insurers.

4. Proposed Amendments

a) Imposition of a fee for service

The general administrative costs of the Council are funded primarily through a levy imposed on all insurers under the *Private Health Insurance (Council Administration Levy) Act 2003*. An insurer's contribution to this levy (\$5.235 million in FY2010-11) is calculated by the number of policies per insurer, and currently equates to approximately 61 cents per annum for policies under which only one person is insured and \$1.22 per annum for joint or family policies.

In exceptional instances, the Council may apply to the Minister for an industry wide supplementary levy to fund its activities. There have not yet been any instances where this levy has been raised.

The Council is concerned that the costs associated with the consideration of applications in relation to registration, mergers, acquisitions, and conversions to for-profit status should be borne by the organisations benefiting from the application, not by the industry as a whole. Significant costs can be accrued by the Council in considering these matters. For example, the Council may incur legal, actuarial or accounting costs. There may also be costs in relation to Court action or litigation. Since the costs so incurred are almost exclusively for the benefit of a single or small number of insurers, the Council considers that these costs should not be borne by the entire industry, nor by the broader constituency of policy holders.

At this juncture, three activities have been identified by the Council as being suitable for the imposition of a fee:

- Registration applications (section 126-10 of the Act)
- Conversions to for-profit applications (section 126-42 of the Act)
- Merger and acquisition applications (section 146-5 of the Act), where the party to bear the cost would be the receiving insurer.

Currently, where Council incurs costs in considering such applications they are ultimately paid by the industry as a whole. Whilst this may have been appropriate in 2007-09 when every insurer had a limited period in which to apply to the Council for registration under the Act, in the last three years the industry has subsidised the Council's consideration of two for-profit applications and four consolidations.

Two options are currently under consideration for the Council to impose fees for these transactions:

- a fixed fee for all transactions under each legislative reference, or
- the imposition of a fee for each application, which reflects the cost of the Council's consideration of that application.

The Council's preference is to employ a methodology similar to that which it uses when it imposes a fee on an insurer under section 264-10(3)(g) of the Act - for making a proper examination of the financial affairs of an insurer (**Attachment B** refers). That is, that the fee is

- directly linked to the actual costs of considering the application
- the billing system employed enables the insurer to readily identify all aspects of the final invoice

- the Council retains the discretion to waive the fee if it is felt that the charge may place an inappropriate burden on an insurer which may already be experiencing financial difficulty, for example in a merger situation.

It is also proposed that the fee imposed will not be dissimilar to fees imposed by other regulators in relation to similar transactions.

The Council's proposal is consistent with the power to fix charges or impose fees held by other prudential regulators such as the Australian Prudential Regulation Authority¹. It is also consistent with the Productivity Commission's "*beneficiary pays*" principle and the Australian Government's Cost Recovery Guidelines².

b) Conversion to for-profit status

In considering an application by an insurer for approval to convert to being registered as a for-profit insurer under section 126-42 of the Act, the Council is required to make three decisions within approximately 90 days of receiving the application:

- Does the conversion scheme in substance involve a demutualisation?
- If it is a demutualisation:
 - i. Will the conversion scheme result in a financial benefit to a person who is not a policy holder or another person insured through a health benefits fund conducted by the insurer?
 - ii. Is the Council satisfied that the conversion scheme will not result in financial benefits from the scheme being distributed inequitably between policy holders and insured persons?

The Council's experience to date is that, generally, the first consideration is relatively straight forward based on the information supplied by the applicant. In some cases, however, the second and third decisions have proven more difficult to adjudicate because of a tendency by some applicants to provide limited information on significant disbursements such as 'success retainers' or 'golden handshakes', to be paid if the Council approves the conversion.

To address these concerns, the Council proposes that the information requirements currently detailed in the approved form and practice notes (available at www.phiac.gov.au) be included in the *Private Health Insurance (Registration) Rules 2007 (the Registration Rules)* as prescribed information required to accompany an application. An amendment specifying these requirements, as envisaged under subsection 126-42(2)(b)(ii) of the Act, will assist applicants to better understand their reporting obligations and give the Council more time to identify, and form a view on the potential financial benefits to be received by persons who are not policy holders of the insurer.

Whilst this amendment should improve the information flow to the Council, it will not completely ameliorate those instances where the Council has felt pressured to reach a decision within the time constraints of the Act. For example, when the policy holder consultations required under subsection 126-42(4)(a) of the Act have identified possible inequitable financial benefits arising from the conversion scheme, or the Council has received late information from the applicant, arising from a request under subsection 126-42(4)(b) of the Act for more information.

In these circumstances, to give the Council appropriate time to consider the late information, it is proposed that a "*stop the clock*" provision be inserted in section 126-42 of the Act. It is currently considered that the provision would be similar in intent to sections 126-15 and 126-30(c) of the Act, to enable the Council additional time to consider the nature of an issue identified late in the consultation process.

Section 126-42 of the Act essentially provides an on or off switch whereby the Council must, if specified requirements are met, either approve or reject an application. The Council has found this

¹ Refer section 51 of the *Australian Prudential Regulation Authority Act 1998*

² Refer Australian Government Cost Recovery Guidelines July 2005 available via www.finance.gov.au/publications

power to be unwieldy, as the Council has no ability to address issues that are manifestly not in the best interests of policy holders.

It is proposed that an additional clause be inserted into section 126-42 to allow the Council to grant an application subject to such terms and conditions as the Council thinks appropriate, and/or disallow elements of the conversion. This would give the Council greater ability to negotiate with an applicant on the content of the proposed conversion scheme and mitigate activities which are not considered to be in the interest of the insurer's policy holders. Such an amendment would enable the Council to approve a conversion scheme whilst disallowing or amending certain elements of the application deemed not to be in the interests of policy holders.

These three proposed amendments to the Act and Registration Rules are not intended to delay Council consideration of an application, but have been identified as ways of assisting the Council in fully addressing the policy holder protections of the Act, whilst also ensuring that applicants are given an appropriate, timely and considered review of their application.

c) Merger applications

In 2008, the Council amended the *Private Health Insurance (Health Benefits Fund Administration) Amendment Rules 2008 (the Administration Rules)* to enable the Council to consider policy holder interests when assessing transfer or merger applications. The amendments were designed to provide a greater synergy between the policy holder protections of sections 126-42 and 146-5 of the Act, particularly in relation to the identification and proposed disbursement of financial benefits arising from the transaction.

Whilst the 2008 amendments authorised the Council to take into account policy holder interests when considering merger and transfer applications, Council considers section 146-5(3) of the Act should also be amended to make it clear that any financial benefits arising from the transfer of policies from a not-for-profit to a for-profit insurer should flow to policy holders like the demutualisation provision of section 126-42 of the Act. Until this happens, the interests of policy holders may not always be protected in such transactions.

As such, similar to section 126-42 of the Act, the Council's power in section 146-5 of the Act to approve or reject an application, is another unwieldy on or off switch, with no capacity to surgically excise elements of the transaction that may be not be in the best interests of policy holders or the industry, or are considered commercially repugnant by the Council. It is therefore proposed that section 146-5 of the Act also be amended to include an additional provision such that the Council may approve the arrangement subject to such terms and conditions as the Council thinks is appropriate, or disallow elements of the transaction. As with the proposed amendment to section 126-42 of the Act, this amendment would give the Council greater ability to approve an arrangement whilst disallowing or modifying those elements of the application deemed not to be in the interest of policy holders.

These two proposed amendments to section 146-5 of the Act are intended to assist the Council in addressing the policy holder protections of the Act. Neither is intended to delay Council's consideration of an application, but will ensure the Council has sufficient time to form a view on potential financial benefits arising from the proposed transaction.

d) The common seal

The Council believes that its enabling legislation should accord with current best corporate practice and that the use of the common seal is now obsolete.

In 2003 amendments were made to section 123 of the *Corporations Act 2001* to abolish the requirement that a company have a common seal. Although the Council is not subject to the *Corporations Act 2001*, it takes cues from current corporate practice.

The Act has a number of references to the Council's common seal which the Council believes are out-of-step with modern business. These include:

- section 264-1(2)(b) of the Act, which provides that the Council must have a common seal

- section 264-1(3) of the Act, which directs that the seal be kept in safe custody and only used as the Council authorises
- section 267-15 of the Act, which provides that the common seal must be used whenever the Council delegates a power to the Chief Executive Officer or another member of the staff of the Council.

In keeping with general business practice, the Council does not require the use of the common seal in its daily operations. Legally binding documents are executed in a form which is approved by the Council and do not require the affixing of the common seal. The only current use of the common seal by the Council is section 267-15 of the Act, when the Council delegates a power to the Chief Executive Officer or another member of staff.

The Council's preference is that the requirements for it to hold a common seal be removed from the Act.

These proposed amendments will have no impact on the Council's continuing oversight of the operations of individual insurers.

Attachment A – Summary of Proposed Changes to the Legislation

Legislative reference	Proposed amendments	Expected regulatory impact	Expected impact on consumers
<p>Section 126-10 of the Act</p> <p>Section 126-42 of the Act</p> <p>Section 146-5 of the Act</p>	Additional fee imposition powers.	Potentially significant. Whilst this proposal will remove most instances of cross subsidisation and reduce pressure on the industry levy which supports the operations of the Council, the user pays system, will see individual insurers incur additional costs when they make an application for registration, conversion to for profit or a merger.	A potential benefit, as it will reduce the pressure for an increase in annual levy payments
<p>Section 126-42: Conversion to for profit status</p>	An amendment of the <i>Private Health Insurance (Registration) Rules 2007</i> to prescribe information requirements for an application under section 126-42 of the Act	Nil. The required information has been detailed in the approved forms since 2009. Inserting these requirements in the Registration Rules will make it an offence if an insurer chooses not to disclose to the Council significant costs related to the conversion scheme at the time of lodging the application.	Greater transparency regarding the cost of the conversion and potential windfall gains.
	Ability of the Council to approve a conversion subject to terms and conditions	Nil. But will ensure greater rigour around the Council's decision making processes.	Consumer protection initiative.
	Inclusion of a "stop the clock" provision to give the Council time to consider late information on a conversion application	Negligible. Whilst this provision may, in some instances increase the time taken to reach a decision on an application, the intent of this amendment is for it to only be employed where a new issue is identified late in the consultation process.	Consumer protection initiative
<p>Section 146-5: Merger and acquisition of health benefit funds</p>	Tightening of policy holder protections	Negligible. Removes an inconsistency in the Act.	Consumer protection initiative
<p>Section 264-1 Continuation of the Council and section 267-15: Delegation by the Council</p>	Abolition of the common seal requirement	No perceived impact on insurers. An administrative amendment, recognising that this requirement of the Act has been superseded by an amendment to the <i>Corporations Act 2001</i> .	No perceived impact

Attachment B – Relevant extracts from the Private Health Insurance Act 2007

126-10 Applying for registration

- (1) A body that is:
 - (a) a company within the meaning of the Corporations Act 2001, or a registered body within the meaning of that Act; and
 - (b) a *constitutional corporation;may apply to the Council for registration as a private health insurer.
- (2) The application:
 - (a) must be in the *approved form; and
 - (b) must be accompanied by a copy of the *rules according to which the applicant proposes to conduct the day-to-day operation of its *health insurance business (including any *health-related business that it proposes to conduct through any of its *health benefits funds); and
 - (c) if the applicant is seeking to be *registered as a for profit insurer—must state that fact; and
 - (d) if the applicant is seeking to be registered as a *restricted access insurer—must state that fact.
- (3) The applicant must also give a copy of its *rules to the Secretary of the Department.

126-15 Requesting further information

The Council may, within 90 days after the application is made, give the applicant written notice requiring the applicant to give the Council such further information relating to the application as is specified in the notice.

126-20 Deciding the application

- (1) The Council may:
 - (a) grant the application, subject to such terms and conditions as the Council thinks fit; or
 - (b) refuse the application.

Note: Refusals of applications, and granting of applications subject to terms and conditions, are reviewable under Part 6-9.

- (2) In deciding the application, the Council must consider:
 - (a) whether the applicant will be able to comply with the obligations imposed by or under this Act on private health insurers; and
 - (b) such other matters as the Private Health Insurance (Registration) Rules require the Council to consider.
- (3) In deciding the application, the Council may consider such other matters as it thinks fit, other than matters that the Private Health Insurance (Registration) Rules prohibit the Council from considering.
- (4) The Council must refuse the application if the *rules of the applicant permit *improper discrimination. For the purposes of this subsection, the Council must consult the Secretary of the Department.
- (5) If the Council grants the application:
 - (a) the applicant is taken to have been *registered as a private health insurer under this Part with effect from the date specified by the Council in granting the

application (which may be a date that occurred before the application was made); and

- (b) if the Council grants the application subject to terms and conditions—the registration is taken to be subject to those terms and conditions from the date on which the applicant is notified of the granting of the application; and
 - (c) if the applicant sought to be *registered as a for profit insurer—the registration is taken to be registration of the applicant as a for profit insurer; and
 - (d) if the applicant sought to be registered as a *restricted access insurer—subject to subsection (6), the registration is taken to be registration of the applicant as a restricted access insurer.
- (6) The registration cannot be taken to be registration as a *restricted access insurer unless the insurer’s constitution:
- (a) describes the *restricted access group to whom the insurer’s *complying health insurance products are, or will be, available; and
 - (b) prohibits the insurer from issuing a complying health insurance product to a person who does not belong to the group; and
 - (c) prohibits the insurer from ceasing to insure a person for the reason that the person has ceased to belong to the group.

126-30 Council can be taken to refuse application

The Council is taken, for the purposes of Part 6-9, to have refused the application if the Council does not notify the applicant of its decision on the application:

- (a) within 90 days after the application was made; or
 - (b) within 90 days after a copy of the applicant’s *rules was given to the Secretary of the Department; or
 - (c) if the Council had given the applicant a notice under section 126-15 requiring the applicant to give further information relating to the application—within 90 days after the applicant gives that information to the Council;
- whichever is latest.

126-42 Conversion to for profit status

- (1) A private health insurer may apply to the Council for approval to convert to being *registered as a for profit insurer.
- (2) The application:
 - (a) must be in the *approved form; and
 - (b) must include a conversion scheme that is:
 - (i) in the approved form; and
 - (ii) accompanied by such further information as is specified in the Private Health Insurance (Registration) Rules; and
 - (c) must be given to the Council at least 90 days before the day specified in the application as the day on which the insurer proposes that it become *registered as a for profit insurer.
- (3) The Council must approve the application if the Council is satisfied, within 30 days after the application was made, that the conversion scheme would not in substance involve the demutualisation of the insurer.
- (4) If subsection (3) does not apply:

- (a) the Council must, at least 45 days before the day specified in the application, cause a notice of the application to be published in a national newspaper, or in a newspaper circulating in each jurisdiction where the insurer has its registered office or carries on business; and
 - (b) the Council may, within 90 days after the application is made, give the insurer written notice requiring the insurer to give the Council such further information relating to the application as is specified in the notice.
- (5) If subsection (3) does not apply, the Council must approve the application if:
- (a) the insurer has complied with subsection (2) in relation to the application, and given to the Council such further information as the Council has required under paragraph (4)(b); and
 - (b) the Council is satisfied that the conversion scheme would not result in a financial benefit to any person who is not a *policy holder of, or another person insured through, a *health benefits fund conducted by the insurer; and
 - (c) the Council is satisfied that the conversion scheme would not result in financial benefits from the scheme being distributed inequitably between such policy holders and insured persons.
- (6) The Private Health Insurance (Registration) Rules may provide for criteria for deciding, for the purposes of subsection (3), whether a conversion scheme would not in substance involve the demutualisation of the insurer.
- (7) The Council must cause the insurer to be notified in writing of the Council's decision on the application.

Note: Refusals of applications are reviewable under Part 6-9.

146-5 Merger and acquisition of health benefits funds

- (1) A private health insurer (the ***transferee insurer***) may enter into an arrangement with one or more other private health insurers (***transferor insurers***) under which:
- (a) insurance policies that are *referable to a *health benefits fund or funds (***transferring funds***) of the transferor insurer or transferor insurers become referable to a health benefits fund or funds (***receiving funds***) of the transferee insurer; and
 - (b) in relation to each of the transferring funds, the insurance policies concerned are:
 - (i) all of the insurance policies that are referable to the transferring fund; or
 - (ii) all of the insurance policies that are referable to the transferring fund and that belong to one or more *policy groups of the fund.
- (2) However, the arrangement must not take effect unless:
- (a) the insurers referred to in subsection (1) apply jointly to the Council, in the *approved form, for approval of the arrangement; and
 - (b) the Council approves the arrangement in writing; and
 - (c) the insurers comply with any requirements that the Private Health Insurance (Health Benefits Fund Administration) Rules impose on the insurers in relation to the arrangement.
- (3) The Council must approve the arrangement if, and only if, it is satisfied that:
- (a) the *assets and liabilities that would be transferred, under the arrangement, to the receiving fund or funds represent a reasonable estimate of what would, immediately before the restructure, be:
 - (i) if there is only one transferring fund—the *net asset position of the fund; or

- (ii) if there is more than one transferring fund—the sum of the net asset positions of each of the funds; and
- (b) if, under the arrangement, there would be more than one receiving fund—those assets and liabilities would be fairly distributed between the receiving funds; and
- (c) if subparagraph (1)(b)(i) applies to any transferring fund—the net asset position of the fund immediately after the arrangement takes effect will not be greater than zero; and
- (d) the arrangement will not result in any breach of the *solvency standard or the *capital adequacy standard if it takes effect.

Note: Refusals to approve transfers are reviewable under Part 6-9.

- (4) For the purposes of paragraph (3)(a), in working out the *net asset position of a transferring fund to which subparagraph (1)(b)(ii) applies, disregard the net asset position of the fund to the extent that it relates to insurance policies that do not belong to a *policy group referred to in that subparagraph.
- (5) The Private Health Insurance (Health Benefits Fund Administration) Rules may provide for the following:
 - (a) criteria for approving or refusing to approve applications under this section;
 - (b) how to work out reasonable estimates of the kind referred to in paragraph (3)(a);
 - (c) criteria for deciding, for the purposes of paragraph (3)(b), whether assets and liabilities would be fairly distributed;
 - (d) requirements to notify interested persons of the outcomes of such applications;
 - (e) matters connected with how arrangements take effect, including the following:
 - (i) insurance policies becoming *referable to a *health benefits fund or funds of the transferee insurer;
 - (ii) *policy liabilities and other liabilities incurred for the purposes of a health benefits fund or funds of a transferor insurer becoming treated as policy liabilities and other liabilities incurred for the purposes of a health benefits fund or funds of the transferee insurer;
 - (iii) *assets of a health benefits fund or funds of a transferor insurer becoming assets of a health benefits fund or funds of the transferee insurer;
 - (iv) the timing of arrangements;
 - (f) requirements for private health insurers to give the Council information following arrangements taking effect.
- (6) The transferee insurer must, within 28 days after the arrangement takes effect, notify the Council of the arrangement. The notice must comply with any requirements specified in the Private Health Insurance (Health Benefits Fund Administration) Rules.
- (7) For the purposes of this Act, an insurance policy that becomes *referable to a *health benefits fund of the transferee insurer as a result of the arrangement is treated, after the arrangement takes effect, as if it were an insurance policy issued by the transferee insurer.

185-10 Meaning of a *Council supervised obligation*

All of the following *enforceable obligations are ***Council supervised obligations***, to the extent to which they relate to risk equalisation, *health benefits funds or Division 163 (*prudential standards):

- (a) a provision of this Act;
- (b) a provision of any Private Health Insurance Rules made under section 333-20 or 333-25;
- (c) a provision of the regulations;
- (d) a direction given to a private health insurer under this Act.

264-1 Continuation of the Council

- (1) The Private Health Insurance Administration Council established under section 82B of the *National Health Act 1953* continues in existence by force of this section, under and subject to the provisions of this Act.
- (2) The Council:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a common seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.

Note: The Commonwealth Authorities and Companies Act 1997 applies to the Council (subject to section 267-20). That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

- (3) The common seal of the Council must be kept in such custody as the Council directs and must not be used except as authorised by the Council.
- (4) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the common seal of the Council appearing on a document; and
 - (b) presume that the document was duly sealed.

264-5 Objectives of the Council

In performing its functions and exercising its powers, the Council must take all reasonable steps to achieve an appropriate balance between the following objectives:

- (a) fostering an efficient and competitive health insurance industry;
- (b) protecting the interests of consumers;
- (c) ensuring the prudential safety of individual private health insurers.

264-10 Functions of the Council

General

- (1) The functions of the Council are:
 - (a) to administer the *Risk Equalisation Trust Fund; and
 - (b) to administer the registration of private health insurers under Part 4-3; and
 - (c) the information collection function under subsection (2); and
 - (d) the compliance functions under subsection (3); and
 - (e) the enforcement functions under subsection (4); and
 - (f) the public information functions under subsection (5); and
 - (g) the agency cooperation functions under subsection (6); and

- (h) to advise the Minister about the financial operations and affairs of private health insurers; and
- (i) functions incidental to any other functions of the Council; and
- (j) any other functions conferred on the Council by this, or any other, Act.

Information collection function

- (2) The information collection function of the Council is to obtain from each private health insurer regular reports about the insurer's operations, including reports supported by actuarial certification.

Compliance functions

- (3) The compliance functions of the Council are:

- (a) to establish a *solvency standard and a *capital adequacy standard to be complied with by private health insurers, and to give *solvency directions and *capital adequacy directions to private health insurers; and

Note: The solvency standard and the capital adequacy standard are established by the Private Health Insurance (Health Benefits Administration) Rules.

- (b) to exercise powers and discretions under the *prudential standards, and to give directions to private health insurers relating to compliance with the prudential standards; and

Note: The prudential standards are established by the Private Health Insurance (Insurer Obligations) Rules.

- (c) to consider, in accordance with Division 160, whether persons should, or should not, be *appointed actuaries; and

- (d) to consider, in accordance with Division 166, whether persons should, or should not, be *disqualified persons; and

- (e) to examine, from time to time, the financial affairs of private health insurers, by the inspection and analysis of the records, books and accounts of the insurers and any other relevant information; and

- (f) to review, by carrying out independent actuarial assessment, the value of the assets and liabilities of each *health benefits fund; and

- (g) if it is necessary, for the purpose of making a proper examination of the financial affairs of a private health insurer, for the Council to incur unusually high costs—to impose an appropriate fee on the private health insurer concerned.

Enforcement functions

- (4) The enforcement functions of the Council are:

- (a) to take action under Part 5-2 to monitor compliance with, and to encourage or compel compliance with, *Council-supervised obligations; and

- (b) to appoint, under section 214-1, *inspectors for the purpose of investigating the affairs of private health insurers under Division 214, and to exercise other related powers and functions of the Council under that Division; and

- (c) to appoint, under Subdivision 217-B, persons as *external managers of *health benefits funds, and to exercise other related powers and functions of the Council under Division 217 and 220.

Public information functions

- (5) The public information functions of the Council are:

- (a) to make statistics, and other financial information, relating to a private health insurer or private health insurers, publicly available in accordance with the Private Health Insurance (Council) Rules; and

- (b) to collect and disseminate information about private health insurance, for the purpose of enabling people to make informed choices about private health insurance.

Agency cooperation functions

- (6) The agency cooperation functions of the Council are:
- (a) to cooperate with other regulatory agencies on matters affecting private health insurers and the private health insurance industry generally; and
 - (b) to provide the Private Health Insurance Ombudsman, from time to time, with information in the Council's possession that the Council considers likely to be of use in production of the State of the Health Funds Reports referred to in paragraph 238-5(c).

267-15 Delegation by the Council

The Council may, by writing under its common seal, delegate to:

- (a) the *Chief Executive Officer; or
 - (b) another member of staff of the Council;
- all or any of the functions and powers of the Council, other than functions and powers under the *Commonwealth Authorities and Companies Act 1997*.