



# Private Health Insurance (Insurer Obligations) Amendment Rules 2010 (No. 1)

*Private Health Insurance Act 2007*

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

Dated 2010

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

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## **1 Name of Rules**

These Rules are the *Private Health Insurance (Insurer Obligations) Amendment Rules 2010 (No. 1)*.

## **2 Commencement**

These Rules commence on 1 January 2011.

## **3 Amendment of *Private Health Insurance (Insurer Obligations) Rules 2009***

Schedule 1 amends the *Private Health Insurance (Insurer Obligations) Rules 2009*.

**CONSULTATION DRAFT**

## **Schedule 1 Amendments**

(rule 3)

**[1] Rule 4, after definition of *Appointed Actuaries Standard***

*insert*

*ASIC* means the Australian Securities and Investments Commission.

**[2] Rule 4, after definition of *corporate group***

*insert*

*Corporations legislation* has the meaning given by section 9 of the *Corporations Act 2001*.

*Disclosure Standard* means the standard set out in Schedule 3.

**[3] Rule 4, note, at the foot**

*after*

- health benefits fund

*insert*

- officer

**[4] After rule 11**

*insert*

**12 Disclosure Standard**

Schedule 3 sets out the Disclosure Standard.

**[5] Schedule 1, sections 12 and 13**

*omit*

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**[6] After Schedule 2***insert***Schedule 3 Disclosure Standard**

(rule 12)

**1 Insurers must give copies of certain forms lodged with ASIC to Council**

- (1) If a private health insurer lodges with ASIC any of the following forms, the insurer must, at the same time, give a copy of the lodged form to the Council:
  - (a) Form 205 — Notification of resolution;
  - (b) Form 315 — Notification of resignation, removal or cessation of auditor;
  - (c) Form 388 — Copy of financial statements and reports;
  - (d) Form 484 — Change to company details;
  - (e) Form 2501 — Application for extension of time to hold Annual General Meeting.
- (2) A reference in subsection (1) to a lodged form includes a reference to any other material required by the Corporations legislation to be lodged with the form.
- (3) In this section, a reference to a form followed by a number is a reference to:
  - (a) if a form of that number is prescribed in the *Corporations Regulations 2001* for a provision of the *Corporations Act 2001* or a provision of those Regulations — the form so numbered in those Regulations; and
  - (b) if a form of that number is not prescribed in those Regulations — the form of that number that is approved by ASIC.

*Note* Forms approved by ASIC under paragraph 350 (1) (b) of the *Corporations Act 2001* are available on the ASIC website at <http://www.asic.gov.au>.

**2 Insurers to give copies of notice of meetings of members to Council**

- (1) A private health insurer must give to the Council:
  - (a) written notice of a meeting of the members of the insurer in the same way that a member of the insurer is entitled to receive notice of a meeting under section 249J of the *Corporations Act 2001*; and
  - (b) any other communications relating to the meeting that a member of the insurer is entitled to receive under that Act.
- (2) The private health insurer must give to the Council the information mentioned in subsection (1) in accordance with:

- (a) if the insurer is a listed company — the notice requirements mentioned in section 249HA of the *Corporations Act 2001*; and
- (b) if the insurer is not a listed company — the longer of:
  - (i) the notice requirements mentioned in section 249H of the *Corporations Act 2001*; and
  - (ii) the period for giving notice specified in the insurer's constitution.

### **3 Insurers to notify Council of resolution to remove director**

- (1) A private health insurer must notify the Council, in writing, if:
  - (a) the insurer by resolution removes a director from office; or
  - (b) for an insurer that is not a public company — the directors of the insurer by resolution remove a director from office.
- (2) The insurer must notify the Council within 14 days after the day the resolution is passed.

### **4 Insurers to notify Council of termination of person's complying private health insurance policy**

A private health insurer must notify the Council, in writing, within 14 days after a decision is made to terminate a person's complying private health insurance policy with the insurer if:

- (a) the termination does not relate to the person's payment of premiums under the policy; and
- (b) the termination is not a result of a request by the person to cancel the policy.

### **5 Insurers to notify Council of complaint or investigation of insurer or officer of insurer**

- (1) A private health insurer must notify the Council, in writing, if:
  - (a) the insurer, or an officer of the insurer, is under investigation or subject to criminal or civil proceedings in relation to an alleged or suspected contravention of:
    - (i) the Act; or
    - (ii) the Corporations legislation, or any law of a foreign country that corresponds to the Corporations legislation; or
    - (iii) the *Trade Practices Act 1974*; or
    - (iv) a law in force in Australia, or the law of a foreign country, if the offence concerns dishonest conduct or conduct relating to a financial sector company (within the meaning of the *Financial Sector (Shareholdings) Act 1998*); or
  - (b) the insurer, or an officer of the insurer, is under investigation or subject to disciplinary action by a regulatory authority or other body established by or under a law of the Commonwealth or of a State or Territory; or

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- (c) the insurer gives a written undertaking to the Australian Competition and Consumer Commission for section 87B of the *Trade Practices Act 1974*.
  - (2) The insurer must give to the Council details of an investigation or proceedings mentioned in subsection (1) as soon as practicable after the insurer becomes aware of the investigation or proceedings.
  - (3) The insurer must report the outcome of the investigation or proceedings to the Council within 14 days after the day the Council is notified of the outcome of the investigation or proceedings.

## **6 Insurer must notify Council of unusual incidents or circumstances**

- (1) A private health insurer must notify the Council, in writing or by telephone, as soon as practicable after an unusual incident or circumstance occurs that relates to, or may affect, prudential matters relating to the insurer.

*Note* For the meaning of *prudential matters*, see section 163–1 of the Act.

- (2) For subsection (1), an *unusual incident or circumstance* includes, but is not limited to, any of the following:
  - (a) fire, flood or other damage to infrastructure resulting in a substantial loss of operational capacity of the insurer for more than 24 hours;
  - (b) total or partial loss of information and communications technology infrastructure for more than 72 hours;
  - (c) an accident that:
    - (i) causes the death of, or serious personal injury to, a substantial proportion of the officers of the insurer; or
    - (ii) causes a substantial proportion of the officers of the insurer to be incapacitated from performing work;
  - (d) biohazard, bomb threat, lockdown or other event that results in a substantial loss of operational capacity of the insurer for more than 24 hours.

## **7 Exemptions and modifications by Council**

The Council may, on written application by a private health insurer or on its own initiative, in writing:

- (a) exempt the insurer from all or specified provisions of this Standard; or
- (b) modify the application of specified provisions of this Standard in relation to the insurer.

## **8 Transitional arrangements**

- (1) On the commencement of this Standard, a private health insurer that is not able to comply with all of the provisions of the Disclosure Standard 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).

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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>.