



Private Health Insurance Legislation Amendment Act 2008

No. 54, 2008

**An Act to amend the law in relation to private
health insurance, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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[Assented to 25 June 2008]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Private Health Insurance Legislation
Amendment Act 2008*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Health-related business

Australian Securities and Investments Commission Act 2001

1 Paragraph 12BAA(7)(d)

Repeal the paragraph, substitute:

- (d) a contract of insurance (see subsection (9)) other than:
 - (i) health insurance provided as part of a health insurance business (as defined by Division 121 of the *Private Health Insurance Act 2007*); or
 - (ii) insurance provided as part of a health-related business (as defined by section 131-15 of that Act) that is conducted through a health benefits fund (as defined by section 131-10 of that Act);

2 After paragraph 12BAA(8)(b)

Insert:

- (ba) insurance provided as part of a health-related business (as defined by section 131-15 of that Act) that is conducted through a health benefits fund (as defined by section 131-10 of that Act);

Corporations Act 2001

3 After paragraph 765A(1)(c)

Insert:

- (ca) insurance provided as part of a health-related business (as defined by section 131-15 of that Act) that is conducted through a health benefits fund (as defined by section 131-10 of that Act);

Insurance Act 1973

4 Subsection 3(1) (after paragraph (j) of the definition of *insurance business*)

Insert:

- (ja) health-related business within the meaning of section 131-15 of the *Private Health Insurance Act 2007* carried on by a private health insurer within the meaning of that Act through a health benefits fund within the meaning of section 131-10 of that Act; or

Insurance Contracts Act 1984

5 After paragraph 9(1)(b)

Insert:

- (ba) of insurance entered into, or proposed to be entered into, by a private health insurer within the meaning of the *Private Health Insurance Act 2007* in respect of its health-related business within the meaning of section 131-15 of that Act that is conducted through a health benefits fund (as defined by section 131-10 of that Act); or

Schedule 2—Restricted access insurers

Private Health Insurance Act 2007

1 Subsection 55-5(3)

After “constitution”, insert “or *rules”.

2 Subsection 126-20(6)

After “constitution”, insert “or *rules”.

3 Paragraph 185-5(e)

After “constitution”, insert “or *rules”.

4 Paragraphs 200-1(1)(e) and (2)(e)

After “constitution”, insert “or *rules”.

Schedule 3—The requirement for private health insurers to be companies

Part 1—Amendments

Private Health Insurance Act 2007

1 Paragraph 126-10(1)(a)

Omit “, or a registered body within the meaning of that Act”.

2 At the end of subsection 126-45(1)

Add:

; or (c) on or after 1 January 2010, the insurer is not a company within the meaning of the *Corporations Act 2001*.

Part 2—Transitional provisions

3 Applications for registration for which decisions are pending

An application made before the commencement of this item for registration as a private health insurer is taken, on that commencement, not to be a valid application under section 126-10 of the *Private Health Insurance Act 2007* if, as at that commencement:

- (a) the applicant was not a company within the meaning of the *Corporations Act 2001*; and
- (b) the Council had not decided the application under section 126-20 of the *Private Health Insurance Act 2007*.

4 Exemption from stamp duty etc. relating to certain private health insurers becoming companies

- (1) Stamp duty, or any other tax, imposed under a law of a State or Territory is not payable in relation to a thing done (including, for example, a transaction entered into or an instrument or document made, executed, lodged or given) for the purpose of, because of or as a result of the registration of a body as a company if:

- (a) the thing is done after the commencement of this item and before 1 January 2010; and
- (b) at the time the thing is done, the body is a private health insurer; and
- (c) the registration as a company is solely for the purpose of avoiding the body's registration as a private health insurer being cancelled under paragraph 126-45(1)(c) of the *Private Health Insurance Act 2007*.

- (2) In this item:

company means a company within the meaning of the *Corporations Act 2001*.

private health insurer means a person registered under Part 4-3 of the *Private Health Insurance Act 2007*, and includes a body that is taken to be a private health insurer because of section 18 of the *Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007*.

Schedule 4—Corporate products

Private Health Insurance Act 2007

1 At the end of section 55-5

Add:

- (4) Despite subsection (2), discrimination by a private health insurer is not improper discrimination to the extent to which:
 - (a) the insurer:
 - (i) takes or fails to take an action; or
 - (ii) in making a decision, has regard or fails to have regard to a matter; and
 - (b) taking or failing to take the action, or having regard or failing to have regard to that matter, has the effect of the premiums payable under an insurance policy that covers a person who is:
 - (i) employed by a particular person or body; or
 - (ii) under contract to provide services to a particular person or body;being the subject of a discount or discounts (whether or not the policy also covers one or more persons who are not so employed and are not under such a contract); and
 - (c) the premiums meet the premium requirement in section 66-5.
- (5) To avoid doubt, subsection (4) does not apply if taking or failing to take the action, or having regard or failing to have regard to that matter, has the effect of an insurance policy being cancelled because a person ceases to be an employee of, or ceases to be under contract to provide services to, a particular employer.

Schedule 5—Pilot projects

Private Health Insurance Act 2007

1 At the end of Division 55

Add:

55-15 Pilot projects

- (1) The principle of community rating in section 55-5 does not prevent a private health insurer from:
 - (a) taking or failing to take any action; or
 - (b) in making a decision, having regard or failing to have regard to any matter;for the purposes of conducting a pilot project in accordance with the Private Health Insurance (Complying Product) Rules.
- (2) The Private Health Insurance (Complying Product) Rules may permit pilot projects of a kind specified in the Rules to be conducted by private health insurers in accordance with requirements specified in the Rules.

*[Minister's second reading speech made in—
House of Representatives on 15 May 2008
Senate on 16 June 2008]*

(81/08)
