



# Accepting a written undertaking given by a private health insurer

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## Standard Operating Procedure

Legislative Reference: Division 197 of the *Private Health Insurance Act 2007*

13 April 2010

Version 1.0

### Disclaimer

This publication is issued as a general guide as to how the Private Health Insurance Administration Council (**the Council**) may apply its powers to accept a written undertaking given by a private health insurer. The Council reserves the right to take action other than as set out in this publication should the need arise. The guide does not constitute legal advice and the Council disclaims any liability for any loss or damage arising out of any use of this paper. The Council encourages private health insurers to seek independent advice and to exercise care in relation to any material contained in this paper.

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## ABOUT THE PRIVATE HEALTH INSURANCE ADMINISTRATION COUNCIL

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1. The Private Health Insurance Administration Council (**the Council**) is an independent Statutory Authority which regulates the private health insurance industry. The Council was established in 1989 as a body corporate under section 82B of the *National Health Act 1953 (the NHA Act)* and continues in existence by force of section 264-1 of the *Private Health Insurance Act 2007 (the Act)*.
2. Under section 264-5 of the Act, the Council is required to take all reasonable steps to perform its functions and exercise its powers with a view to achieving an appropriate balance between:
  - fostering an efficient and competitive health insurance industry
  - protecting the interests of consumers
  - ensuring the prudential safety of individual private health insurers (**insurers**).
3. The Council has a range of general, information collection, compliance, enforcement, public information and inter-agency co-operation functions. A full extract of the Council's functions, as detailed in section 264-10 of the Act is included at **Attachment A**. Additional information regarding the Council's activities can be obtained by referencing the Council's website at: [www.phiac.gov.au](http://www.phiac.gov.au).

## POLICY CONTEXT

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4. As part of the Council's commitment to the principle of open and transparent regulatory action, and in accordance with best practice, the Council is publishing a series of policies and standard operating procedures (**SOPs**) outlining how the Council proposes to administer its responsibilities under the Act. These documents will give insurers a better understanding of the operation of elements of the Act, in particular those parts of the Act which detail the Council's options for monitoring, and, where necessary, intervening in the affairs of an insurer to ensure/enforce compliance with the requirements of the Act.
5. The appropriate regulatory response will depend upon the nature and severity of a breach, or potential breach of the Act and the insurer's responsiveness to the Council's enquiries.
6. The Council's enforcement actions are governed by the following principles:
  - **no surprises**: the Council prides itself on a close and positive working relationship with insurers. No surprises works both ways, with Council expecting early and clear disclosure of potential compliance issues, and a commitment by the Council to giving insurers fair warning of proposed regulatory interventions
  - **transparency**: the Council's decision making takes place within rigorous corporate governance processes. This ensures that it acts predictably, proportionately and satisfies natural justice principles. Its actions are able to be reviewed by a range of agencies including the courts
  - **confidentiality**: in general, investigations are conducted confidentially and the Council does not comment on matters it may or may not be investigating
  - **timeliness**: the investigative process and the resolution of enforcement matters will be conducted as efficiently as possible to avoid costly delays and insurer uncertainty
  - **fairness**: the Council seeks to strike a balance between voluntary compliance and enforcement. Council will give insurers, subject to formal action, opportunities to be heard and to rectify matters. Council will not hesitate to act when it should, in particular to protect the consumers of private health insurance

- **responsibility:** all insurers are responsible for their compliance with the Act, and have established processes and protocols in place to ensure compliance.
7. This SOP discusses one of the newer Council enforcement powers: accepting a written undertaking from a private health insurer. The SOP outlines
    - what an undertaking is
    - in what circumstances the Council might request an enforceable undertaking from an insurer
    - key elements of an undertaking
    - when the Council might accept an undertaking
    - actions available to the Council if an undertaking is breached.
  8. Under the NHA Act, only the Minister for Health and Ageing (**Minister**) had the authority to accept a written undertaking from an insurer (section 73BEH referred – now repealed). Division 197 of the Act provides that both the Minister and the Council may accept a written undertaking given by an insurer.
  9. This document focuses on issues surrounding undertakings which the Council may accept pursuant to section 197-1(2) of the Act, as set out in **Attachment A**. The information contained in this SOP does not apply to an undertaking to be accepted by the Minister. Queries in relation to the Minister’s powers regarding enforceable undertakings should be directed to the Department of Health and Ageing.

## WHAT IS AN UNDERTAKING?

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10. An undertaking is designed to be a preventative measure which may be employed by the Council in the early stages of a regulatory intervention. An enforceable undertaking is a formal mechanism by which an insurer can demonstrate to the Council the insurer’s intent and ability to resolve a breach or potential breach of a Council supervised obligation without the need for further Council intervention.
11. Council supervised obligations are defined in section 185-10 of the Act. They are enforceable obligations in the Act, Rules, Regulations or a direction given to an insurer under the Act that relate to risk equalisation, health benefits funds or prudential standards. They therefore cover a broad spectrum of insurer obligations. A breach of any Council supervised obligation can be a trigger for formal and direct Council intervention in the affairs of an insurer. **Attachment A** includes a full extract of the definition of a Council supervised obligation.
12. The terms of a proposed undertaking will be developed by the insurer through negotiation and collaboration with the staff of the Council. The objective being to allow the insurer to reach an agreement with the Council on how to improve the insurer’s operations, to ensure compliance with its Council supervised obligations.
13. Undertakings are seen as a particularly important component of the Council’s enforcement powers as they clearly place the responsibility on the insurer to develop and then implement remedies for a breach or potential breach of a Council supervised obligation.
14. Undertakings are a strategic tool widely used by other regulatory agencies such as the Australian Prudential Regulation Authority, the Australian Securities and Investment Commission and the Australian Competition Consumer Commission.

## WHEN MIGHT THE COUNCIL REQUEST AN UNDERTAKING FROM AN INSURER?

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15. The Council may request an enforceable undertaking in circumstances where it is aware of concerns around an insurer's ability to meet the requirements of a Council supervised obligation, and discussions with the insurer have demonstrated a willingness, along with a capacity, to remedy the breach.
16. An example of this could be a breach of a prudential standard under section 163-10 of the Act. This section provides that an insurer commits an offence if it becomes aware of a breach by it, of a prudential standard, or any other matter or occurrence that materially affects its financial position, and it fails to notify the Council, as soon as practicable, in writing, of the issue.
17. Failure to comply with this requirement of the Act means an insurer commits a criminal offence. Section 163-10 of the Act has significant penalty provisions, and can be a trigger for Federal Court enforcement proceedings.
18. Accordingly, early consultation with the Council will be important in determining how the Council may react to such a contravention, in particular whether the Council will consider accepting an undertaking from an insurer rather than taking more formal regulatory action to resolve the issue/s.
19. Whilst the Act envisages an enforceable undertaking being provided at Council's request, Council is also comfortable and supportive of enforceable undertakings developed by an insurer.

## KEY ELEMENTS OF AN UNDERTAKING

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20. An undertaking identifies and acknowledges a problem and sets out a resolution strategy for effectively dealing with an issue in-house.
21. **Attachment B** provides a draft outline which insurers may have regard to in developing an undertaking in consultation with the Council. As can be seen from this draft template, the majority of the document is prepared by the insurer, but some parts of section 2 would be drafted by the Council's secretariat (PHIAC) in consultation with the insurer.
22. Each undertaking will be specific to the issues facing an individual insurer, but key elements of every undertaking considered by the Council will be that it is collaborative, strategic, forward looking and enforceable.
23. A written undertaking to the Council under section 197-1 of the Act is different to an undertaking to a court. It is not necessary to start expensive and timely court proceedings before an undertaking can be accepted by the Council. A court undertaking may only be given when a court action has started and there is a public record of the proceedings.

## THE PROCESS

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24. An insurer responding to a Council request for an enforceable undertaking, or considering offering the Council an undertaking under section 197-1 of the Act, should firstly discuss the proposed content of the undertaking with the General Manager Prudential Supervision who can be reached on telephone: **02 6215 7900**. This should include a discussion of the issue/s

and development of a targeted business plan or recovery strategy, with clearly identifiable milestones and reporting points.

25. Once the undertaking is finalised, the decision to accept or reject the document is a formal decision that can only be made by the Council.
26. The Council's acceptance of an enforceable undertaking in a particular set of circumstances should not be regarded as a binding precedent for future action by the Council. Each case will be considered separately on its merits.
27. An undertaking will not take effect until it is formally accepted by the Council. Two original copies of the document will be executed and the Council and the insurer will each keep a signed original.

## COUNCIL ACCEPTANCE OF A WRITTEN UNDERTAKING

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28. In assessing whether an undertaking is the most appropriate regulatory option, the Council may take into account any, or all of the following considerations:
  - whether the insurer understands the Council's concerns
  - whether there is a level of contrition and a desire to rectify the problem
  - the seriousness and immediacy of the issue
  - the insurer's size and resources available to resolve the issue/s
  - the terms of the undertaking and the proposed recovery strategy
  - whether the Council agrees that the proposed course of action will improve the insurer's operations in relation to its Council supervised obligations
  - the effect on the industry as a whole
  - the protection of consumers
  - the public interest
  - the community benefit in regulatory outcomes being achieved as quickly and cost-effectively as possible.
29. The Council must also be satisfied that the insurer will report regularly and that it has adequate arrangements for monitoring how the undertaking is implemented. Details might include:
  - monitoring and reporting mechanisms which the insurer proposes to adopt, such as internal controls and/or compliance programs and reports to the Council on progress against the undertaking
  - any external assessment of the changes that are implemented
  - the name of the contact officer responsible for monitoring compliance with the undertaking (and any external experts)
  - the contact officer in PHIAC to whom the insurer will report about compliance with the undertaking.

## VARYING OR WITHDRAWING AN UNDERTAKING

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30. An insurer cannot withdraw or vary an undertaking given to the Council under section 197-1 of the Act without the consent of the Council.
31. An insurer may apply to the Council for an undertaking to be withdrawn or varied at any time. In considering such an application, the Council may consider matters including, but not necessarily limited to:

- whether the insurer has improved its performance with respect to the issues identified over a sustained period. For example, if the insurer manages to turn around its overall financial position, thereby greatly reducing the risk of breaching a Council supervised obligation, it may be able to apply to the Council to withdraw the undertaking. Or
  - if the matter is resolved.
32. The Council will only consider a request to vary an undertaking if:
- the variation will not alter the spirit of the original undertaking
  - compliance with the undertaking is subsequently found to be impractical, or
  - there has been a material change in the circumstances which led to the undertaking being given.
33. If a variation involves anything other than an extension of time, it will be executed through a written variation of the undertaking document. This will require negotiation and, if agreed, the amended document may be accepted by the Council in the same manner as the original written undertaking.
34. If an insurer requests an extension of time for certain action under the enforceable undertaking to occur, and the Council considers the insurer has reasonable grounds, the Council may grant an extension of time by notice in writing, whilst reserving its right to pursue an action for a breach of the undertaking.
35. If the Council allows an insurer to withdraw an undertaking, the insurer is no longer bound by the terms of the undertaking. In these circumstances the Council will write to the insurer confirming that the undertaking has now ceased.

## THE INSURER'S RIGHT OF REVIEW

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36. The Council's decision making takes place within rigorous corporate governance processes.
37. If the Council refuses to allow an insurer to withdraw or vary an undertaking, the Council will provide the insurer with a statement of reasons regarding the decision.
38. The insurer is entitled to seek a review of the Council's decision not to withdraw or vary an undertaking through the Administrative Appeals Tribunal as per Item 33 in the table in section 328-5 of the Act. The time limit for bringing such an application is 28 days from the date of the decision.

## BREACH OF AN UNDERTAKING

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39. Council will work closely with an insurer to ensure and monitor compliance with the terms of an undertaking. If the Council becomes aware of a breach of an undertaking it will immediately raise its concerns with the insurer. If the insurer fails to provide a timely and satisfactory response, the Council may apply to the Federal Court for appropriate orders pursuant to section 197-5 of the Act.
40. The Council is more likely to proceed to litigation in circumstances where the conduct of the insurer:
- has the potential to result in significant consumer detriment
  - demonstrates a blatant disregard of the law
  - poses a prudential threat

- may jeopardise the proper functioning of the industry if the Council does not intervene.
41. If the Council applies to the Federal Court, the Court can
- order the insurer to pay the Council's legal and / or ancillary costs
  - direct the insurer to comply with the particular terms of the undertaking (section 197-5(2)(a) of the Act refers)
  - make a declaration that the insurer has contravened the terms of the undertaking (section 203-1 (2)(a) of the Act refers)
  - make a pecuniary order against the insurer, or an order to redress the contravention pursuant to section 203-2(b) (i) of the Act.

## PUBLISHING AN UNDERTAKING

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42. The usual practice amongst prudential regulators is to publish an undertaking. As a general principle, the Council takes the view that there is significant public interest in ensuring that consumers, industry and the broader community are aware of and informed of what action a regulator takes. Transparency and disclosure are important factors in promoting deterrence and ensuring a well-run and competitive industry.
43. Accordingly, PHIAC will approach each instance of an enforceable undertaking with a strong predisposition in favour of publishing the undertaking on its website. It will however, consider the circumstances of each case and may – where special circumstances exist – be prepared to receive an undertaking which is either wholly or partially subject to confidentiality.

## **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).

## **Division 197—Enforceable undertakings**

### **197-1 Minister or Council may accept written undertakings given by a private health insurer**

- (1) The Minister may accept a written undertaking, given by a private health insurer at the Minister's request, if the Minister considers that compliance with the undertaking will:
- (a) be likely to improve the performance of the insurer; or
  - (b) if the Minister is satisfied that the insurer has contravened an \*enforceable obligation—be likely to ensure that the insurer will cease to be in contravention of the enforceable obligation.
- (2) The Council may accept a written undertaking, given by a private health insurer at the Council's request, if the Council considers that compliance with the undertaking will be likely to improve the insurer's operations in relation to its \*Council-supervised obligations.

## **Definition of a Council supervised obligation**

### **185-10 Meaning of *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.

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## ATTACHMENT B – SUGGESTED FORMAT FOR A WRITTEN UNDERTAKING BY A PRIVATE HEALTH INSURER

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### ENFORCEABLE UNDERTAKING

*Private Health Insurance Act 2007*

Section 197-1

The commitments in this undertaking are offered to the Private Health Insurance Council (**the Council**) by:

*Insert name of Private Health Insurer*  
[ACN]  
*[Insert Registered Address]*

#### 1. DEFINITIONS

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

**Act** means the *Private Health Insurance Act 2007* (Cth)

**Assess** means *evaluate the ability or quality of the thing or person.*

**Assessment** is *the process of evaluating the ability or quality of the thing or person.*

**Corporations Act** means the *Corporations Act 2001* (Cth)

**Council** refers to the Private Health Insurance Administration Council; which was established in 1989 as a body corporate under section 82B of the *National Health Act 1953* and continued in existence by force of section 264-1 of the Act, to protect the interests of consumers of private health insurance and to ensure a well run and competitive industry.

*Additional terms may be included, e.g. if a compliance program assessment is required as part of the undertaking:*

#### 2. BACKGROUND

##### 2.1 Council's role

Pursuant to section 264-5 of the Act, the Council is charged with a statutory responsibility to take all reasonable steps to perform its functions and exercise its powers to achieve an appropriate balance between:

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

## 2.2 Details of conduct

*Insurer to insert details of the event/s which have led to a breach or a potential breach of a Council supervised obligation in the Act.*

## 2.3 Investigation / surveillance and analysis

*Council to outline the investigation process and information that the concern is based upon.*

## 2.4 Council concerns

*Council to insert details of its concerns.*

*Where possible, also provide comment on the possible impact on the industry/ consumers/ the ongoing prudential position of the insurer.*

## 2.5 Acknowledgement of concerns

*(The private health insurer) acknowledges the aforementioned concerns and intends to:*

- *remedy the conduct*
- *accept responsibility for its actions*
- *establish or review and improve its compliance programs and governance structures (where appropriate).*

## 3. UNDERTAKINGS

3.1 Under s197-1 of the Act, *(the insurer)* has offered, and the Council has agreed to accept the following undertakings.

*(a) Insurer to insert undertakings specific to the issues being faced by it, with clearly marked milestones for accountability purposes*

(b) The insurer will report on meeting the requirements of the enforceable undertaking to the Council in writing on a monthly basis

(c) The insurer undertakes that it will pay the costs of its compliance with this enforceable undertaking.

(d) The insurer will provide all documents and information requested by the Council from time to time for the purpose of assessing the insurer's compliance with the terms of this enforceable undertaking.

*(e) The insurer's contact for this matter is (insurer to insert name, title and all appropriate contact details)*

(f) The Council's contact for this matter is *(The Council to insert name, title and all appropriate contact details)*

**4. ACKNOWLEDGMENTS**

**4.1 THE INSURER ACKNOWLEDGES:**

*(a) Council's acceptance of this undertaking does not affect the Council's power to undertake any other regulatory activity available to it including, but not limited to: investigating, conducting surveillance or pursuing a criminal prosecution, or its power to lay charges or seek a pecuniary civil order in relation to any contravention;*

*(b) This undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct*

4.2 The insurer acknowledges that the Council had reason to be concerned as to the detail in section 2.2 herein and has offered an enforceable undertaking pursuant to sub section 197-1(2) of the Act, in the terms of paragraphs 3.1 (a)-(xx) above.

4.3 The insurer acknowledges that this undertaking has no operative force until accepted by the Council.

4.4 The insurer and the Council acknowledge that the date of this enforceable undertaking is the date on which it is accepted by the Council.

**THE COMMON SEAL** of **THE PRIVATE HEALTH INSURER** was affixed in accordance with the *Corporations Act 2001* in the presence of:

..... Director

..... Director/Company Secretary

*Insert Date*

**Accepted by the Private Health Insurance Council under s197-1 of the Act by its Commissioner:**

.....  
[James Dominguez CBE AM]

Witness signature

*Insert Date*

## ATTACHMENT C – SUMMARY OF THE COUNCIL’S KEY REGULATORY POWERS

COUNCIL'S KEY POWERS	SECTION OF THE ACT
<b>General powers</b>	
<b>Register</b> a company as an insurer.	S126-20
<b>Cancel registration</b> if an insurer has ceased health insurance business for 12 months or its fund is terminated.	S126-45
<b>Impose requirements</b> on insurers.	S172-1
<b>Collect information</b> from insurers, including with actuarial certification, about their operations.	S264-10
<b>Cost recover</b> from an insurer if the costs for making a proper examination of the financial affairs are unusually high.	S264-10(3)(g)
<b>Direct insurer to divest health-related business</b> if health insurance is not the dominant business of the fund.	S134-10
<b>Approve change to for-profit status</b> if no demutualisation and equal treatment of policy holders.	S126-42
<b>Approve a restructure</b> of an insurer's health benefits funds (so that they may have more than one fund).	S146-1
<b>Approve a merger or acquisition</b> of an insurer's fund/s with others.	S146-5
<b>Approve a capital payment</b> if an insurer wishes to transfer assets from one of its funds to another.	S 137-5(3)(b)
<b>Approve a person as an approved actuary</b> if the person does not meet the specified eligibility requirements.	S 160-1(4)
<b>Regulatory powers</b>	
<b>Declare an appointed actuary is not eligible</b> against the criteria in the Insurer Obligation Rules.	S 160-5(2)
<b>Disqualify a person as a director/senior manager</b> if satisfied the person is not a fit and proper person to act in that position. The Act also sets out circumstances for automatic disqualification.	S 166-20
<b>Notice to remedy a breach of Part 4-4</b> , which deals with assets, standards, restructures or mergers.	S 152-5
<b>Suing in insurer's name.</b> The Council may bring an action in the insurer's name to recover an amount the insurer may recover under Division 152.	S. 152-15
<b>Require an explanation of operations</b> if the Council suspects a breach of a CSO.	S 191-1
<b>Notice to give information.</b> Notice to a person to give information if the Council considers an insurer might have contravened a CSO, or has concerns about compliance.	S 194-5
<b>Notice to produce documents.</b> Notice to a person to produce documents if the Council considers an insurer might have contravened a CSO, or has concerns about compliance.	S.194-10
<b>Notice to give evidence.</b> Notice to a person to give evidence if the Council considers an insurer might have contravened a CSO, or has concerns about compliance.	S 194-15
<b>Authorise a person to examine documents</b> if the Council considers an insurer might have contravened a CSO.	S 194-25
<b>Council to advise after investigation.</b> After an investigation, the Council to notify the insurer whether it is satisfied, and, if not, what steps it intends to take.	S 194-35
<b>Accept undertakings by insurer.</b> The Council may request a written undertaking by an insurer to improve the insurer's operations in relation to a CSO.	S 197-1
<b>Direction to modify operations or rules</b> if the Council considers this will assist in the prevention of a contravention of CSO.	S 200-1
<b>Issue a solvency or capital adequacy direction</b> to an insurer.	Ss 140-20 and 143-20

<b>COUNCIL'S KEY POWERS</b>	<b>SECTION OF THE ACT</b>
<b>Issue a prudential direction</b> to an insurer.	S 163-15.
<b>Appoint an inspector</b> if the Council suspects the affairs are not being carried on in the interests of policy holders, or a contravention of Part 4-4 (assets, standards, restructures, mergers and termination of funds).	Div 214
<b>Appoint an external manager</b> to a fund (not to the insurer) if in the interests of the policy holders and non-compliance with the solvency standard or a direction.	Ss 217-10 and 217-15
<b>Approving termination of a fund</b> , which must be all the funds of an insurer if it has more than one fund.	S149-10
<b>Applying for winding up of the insurer.</b> Council, or terminating manager, may apply to the Federal Court if the terminating manager recommends this.	S 149-60

## Remedies in the Federal Court

<b>Enforcement powers</b>	<b>Application and relevant provision</b>
<b>Enforcement of undertaking</b>	Seek order if satisfied of breach of undertaking (s197-5).
<b>Declaration of contravention</b>	Seek order if satisfied contravention of a CSO (s203-1).
<b>Pecuniary penalty order</b>	Seek a pecuniary penalty order if court declares a contravention s (s203-1).
<b>Compensation order</b>	Seek a compensation order if court declares a contravention (s203-1).