



Australian Government

Private Health Insurance Administration Council

Discussion Paper

Outsourcing Standard
for Private Health Insurers

August 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.

1. Foreword

This paper discusses the proposed introduction by the Private Health Insurance Administration Council (**PHIAC**) of a new prudential standard, made under Division 163 of the *Private Health Insurance Act 2007* (**the PHI Act**) in relation to the outsourcing of material business activities by private health insurers (**insurers**). This discussion paper aims to:

- assist insurers and industry stakeholders to understand the proposed outsourcing standard (**the Standard**), and
- seeks insurer and industry stakeholder views on the Standard.

The release of this discussion paper marks the beginning of two planned rounds of industry consultation. PHIAC seeks comments on the Standard from private health insurers and industry stakeholders by **Friday 7 October 2011**. The second consultation round is planned for late 2011 or early 2012, and will provide industry with a draft legislative instrument and proforma outsourcing policy for consideration and comment.

The Australian Government, in an effort to improve the efficiency of regulation, requires proposals to undertake a preliminary assessment to establish the extent of compliance costs on industry. As part of the consultation process, PHIAC requests respondents to indicate the impact, specifically compliance costs, the Standard is likely to have.

Respondents may also indicate whether any other regulatory issues relating to outsourcing could be improved or removed to reduce compliance costs. In doing so, please explain what they are and why they need to be improved or removed.

PHIAC invites written submissions on the content and regulatory impact of the Standard. Submissions should be addressed to:

The Manager – Prudential Standards
Private Health Insurance Administration Council
PO Box 4549
KINGSTON ACT 2604

Or by email: phiac@phiac.gov.au marked 'Outsourcing Standard'.

Written submissions must be received by **COB Friday 7 October 2011**.

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

PHIAC will determine FOI Act requests, if any, in accordance with the provisions of the FOI Act and the PHI Act.

2. Abbreviations used in this paper

| | |
|----------|--|
| ACCC | Australian Competition and Consumer Commission |
| ASIC | Australian Securities and Investments Commission |
| APRA | Australian Prudential Regulation Authority |
| Board | the board of directors of a private health insurer |
| FOI Act | <i>Freedom of Information Act 1982</i> |
| insurer | a private health insurer registered under the <i>Private Health Insurance Act 2007</i> |
| OLDP | Office of Legislative Drafting and Publishing |
| PHIAC | Private Health Insurance Administration Council |
| PHI Act | <i>Private Health Insurance Act 2007</i> |
| Standard | PHIAC's proposed outsourcing standard, which will appear as a Schedule to the <i>Private Health Insurance (Insurer Obligations) Rules 2009</i> |

3. About PHIAC

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

PHIAC's functions are set out in section 264-10 of the PHI Act (see **Section 12**). PHIAC's functions include monitoring and regulating the private health insurance industry, as well as providing information to Government and other stakeholders on private health insurance membership and utilisation, risk equalisation and gap cover. The performance of its functions requires the collection of financial and statistical returns from each registered private health insurer on a quarterly and annual basis.

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

4. PHIAC's Role

Under the PHI Act, PHIAC is responsible for overseeing the prudential affairs of private health insurers. This role is presently discharged in a number of ways, through:

- the creation and imposition of solvency standards and capital adequacy standards made under Divisions 140 and 143 of the PHI Act
- the making of prudential standards under Division 163 of the PHI Act (see **Section 12**), which ensure that insurers conduct their affairs (amongst other things) "with integrity, prudence and professional skill"
- obligations, imposed by law,¹ for insurers to adhere to minimum governance and disclosure requirements and to appoint and regularly consult with appointed actuaries
- a program of insurer reviews in which key aspects of the operations of insurers are examined by PHIAC's analytical team and reported to the Council of PHIAC

¹ *Private Health Insurance (Insurer Obligations) Rules 2009*

- a requirement to provide PHIAC with financial and other prudential information on a quarterly and annual basis.

When insurers breach any standards imposed by PHIAC, PHIAC has a range of regulatory responses at its disposal. These range from issuing directions, through to formal investigations into the affairs of the insurer, and the appointment of an external manager to conduct the business of the fund.

Importantly, PHIAC is authorised to act on a preventative basis². Accordingly, PHIAC sees the design and promulgation of appropriate prudential standards as a key control to the proactive oversight of the industry's prudential affairs.

In discharging these responsibilities, the PHI Act instructs PHIAC 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.

The Standard will be developed with the above objectives firmly in mind.

5. Summary of Proposal

This discussion paper seeks to outline PHIAC's proposed framework for better regulating the risks associated with the outsourcing by private health insurers of material business activities. PHIAC is seeking insurers' and stakeholders' views on the introduction of the Standard, which will be a prudential standard made under Division 163 of the PHI Act (see **section 12**) and will appear as a new Schedule to the *Private Health Insurance (Insurer Obligations) Rules 2009 (the Rules)*.

It is noted that prudential standards are considered to be Council-supervised obligations and as such may be enforced by PHIAC under both Division 163 of the PHI Act and by recourse to PHIAC's broader enforcement powers.

The Standard will require insurers to have in place an effective control framework in relation to implementing and managing the outsourcing arrangements of material business activities, which will be defined as "*an activity which has the potential, if disrupted, to have a significant impact on the insurer's business operations or its ability to manage risks effectively.*"

Notably, if an activity is not considered to be a material business activity, it will not be subject to the Standard, although insurers will be encouraged to use the Standard's framework for all outsourcing arrangements.

It is planned that the Standard will set out best practice principles that are the minimum requirements insurers will need to comply with in relation to outsourcing considerations and contractual arrangements. These requirements will include:

- insurers to have a Board-endorsed policy that sets out its approach to outsourcing and the Board must be able to demonstrate to PHIAC that it is satisfied that it has identified and can manage any risk associated with an outsourcing arrangement that may materially affect the prudential safety of the insurer
- insurers' outsourcing arrangements should allow PHIAC to access information from the outsource provider and for PHIAC to make site visits to the service provider when necessary
- PHIAC's prior written approval will be required to outsource material business activities to off-shore service providers

² Section 200-1(1) of the *Private Health Insurance Act 2007*

- insurers to notify PHIAC of outsourcing arrangements within 28 days after the execution of the agreement
- insurers must notify PHIAC of any problems being encountered which may materially impact on the outsourcing arrangement
- PHIAC may require an insurer to engage an external auditor to provide PHIAC with an assessment of the adequacy of the risk management processes in relation to the outsourcing arrangements.

Subject to the requirements of the Standard, insurers will have the flexibility to manage their outsourcing arrangements in the way most suited to achieving their distinct business objectives, and furthermore are strongly encouraged to go above and beyond the minimum requirements.

6. Problem identification

Context

Outsourcing involves an insurer entering into an arrangement with another party (including a related body corporate) to perform a business activity which currently is, or could be, undertaken by the insurer. Effective outsourcing allows arrangements to be put in place more quickly and potentially at a lower cost than would be the case if the service was provided in-house, and in many instances provides economies of scale and cost efficiencies to insurers.

The risks associated with outsourcing have been broadly examined, and in developing the Standard, PHIAC has taken account of the following sources and events:

- **PHIAC's supervisory experience:** PHIAC's fund review program has highlighted the variability of insurers' outsourcing arrangements and established the need to have industry wide minimum standards in place.
- **Enactment of the PHI Act:** the PHI Act was enacted in 2007. As noted earlier, the legislation contains provisions which specifically empower PHIAC to make prudential standards addressing "the conduct by private health insurers of any of their affairs with integrity, prudence and professional skill".
- **APRA Prudential Standards.** An outsourcing standard has been in place for authorised deposit-taking institutions since 2002, and general insurers since 2007. APRA is also currently conducting a review to standardise outsourcing arrangements across all institutions regulated by APRA.
- **International principles on outsourcing** issued by the Joint Forum, which comprises the Basel Committee on Banking Supervision, the International Organisation of Securities Commissions and the International Association of Insurance Supervisors, which provided an internationally accepted benchmark of minimum supervisory standards against which the quality of a country's prudential supervision of outsourcing arrangements can be measured and assessed.
- **International prudential regulators.** In recent years, many overseas prudential regulators have introduced comprehensive guidance material and regulations relating to outsourcing, including the Office of the Superintendent of Financial Institutions in Canada and the Financial Services Authority in the United Kingdom.

Risk identification

Outsourcing of business activities has a long history in the private health insurance industry and historically, administrative functions have been commonly outsourced to bodies within extant corporate groups. External claims processing functions and group negotiations for private hospital contracting are other common business activities that are outsourced by the industry.

With the maturation of the private health insurance industry, outsourcing has become more common place and PHIAC has identified that industry wide, there are currently significant functions being provided by third parties and other entities within insurers' corporate groups.

PHIAC acknowledges the important role of outsourcing in the administrative arrangements of private health insurers. The Standard does not seek to restrict existing or future outsourcing arrangements, rather it is designed to ensure that the significant risks associated with outsourcing material business activities, are adequately controlled.

While outsourcing can transfer some risks to the outsourced service provider, the outsourcing of material business activities can expose an insurer to a range of risks, including:

- **prudential risk**, should the outsourcing arrangement fail and/or expose the insurer to additional and unexpected costs
- **legal and reputational risk**, should the outsourced service provider fail to deliver on time and to agreed quality
- **operational risks** such as significant loss of control, reliability and responsiveness over the business activity being outsourced
- **business continuity risk**, should the service provider no longer prove to be a viable entity
- **hidden and uncertain costs** for the service being provided, if the contractual arrangements are not sufficiently detailed
- **loss of internal capacity** as the ability to perform the outsourced function in house is reduced or removed.

From a regulatory perspective, a key risk is the possibility that a service provider that is systemically important to the industry, or to an individual insurer, refuses to cooperate with PHIAC. In this case, PHIAC's current inability to access information from the service provider would not permit it to effectively supervise the insurer or other insurers using that service provider and this could potentially put consumers at risk.

Potential for failure

PHIAC has considered the potential causes of failure of an outsourcing arrangement, and the Standard will be developed to minimise these risks. Potential causes of failure of outsourced arrangements include:

- **Tendering process not effectively employed.** There is potential for failure if the most appropriate supplier is not engaged to deliver the service. Competitive tender and selection processes are important to the successful selection and this will form a part of the Standard.
- **Upfront risk assessment not performed.** If an insurer has not fully considered the risks of the outsourcing it is easy to make poor outsourcing decisions, even when the right provider is chosen. The Standard will prescribe a due diligence process to minimise this risk.
- **Effective monitoring process not used.** After establishment of an outsourcing arrangement, effective, ongoing contract management processes are not always employed. Risk of failure increases dramatically if the outsourced arrangement is not well designed, negotiated, managed, controlled and executed.
- **Misunderstanding the service levels.** Although service level agreements (**SLA**) are often documented, it is possible for them to be misunderstood by both parties to the arrangement. The Standard will provide guidance on how SLAs should be employed and used.
- **Outsourcing a function that is strategic or underperforming.** It is possible that an insurer will tend to outsource a function that is not performing well internally. Business requirements are

difficult to communicate when the process in question is failing or underperforming. Effective management requires an understanding of how it is supposed to work. The process must be fixed before it can be outsourced.

PHIAC notes that many insurers already have high standards for managing outsourcing arrangements across business operations. Cases have, however, been identified where the selection process, contracts and/or monitoring procedures were poor, or could have been improved.

7. Key Objectives

As a risk-based prudential regulator, PHIAC's key objectives in relation to introducing a prudential standard on outsourcing are to effectively control risks that may contribute to instability in the private health insurance industry. Specifically, PHIAC's objectives are to:

- improve the business and risk management practices of insurers in relation to outsourcing
- enable individual insurers to effectively assess the risks that are associated with outsourcing material business activities, and implement a control framework to ensure those risks are managed
- ensure consistency between PHIAC's outsourcing requirements and the outsourcing requirements of other Australian regulatory regimes, to the extent that this is practical.

These objectives stem from PHIAC's statutory objectives under section 264-5 of the PHI Act and the power and intent of Division 163 of the PHI Act (see **Section 12**). In particular, PHIAC seeks to achieve a balance between fostering an efficient and competitive health insurance industry and protecting the interests of consumers of health insurance. The proposed outsourcing standard will help to foster improved risk management practices among private health insurers.

8. Options

In forming the opinion that an outsourcing standard is required for the industry, PHIAC considered a number of options relevant to developing the Standard.

Option 1 – retain status quo: no specific requirements regarding insurer outsourcing arrangements

Under this option, there would be no change to current arrangements, and PHIAC would continue to review outsourcing arrangements in the context of its program of fund reviews and provide recommendations on improvements in outsourcing practices to individual insurers.

Where necessary, PHIAC would hold direct discussions with third party service providers who were willing to cooperate with PHIAC, although they would be under no legal obligation to do so. Where a service provider refused to cooperate, PHIAC would have to rely on its relationship with the insurer to ensure resolution of any issues.

This option is not preferred as it does not address the identified risks in the private health insurance industry, as there is no requirement for third parties to cooperate with PHIAC and no requirement for insurers to implement better practices in undertaking outsourcing arrangements.

Option 2 – provide guidance and information to insurers in relation to outsourcing arrangements

This option would involve the development of guidance material for the industry to adopt best practice arrangements for outsourcing. This approach largely relies on the good intentions of the insurer to improve its outsourcing practices.

While there may be some improvements in individual insurers, this approach is subjective and would leave interpretation to each insurer, thereby increasing the likelihood that there would be a

continuation of an inconsistent approach to outsourcing across the industry. Accordingly, PHIAC's concerns would not be abated and this option is not preferred.

Option 3 – establish a prudential standard to ensure that insurer outsourcing arrangements adopt minimum requirements

Under this option, PHIAC would exercise its legislative powers to introduce a prudential standard relating to outsourcing that would apply to all insurers. The Standard would require insurers to adhere to minimum requirements when considering outsourcing material business activities and provide a framework for undertaking due diligence, selecting service providers and monitoring the arrangements.

Additionally, PHIAC would have access to service providers. Where a third party provides services to a large number of insurers, PHIAC would have a greater capability to assess the potential systemic issues arising from this dependency.

This is the preferred option and is discussed in detail in the next section of this paper.

9. Proposed Outsourcing Framework

The Standard will set out best practice principles that are the minimum requirements insurers will need to comply with, in relation to outsourcing considerations and contractual arrangements.

Subject to the requirements of the Standard, insurers will have the flexibility to manage their outsourcing arrangements in the way most suited to achieving their distinct business objectives, and furthermore are strongly encouraged to go above and beyond the minimum requirements.

The Standard will form part of a suite of prudential standards designed to ensure that insurers' operations are in line with Australian corporate sector best practice and APRA provides significant guidance on outsourcing arrangements.

PHIAC has drawn on the APRA regulatory model, specifically *Prudential Standard GPS 231 – Outsourcing*, in developing the Standard. PHIAC has avoided unnecessary differences between regulatory approaches, as the ARPA arrangements have been in place for authorised deposit-taking institutions since 2002, and general insurers since 2007. APRA is also currently conducting a review to standardise outsourcing arrangements across all institutions regulated by APRA which PHIAC is watching closely.

The Standard It will also address some of the issues identified by PHIAC's ongoing regulatory oversight. A high level overview of the framework is below for comment and consideration.

Outsourcing definition

For the purposes of the Standard, outsourcing involves a registered private health insurer entering into an arrangement with another party (including a related body corporate) to perform, on a continuing basis, a business activity which currently is, or could be, undertaken by the private health insurer itself.

Material business activity definition

The Standard will only apply to those outsourcing arrangements that can be defined as material business activities.

A material business activity is that which has the potential, if disrupted, to have a significant impact on the insurer's business operations or its ability to manage risks effectively, having regard to such factors as:

- **the financial, operational or reputational impact** of a failure of the service provider to perform over a given period of time

- **the cost** of the outsourcing arrangement as a share of total costs
- **the degree of difficulty**, including the time taken, in finding an alternative service provider or bringing the business activity 'in-house'
- **the ability of the insurer to meet regulatory requirements** if there are problems with the service provider
- **potential losses** to the insurer's customers and other affected parties in the event of a service provider failure
- **affiliation or other relationship** between the insurer and the service provider.³

A non-exhaustive list of examples of material business activities in the private health insurance industry would include:

- service agreements to provide a significant management or human resource function
- benefit claims processing services
- private hospital contracting negotiation services
- internal audit functions to another entity within the corporate group.

Offshore outsourcing definition

For the purposes of this Standard, offshore outsourcing means the outsourcing by an insurer of a material business activity associated with its Australian health insurance business to a service provider (including a related body corporate) where the outsourced activity is to be conducted outside Australia.

Offshore outsourcing includes arrangements where the service provider is incorporated in Australia, but the physical location of the outsourced activity is outside Australia, but does not include arrangements where the physical location of an outsourced activity is within Australia but the service provider is not incorporated in Australia.

Outsourcing policy

The Standard will impose on insurers the requirement to have an outsourcing policy. The policy must be approved by the insurer's Board and must ensure outsourced activities are subject to appropriate due diligence, approval and ongoing monitoring.

The Standard will require that an insurer's outsourcing policy must include a detailed framework for managing all outsourcing arrangements and will set out specific requirements in relation to outsourcing to entities with its corporate group structure, outsourcing to service providers conducting the material business activity outside Australia and include a detailed framework for managing all outsourcing arrangements.

The outsourcing policy will require the insurer, when considering outsourcing a material business activity, to:

- prepare a business case
- undertake a tender process or similar competitive procurement arrangement
- address an appropriate range of contractual considerations (scope, end date etc.) and be in the form of a legally binding agreement

³ It is noted that this definition of Material Business Activity is consistent with that set out in APRA's Outsourcing Standard - GPS 231

- undertake a due diligence review of the chosen provider
- involve the Board or relevant Board committee in the decision
- develop appropriate monitoring and renewal processes, including criteria for service levels
- establish dispute resolution procedures
- develop contingency planning if the service provider is unable to continue the service provision.

Where an insurer is considering outsourcing within a group structure, the outsourcing policy will also require the insurer, in addition to the above points, to consider where appropriate additional issues including:

- the ability of the corporate group entity to undertake the activity cost effectively and on an ongoing basis
- changes in risk profile of the insurer arising from outsourcing the activity within the group, and how the changes will be addressed within the insurer's existing risk management framework
- the monitoring procedures required to ensure that the corporate group entity is performing effectively and how potential inadequate performance would be addressed.

Outsourcing monitoring processes

Risk management

The Standard will require that the insurer's risk management framework be able to deal with the risks associated with the outsourcing of a material business activity. The associated risks should be controlled in a manner as if the outsourced activity were being performed 'in-house' and should incorporate the policies and procedures into its existing risk management framework.

The Standard will also require that an insurer have procedures to ensure that all its relevant business units are fully aware of, and comply with, the outsourcing policy.

Monitoring arrangements

An insurer will be required to ensure it has sufficient and appropriate resources to manage and monitor the outsourced service at all times. The type and extent of resources required will depend on the materiality of the outsourced business activity. At a minimum, the monitoring should include maintaining appropriate levels of regular contact with the service provider and a process for regular monitoring of performance under the agreement, including meeting criteria concerning service levels.

PHIAC access to service providers

Any new or re-negotiated outsourcing agreements will need to include a clause that allows PHIAC access to information related to the outsourcing arrangement with the insurer. In the normal course, PHIAC will seek to obtain whatever information it requires from the insurer, however, the outsourcing agreement should include the right for PHIAC to require the provision of whatever information it requires from the outsource service provider and to conduct on-site visits to the outsource service provider if PHIAC considers this necessary. PHIAC expects outsource service providers to cooperate with PHIAC's requests for information and assistance. If PHIAC intends to undertake an on-site visit to an outsource service provider, it will normally inform the insurer of its intention to do so.

Where an insurer enters into an outsourcing arrangement with a related body corporate, the Board of the insurer should ensure that access by PHIAC to outsourcing entities with its corporate group structure will not be impeded.

The insurer will be required to take all reasonable steps to ensure that a service provider will not disclose or advertise that PHIAC has conducted such a visit, except as necessary to coordinate with other insurers regulated by PHIAC which are existing clients of the service provider.

Notification requirements

Offshore outsourcing

PHIAC notes that outsourcing a material business activity offshore carries with it considerable additional risk to the insurer, as there is far less effective control over the service provision, including privacy obligations for overseas providers.

Accordingly, the Standard will require insurers to consult with PHIAC prior to entering into agreements to outsource material business activities to service providers who conduct their activities outside Australia, so that PHIAC may be satisfied that the impact of the offshoring arrangement has been adequately addressed as part of the insurer's risk management framework.

If, in PHIAC's view, the offshoring agreement involves risks that the insurer is unable to manage satisfactorily, PHIAC may require the insurer to make other arrangements for the outsourced activity within a timeframe stipulated by PHIAC.

Disclosure requirements

As outsourcing material business activities changes an insurer's risk profile, insurers will be required under the Standard to notify PHIAC of entering into such an agreement within 28 days of entering into the agreement. This will allow PHIAC to appropriately monitor and assess the insurer's risk profile.

Where an outsourcing agreement is terminated, an insurer will need to notify PHIAC as soon as practicable and provide details about the transition arrangements and future strategies for carrying out the outsourced material business activity.

Notably, if a significant unexpected disruption to a material business activity occurs, the insurer would be required to notify PHIAC under the provisions of the Disclosure Standard.

10. Impact on industry

PHIAC is of the view that the costs associated with the introduction of the Standard will be small. Many insurers would already be meeting the proposed requirements and would therefore face little or no additional costs in relation to these proposals.

The Standard promotes best commercial practice and should therefore only affect those insurers where these practices are not already in place.

It is expected that all insurers would already be assessing the risks of their outsourcing arrangements to some extent and cost increases would relate to improving these arrangements, as necessary. This might include enhancements of internal processes or additional costs imposed by a service provider for increased monitoring arrangements.

Potential advantages to the industry and to individual insurers of the better outsourcing practices prescribed by the Standard include:

- **better selection of outsourced service providers**, leading to more competitive, efficient and cost effective services being provided to the industry
- **better identification and resolution of service delivery issues** where an insurer has adequate monitoring procedures, for example, an issue would be likely to be identified and addressed before it became significant and potentially costly

- **better understanding of services being delivered and contractual arrangements** leading to lower other costs such as the costs associated with changing service providers in the event of major issues.

In PHIAC's view, the benefits of the Standard to the industry outweigh the costs to individual insurers to improve their business practices.

11. Next steps

The next step in the process, after receiving the industry's preliminary advice on the proposed structure and content of the Standard, will be to draft the legislative instrument. In this instance, PHIAC proposes to engage the Office of Legislative Drafting and Publishing (**OLDP**) within the Attorney General's Department. PHIAC has had recent experience in working with the OLDP and that Office is familiar with PHIAC's legislative and administrative requirements.

A second round of industry consultation will begin with the release for comment of a draft legislative instrument and proforma outsourcing policy. Insurers and stakeholders will again be given sufficient time to properly consider the draft Standard before it is made by the Council in the first half of 2012.

When made, the Standard will be subject to the usual 10 year sun-setting rules of the *Legislative Instruments Act 2003*. The Standard will also be reviewed after 24 months and again after five years to ensure it continues to reflect good practice, remain relevant, effective and meet the Government's five-yearly review process. PHIAC will also liaise with other regulatory bodies to ensure that its disclosure requirements remain relevant.

12. PHI Act sections

Section 163-1 Private Health Insurance (Insurer Obligations) Rules to establish prudential standards

- (1) The Private Health Insurance (Insurer Obligations) Rules may establish prudential standards
 - (2) **Prudential matters** are matters relating to:
 - (a) the conduct by private health insurers of any of their affairs in such a way as:
 - (i) to keep themselves in a sound financial position; or
 - (ii) not to cause or promote instability in the Australian private health insurance system; or
 - (b) the conduct by private health insurers of any of their affairs with integrity, prudence and professional skill;
- but does not include matters relating to the solvency or capital adequacy of *health benefits funds.
- (3) A *prudential standard may impose different requirements to be complied with:
 - (a) by different classes of private health insurers; or
 - (b) in different situations; or
 - (c) in respect of different activities.
 - (4) A *prudential standard may provide for the Council to exercise powers and discretions under the standard, including but not limited to discretions to approve, impose, adjust or exclude specific prudential requirements in relation to a particular private health insurer or a particular class of private health insurers.
 - (5) A *prudential standard takes effect on the day on which it is established in the Private Health Insurance (Insurer Obligations) Rules, or on such later day as is specified in the Private Health Insurance (Insurer Obligations) Rules.

Section 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).