



# Private Health Insurance (Insurer Obligations) Rules 2009<sup>1</sup>

*Private Health Insurance Act 2007*

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The Private Health Insurance Administration Council makes these Rules under item 2 of the table in section 333-25 of the *Private Health Insurance Act 2007*.

Dated 2009

**[DRAFT ONLY – NOT FOR SIGNATURE]**  
Private Health Insurance Administration Council

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**CONSULTATION DRAFT ONLY**

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## Part 1 Preliminary

### 1 Name of Rules

These Rules are the *Private Health Insurance (Insurer Obligations) Rules 2009*.

### 2 Commencement

These Rules commence on the day after they are registered.

### 3 Repeal

The *Private Health Insurance (Insurer Obligations) Rules 2007* are repealed.

### 4 Definitions

In these Rules:

*Act* means the *Private Health Insurance Act 2007*.

*Appointed Actuaries Standard* means the standard set out in Schedule 2.

*associate* has the same meaning as in clause 4 in Schedule 1 of the *Financial Sector (Shareholdings) Act 1998*.

*board* means the board of directors of a private health insurer or, if the insurer is not a company within the meaning of the *Corporations Act 2001*, the governing body of the insurer.

*company* means:

- (a) a company within the meaning of the *Corporations Act 2001*; or
- (b) a constitutional corporation.

*corporate governance* means a system by which an insurer is directed and controlled.

*corporate group* means each body corporate that is a related body corporate within the meaning given by section 50 of the *Corporations Act 2001*.

*executive director*, for a private health insurer, means a person who is:

- (a) a member of management of the insurer; and
- (b) an employee of the insurer.

*financial condition report* means a report on the financial condition of a private health insurer, including a report on the financial condition of each health benefits fund conducted by the insurer.

*Governance Standard* means the standard set out in Schedule 1.

**Rule 4**

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***independent director*** means a director of a private health insurer who can demonstrate, on request by the Council or the board, to the satisfaction of the requesting body, that he or she:

- (a) is free from any business or other association that could materially interfere with the exercise of his or her independent judgment; and
- (b) is not an executive director; and
- (c) either:
  - (i) is not:
    - (A) a substantial shareholder of the private health insurer or an officer of, or otherwise associated directly with, a substantial shareholder of the insurer; or
    - (B) employed by, or previously employed in an executive capacity by, the insurer or another member of the group, and has not ceased that employment at least 3 years before serving on the board of the insurer; or
    - (C) someone who has, within the last 3 years, been a principal of a material professional adviser or a material consultant to the insurer, another member of the group, or an employee materially associated with the service provided; or
    - (D) a material supplier or customer of the insurer or other group member, or an officer of, or otherwise associated directly or indirectly with, a material supplier or customer; or
    - (E) someone with a material contractual relationship with the insurer or another group member other than as a director; or
  - (ii) has been approved in writing as an independent director by the Council.

*Note* A person who is a member of a private health insurer that is a mutual society would not by that fact alone be a person described by sub-subparagraph (c) (i) (A). The definition of ***substantial shareholder*** in this section makes clear that a person must have in the insurer a ***substantial holding*** as defined in section 9 of the *Corporations Act 2001*.

***new product*** means a product that:

- (a) has not previously been offered by a private health insurer; and
- (b) contains characteristics that are different from other products offered by the insurer.

***non-executive director*** means a director who is not an executive director.

***notifiable circumstance*** has the same meaning as in subsection 1 (3) of Schedule 2.

***overseas equivalent*** means an insurer that is not registered in Australia but is authorised in another country, whether or not by registration, and is subject to prudential regulation in that country.

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**Rule 4**

***related person***, for an appointed actuary, means:

- (a) the actuary's spouse; or
- (b) a dependent child of the actuary; or
- (c) a business partner of the actuary; or
- (d) an employer (other than the appointing private health insurer) of the actuary; or
- (e) a company of which the actuary is a director.

***substantial shareholder*** means a person with a substantial holding within the meaning given by section 9 of the *Corporations Act 2001*.

*Note* Terms used in these Rules have the same meaning as in the Act — see section 13 of the *Legislative Instruments Act 2003*. These terms include:

- appointed actuary
- capital adequacy standard
- chief executive officer
- constitutional corporation
- Council
- director
- health benefits fund
- policy holder
- private health insurer
- product.

**Rule 5**

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## **Part 2                      Reporting and notification requirements**

### **5                      Copies of reports to Council**

For section 169-1 of the Act, a private health insurer that makes a report to all or any of the policy holders of a health benefits fund conducted by the private health insurer, must, if requested by the Council, give a copy of the report to the Council.

*Note* Section 169-1 of the Act provides that a report be given to the Council within 1 month after making the report, or within such further time as the Council allows.

### **6                      Information to be given annually to the Council**

- (1) For paragraph 169-5 (1) (b) of the Act, the private health insurer must give to the Council:
  - (a) a statement by the directors of the insurer certifying that the capital adequacy margin adopted by the insurer for the financial year to which the statement relates:
    - (i) is considered appropriate; and
    - (ii) has been endorsed by a resolution of the board; and
  - (b) if the board believes the sum of the claims ratio and the expense ratio, determined for the application of the capital adequacy standard, may no longer be a best estimate of the prospective loss ratio for calculating the unexpired risk liability in accordance with the capital adequacy standard — a statement certifying that the alternative loss ratio adopted by the insurer and included in a financial statement provided to the Council:
    - (i) is considered appropriate; and
    - (ii) has been endorsed by a resolution of the board.

*Note* Subsection 169-5 (1) of the Act provides that the information be given to the Council within 3 months after the end of each financial year, or within such further time as the Council allows.

- (2) In this rule, *capital adequacy margin*, *claims ratio*, *expense ratio*, *loss ratio* and *unexpired risk liability* have the meanings given by the capital adequacy standard.

### **7                      Certification requirements**

- (1) For subsection 169-5 (2) of the Act, any accounts and statements given to the Council under subsection 169-5 (1) of the Act and the statements mentioned in rule 6 must be certified by 2 officers of the private health insurer to be true and correct.

**Rule 7**

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(2) The certifications for any accounts and statements must be in the following form:

I, *[name]*, certify on behalf of *[name of private health insurer]* that:

- (a) the accounts and statements bearing this certification are true and correct; and
- (b) I have the authority of *[name of private health insurer]* to make this certification.

.....  
Certifier 1

.....  
Date of certification

.....  
Certifier 2

.....  
Date of certification

**Rule 8**

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**Part 3 Prudential standards****8 Establishment of prudential standards**

For section 163-1 of the Act, this Part establishes prudential standards relating to prudential matters for private health insurers.

*Note* Subsection 163-1 (3) of the Act provides that the Council may impose different requirements to be complied with by different classes of private health insurers, or in different situations or in respect of different activities.

**9 Application of Part 3**

This Part applies to all private health insurers.

**10 Governance Standard**

Schedule 1 sets out the Governance Standard.

**11 Appointed Actuaries Standard**

Schedule 2 sets out the Appointed Actuaries Standard.

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## Schedule 1 Governance Standard

(rule 10)

### 1 Board composition

- (1) A board must have at least 5 directors.
- (2) A board must have a majority of non-executive directors at all times.
- (3) If a board consists of 5 to 7 directors, it must at all times have at least 2 independent directors and an independent chairperson.
- (4) If a board consists of more than 7 directors, it must at all times have at least 3 independent directors and an independent chairperson.
- (5) The directors must have a range of skills, knowledge and experience:
  - (a) to understand collectively the risks to the private health insurer; and
  - (b) to understand the insurer's legal prudential obligations; and
  - (c) to oversee effectively the management of the private health insurer; and
  - (d) to contribute effectively to the board's deliberations and processes.
- (6) A private health insurer must tell the Council about a change in board membership or a change in the name or contact details of a director:
  - (a) within 28 days after the change; and
  - (b) in a form approved by the Council.
- (7) A director of either of the following companies may sit as an independent director on the board of a private health insurer only if he or she is a director of only 1 of the companies:
  - (a) a parent company of the private health insurer;
  - (b) another subsidiary of the parent company of the private health insurer.

### 2 Chairperson

- (1) The chairperson of a board must be an independent director.
- (2) A person may only be chairperson of a board if he or she has not been the chief executive officer (or equivalent) of the private health insurer at any time during the previous 3 years.
- (3) However, the Council may approve in writing a person who does not meet subsection (1) as chairperson of a board.
- (4) Also, if the position of chief executive officer (or equivalent) is unexpectedly vacated, the chairperson may serve in the role for up to 90 days without Council approval.

- (5) Approval from the Council is required if a chairperson seeks to serve as chief executive officer (or equivalent) for more than 90 days.

### **3 Residency of directors**

- (1) The majority of directors of Australian-owned private health insurers must ordinarily reside in Australia.
- (2) For a foreign-owned private health insurer:
- (a) at least 2 directors must be in Australia for a majority of the time within any 12 month period; and
- (b) at least 1 of the directors mentioned in paragraph (a) must be an independent director.

### **4 Directors — associates of shareholders**

For a private health insurer that is a company limited by shares, the number of directors who may be associates of a shareholder must be proportionate to the shareholder's shareholding.

*Example*

If a shareholder holds up to 15% of the insurer's voting shares, and the board has up to 6 directors, only 1 director may be an associate of the shareholder.

### **5 Board charter**

A board must have a charter in writing that:

- (a) sets out the roles and responsibilities of the board, committees and management of the private health insurer; and
- (b) provides a structure for determining how board decisions are to be made; and
- (c) encourages directors to exercise independent thinking and judgment in the discharge of their responsibilities; and
- (d) if the private health insurer is part of a corporate group — clearly documents how the board will interact with the group.

### **6 Delegation**

- (1) A board may delegate its authority to a person or a committee.
- (2) A delegation under subsection (1) must be in writing and retained as a record by the private health insurer.
- (3) A board must:
- (a) ensure there are procedures for it to monitor the exercise of delegations; and
- (b) not abrogate its responsibilities through the use of delegations.

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## 7 Board policies

- (1) A board must ensure that:
  - (a) the private health insurer has written policies to manage the insurer's risks; and
  - (b) the private health insurer has procedures in place to monitor and evaluate compliance with policies and that these are regularly reviewed.
- (2) If the private health insurer is part of a corporate group and applies group policies or carries out group functions, the board of the insurer must ensure that the group policies or functions take account of the business requirements of the insurer.

## 8 Board performance

- (1) A board must have a policy and procedures for annually assessing its performance against its objectives.
- (2) The policy and procedures must provide for an assessment of individual directors, board committees and the board collectively.

### *Examples of objectives for a board*

- 1 Establishing the overall strategy for the insurer and ensuring reporting against this strategy.
- 2 Approving the risk management strategy of the insurer including determining the level of risk it is willing to accept.
- 3 Assessing operating and financial conditions against forecasts.
- 4 Assessing senior management performance against agreed criteria, which would include, for relevant senior management, the effectiveness of risk controls.
- 5 Making key decisions in a timely manner.

### *Examples of objectives for individual directors*

- 1 Whether a director demonstrates the required expertise for their role.
- 2 Attendance and participation at board meetings.
- 3 Contribution to board deliberations and the overall direction of the insurer.

## 9 Board renewal

A board must have a policy about board renewal that addresses how the board will renew membership to ensure that:

- (a) it remains open to new ideas and independent thinking; and
- (b) it complies with section 1; and
- (c) consideration is given to the length of time a director has served on the board, and whether this could affect his or her ability to perform his or her duties.

## 10 Board audit committee

- (1) A private health insurer must have a board audit committee.

- (2) The functions of a board audit committee must include an objective, non-executive review of the effectiveness of the private health insurer's financial reporting and risk management framework.
- (3) A board audit committee need not undertake a review of risk management if there is another board committee undertaking this function.
- (4) A board audit committee must:
  - (a) have at least 3 members, all of whom must be non-executive directors; and
  - (b) have sufficient power to enable it to obtain all information necessary to perform its function; and
  - (c) meet at least once every year; and
  - (d) give a report to the board of the insurer after each committee meeting.
- (5) The chairperson of the board audit committee must be an independent director.
- (6) The chairperson of the board may sit on the board audit committee but must not chair the committee.
- (7) A board audit committee must have a charter approved by the board that:
  - (a) clearly documents the committee's responsibilities and the extent of its decision-making powers; and
  - (b) includes sufficient powers to enable the committee to obtain all necessary information for the performance of its function; and
  - (c) provides the committee with unfettered access at all times to the following:
    - (i) senior management;
    - (ii) an internal auditor;
    - (iii) an external auditor;
    - (iv) an appointed actuary; and
  - (d) requires a formal process to measure the committee's performance against the charter.
- (8) A board audit committee must:
  - (a) ensure the adequacy, expertise and independence of the internal and external audit functions; and
  - (b) ensure there is opportunity for the internal auditor, the external auditor, and the appointed actuary to raise matters directly with the board or the board audit committee; and
  - (c) review an external auditor's engagement annually and be satisfied that the auditor is independent within the meaning of Part 2M.4 of the *Corporations Act 2001*; and
  - (d) regularly review internal and external audit plans to ensure that they cover all material risks and financial reporting requirements of the private health insurer; and

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- (e) ensure that issues identified in internal and external audit reports are rectified in an appropriate and timely manner.
- (9) If a private health insurer is part of a corporate group, the insurer may use an audit committee of the group to satisfy subsection (1) if:
- (a) there are clear reporting lines between the group audit committee and the board of the insurer; and
  - (b) the board of the insurer ensures that the group audit committee gives appropriate regard to the requirements of the insurer; and
  - (c) the board of the insurer annually re-evaluates the effectiveness of the group audit committee in meeting the needs of the insurer; and
  - (d) the group audit committee has unfettered access to all business operations of the insurer.

## **11 Internal audit**

- (1) A private health insurer must have an internal audit function that is adequately resourced and skilled for the size and corporate complexity of the insurer.
- (2) The board must be satisfied that:
  - (a) the internal audit function is independent; and
  - (b) internal audit processes are clearly documented and subject to regular review; and
  - (c) the internal audit function has unfettered access to all business operations of the insurer.

## **12 Conflicts of interest**

A private health insurer that is not a company must establish a process in accordance with the *Corporations Act 2001* for directors:

- (a) to declare any material personal interests at every board meeting; and
- (b) to update annually their conflict of interest disclosure statement.

## **13 Transitional arrangements**

- (1) On the commencement of the Governance Standard, a private health insurer must, in writing to the Council:
  - (a) identify all provisions of the standard with which the insurer is not able to comply; and
  - (b) specify a date by which the insurer can comply with the identified provisions.
- (2) The Council must approve a date for compliance by the private health insurer with the identified provisions and tell the insurer, in writing, of the approved date.

- (3) The private health insurer must comply with the identified provisions by the date approved by the Council.

*Note* The date approved by the Council under subsection (2) need not be the same date as the date specified by the insurer under paragraph (1) (b).

#### **14 Review of certain Council decisions**

A person may apply to the Administrative Appeals Tribunal for review of the following decisions of the Council:

- (a) a decision of the Council not to approve the person as an independent director;
- (b) a decision of the Council not to approve, under subsection 2 (3), the person as chairperson of a board.

*Note* For paragraph (a), see subparagraph (c) (ii) of the definition of *independent director* in rule 4.

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## Schedule 2 Appointed Actuaries Standard

(rule 11)

### Part 1 General

#### 1 Insurers to notify appointed actuaries of certain circumstances

- (1) A private health insurer must:
  - (a) notify its appointed actuary about any notifiable circumstance; and
  - (b) provide to the actuary all relevant information and documents about the circumstance that the actuary requires to perform the duties and exercise the powers of the actuary imposed by or under the Act.
- (2) The private health insurer must notify the appointed actuary and provide the relevant information and documents as soon as practicable after becoming aware of the notifiable circumstance.
- (3) Each of the following is a *notifiable circumstance*:
  - (a) proposed changes to the rates of premiums charged under a product of a health benefits fund conducted by the private health insurer;
  - (b) proposed changes to the benefits provided under a product of a health benefits fund conducted by the insurer;
  - (c) significant redevelopment or revision of the strategic or business plans of the insurer;
  - (d) significant redevelopment or revision of the strategic or business plans of a health benefits fund conducted by the insurer;
  - (e) development of a new product of a health benefits fund conducted by the insurer;
  - (f) major revision of an existing product of a health benefits fund conducted by the insurer;
  - (g) significant changes to the investment policies of the insurer;
  - (h) significant redetermination of the risk profile of the insurer;
  - (i) development of, or changes to, a capital management plan, being a plan dealing with the management of capital of the insurer or a health benefits fund conducted by the insurer;
  - (j) any other event that the insurer reasonably expects to have a significant impact on the conduct of the business of a health benefits fund of the insurer;
  - (k) significant business diversification activity;
  - (l) any event specified in writing to the insurer from the actuary.

## **2 Insurers to prepare financial condition report**

A private health insurer must, as soon as practicable after the end of each financial year:

- (a) request its appointed actuary to prepare a financial condition report; and
- (b) provide a copy of the report to the Council within 3 months after the end of the financial year.

## **3 Eligibility for appointment**

For subsection 160-5 (1) of the Act, a person is eligible for appointment as a private health insurer's appointed actuary if:

- (a) the person:
  - (i) is ordinarily resident in Australia; and
  - (ii) is a Fellow of the Institute of Actuaries of Australia; and
  - (iii) has been a Fellow for at least 5 years; and
  - (iv) is not, in relation to the insurer, the chief executive officer or a member of the board; or
- (b) an approval of the appointment of the person under subsection 160-1 (5) of the Act is in force.

*Note* A refusal by the Council to approve the appointment of an actuary is a reviewable decision under item 20 of the table in section 328-5 of the Act.

## **4 Declaration by the Council**

- (1) For subsection 160-5 (2) of the Act, a declaration must be made in accordance with this rule.
- (2) The Council may, in writing, make a declaration in respect of a person if the Council is satisfied that the person:
  - (a) under a previous appointment, has failed to adequately and properly perform the duties, or exercise the powers, of an appointed actuary under the Act; or
  - (b) does not possess the competence, character, diligence, honesty, integrity or judgment to adequately and properly perform the duties of an appointed actuary under the Act.

*Note* Under subsection 160-5 (2) of the Act a person is not eligible for appointment as an actuary if there is in force a declaration by the Council in accordance with these Rules.

- (3) Before making the declaration, the Council must:
  - (a) give written notice to the person of the matters that, in the opinion of the Council, warrant consideration being given to making a declaration; and
  - (b) allow the person to show cause, within such reasonable time as is specified in the notice, why the declaration should not be made.

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- (4) The Council must give the declaration, in writing, to the person.
  - (5) The declaration takes effect from the date specified in the declaration and remains in effect until it is revoked by the Council.

*Note* A declaration by the Council is a reviewable decision under item 21 of the table in section 328-5 of the Act.

## **5 Notification of appointment etc**

- (1) For section 160-10 of the Act, written notification of the appointment of a person as an appointed actuary must be given to the Council by the private health insurer within 28 days of appointment.
- (2) The notice must include:
  - (a) the name of the person appointed; and
  - (b) the date of appointment; and
  - (c) the qualifications, experience or approval by which the person is eligible for appointment; and
  - (d) a telephone number, mailing address and email address by which the person can be contacted; and
  - (e) the name of the employer of the person appointed or, if the person appointed is a partner in a partnership, the name of the partnership; and
  - (f) the names of companies to which the person has been appointed a director; and
  - (g) a note of any interest that the person has in the operations of the private health insurer that may conflict with the duties of an appointed actuary.
- (3) For paragraph (2) (g), an interest may include, but is not limited to, pecuniary interests of the actuary, or a related person of the actuary, such as:
  - (a) a security in, or a contract with, the appointing private health insurer; or
  - (b) the receipt of any remuneration from the appointing private health insurer.
- (4) The private health insurer must give written notification of the cessation of an appointment of a person as an appointed actuary to the Council within 28 days after the cessation of the appointment.
- (5) The notification of cessation of appointment must include:
  - (a) the date of cessation; and
  - (b) the reasons for the cessation of the appointment.

## **6 Cessation of appointment**

- (1) For section 160-15 of the Act, a person ceases to hold an appointment as an appointed actuary if:
  - (a) the private health insurer ceases to exist; or

- (b) the person ceases to satisfy the criteria that are necessary to be eligible for appointment under section 3; or
  - (c) the person is the subject of a declaration by the Council under subsection 160-5 (2) of the Act; or
  - (d) the person gives the private health insurer a written notice of resignation of the appointment; or
  - (e) the private health insurer gives the person written notice that the appointment is terminated.
- (2) For paragraphs (1) (d) and (e), a person ceases to hold an appointment as an appointed actuary from the date on which the resignation or termination takes effect.

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## Part 2 Duties and powers of appointed actuaries

### 7 Duties

- (1) For section 160-20 of the Act, an appointed actuary must:
  - (a) perform each of the duties mentioned in subsection (2); or
  - (b) if the insurer has carried out a duty mentioned in subsection (2), other than the duty in paragraph (2) (c), and the actuary is satisfied the insurer has provided him or her with sufficient material — review the insurer's material and advise the insurer on the matter.
- (2) For subsection (1), the duties are:
  - (a) the valuation of insurance liabilities of each health benefits fund conducted by the private health insurer for inclusion in the insurer's annual financial statements that are to be lodged under the *Corporations Act 2001* and returns of financial information required by the Council; and
  - (b) the development of insurance liability valuation methodology to be used by the insurer for the purpose of returns of financial information required by the Council; and
  - (c) the assessment of the reasonableness of any discretionary margin adopted by the insurer for the purpose of assessing the capital adequacy of a fund; and
  - (d) the determination of risk margins for annual financial statements prepared in accordance with AASB 1023 and other relevant Australian equivalent international financial reporting standards or statements.

### 8 Application of skill and diligence

An appointed actuary must comply with professional requirements applicable to the actuary and must apply skill and diligence in carrying out the duties and exercising the powers of an appointed actuary.

### 9 Notifiable circumstances

- (1) The appointed actuary must advise the private health insurer whether he or she considers that actuarial advice on a notifiable circumstance is warranted.

*Note* Notifiable circumstances are set out in subsection 1 (3).
- (2) If the private health insurer requests advice from the appointed actuary in relation to a notifiable circumstance, the actuary must provide a report to the insurer on the notifiable circumstance.

- (3) If the appointed actuary has not received a request for advice on a notifiable circumstance, but gives notice to the insurer that he or she believes an advice is warranted, the actuary must inform the Council if the insurer does not seek an advice from the actuary with 21 days after the notice.
- (4) The report mentioned in subsection (2) must include details of the appointed actuary's assessment of the actual impact, and the potential impact, of the notifiable circumstance on the health insurance business conducted by the private health insurer.
- (5) The appointed actuary must notify the private health insurer of any event occurring within the fund's operations that is known to the actuary which the actuary reasonably expects to have a material impact on the private health insurer's health insurance business.
- (6) Subsection (5) does not apply if the disclosure would breach a duty of confidentiality owed by the appointed actuary to a person other than the insurer, its officers or a related entity.

## **10 Financial condition report**

The appointed actuary must:

- (a) on request by the private health insurer, prepare a financial condition report in respect of each financial year; and
- (b) prepare the report in accordance with the Institute of Actuaries of Australia's *Guidance Note 670 Financial Condition Reports for Health Insurers*, being the version of the Guidance Note last issued by the Institute before the commencement of these Rules but as if references in the Guidance Note to provisions of, and instruments under, the *National Health Act 1953* were references to equivalent provisions and rules under the Act; and
- (c) submit the report to the insurer.

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### **Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.