

# We are hirmaa

11 June, 2010

Ms Annemaree Gray  
Director  
Industry Policy and Enforcement  
PHIAC  
PO Box 4589  
**KINGSTON ACT 2604**

Dear Ms Gray

Thank you for the opportunity to offer comments on the draft Standard Operating Procedure entitled *Accepting a written undertaking by a Private Health Insurer*.

HIRMMA has consulted with its constituent members and the following comments are submitted for your consideration.

Yours sincerely

**RON WILSON**  
**Executive Director**

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In summary, HIRMAA welcomes the development by PHIAC, in consultation with the private health insurance (PHI) industry, of a Standard Operating Procedure (SOP) regarding *accepting a written undertaking given by a private health insurer*.

HIRMAA supports the development of a SOP on the basis that it establishes how PHIAC proposes to administer its responsibilities under the National Health Act 1953 and the Private Health Insurance Act 2007 (the Act). HIRMAA further notes that PHIAC's enforcement actions are governed by six listed principles : no surprises, transparency, confidentiality, timeliness, fairness and responsibility. HIRMAA supports the application of these principles.

HIRMAA has consulted its constituent funds (Appendix A) and makes the following specific comments and observations.

**Paragraphs 1-3** : These paragraphs outline the history, role and functions of PHIAC.

**Paragraphs 4-9** : These paragraphs outline the policy context behind the publication of a series of SOPs, and specifically a SOP for accepting a written undertaking given by a private health insurer.

While HIRMAA fully understands the separation of powers and responsibilities between PHIAC and the Minister, it would be of assistance to insurers if the same processes and procedures applied to undertakings accepted by both PHIAC and the Minister.

**Paragraphs 10-14** : These paragraphs outline the definition of undertakings.

HIRMAA notes the definition in paragraph 10 that "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." However, it is further noted that the formality of the undertaking should also be seen in the context of paragraph 12 which says the "proposed undertaking will be developed by the insurer through negotiation and collaboration with the staff of Council." HIRMAA also notes that enforceable undertakings are a tool used by other Australian regulatory agencies.

**Paragraphs 15-19** : These paragraphs outline when PHIAC might request an undertaking from an insurer.

In this context, paragraph 19 seems somewhat inconsistent as it is referring to an undertaking being initiated by an insurer.

**Paragraphs 20-23** : These paragraphs outline the key elements of an undertaking.

Paragraph 20 refers to dealing with an issue "in-house." However, paragraphs 42 and 43 refer to the publication of undertakings. HIRMAA would argue that the publishing of undertakings should be limited to only matters considered to be a

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serious breach of obligation by an insurer – PHIAC would always be in a position to make a reasonable judgement on such issues.

With regard to the draft template referred to in paragraph 21, HIRMAA notes that in 4.1 the insurer would be obliged to acknowledge that the acceptance of the undertaking by PHIAC does not preclude PHIAC from pursuing other regulatory actions. It is not clear why PHIAC would be pursuing other actions once an undertaking has been accepted – further action should be limited to those occasions where an undertaking is breached or withdrawn.

**Paragraphs 24-27** : These paragraphs deal with the process associated with written undertakings.

HIRMAA supports the process outlined therein.

**Paragraphs 28-29** : These paragraphs deal with PHIAC's acceptance of a written undertaking.

HIRMAA notes that, under the list of considerations to be taken into account, is "the insurer's size and resources available to resolve issue/s." HIRMAA would never wish to see small insurers disadvantaged by this consideration.

**Paragraphs 30-35** : These paragraphs deal with the varying or withdrawing of undertakings.

HIRMAA accepts the rationale and process outlined therein.

**Paragraphs 36-38** : These paragraphs deal with the insurer's right of review.

Paragraphs 37 and 38 cover only the process (written reasons and review by the AAT) to be followed if PHIAC refuses to allow an insurer to withdraw or vary an undertaking. Is there a broader right of review if PHIAC refuses to accept an insurer's undertaking?

**Paragraphs 39-41** : These paragraphs deal with the breach of an undertaking.

HIRMAA accepts the rationale and process outlined therein.

**Paragraphs 42-43** : These paragraphs deal with the publication of an undertaking.

As stated earlier, HIRMAA notes that paragraph 20 refers to dealing with an issue "in-house." However, paragraphs 42 and 43 refer to the publication of undertakings. As stated previously, HIRMAA would argue that the publishing of undertakings should be limited to only matters considered to be a serious breach of obligation by an insurer – PHIAC would always be in a position to make a reasonable judgement on such issues.

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## **Attachment A – HIRMAA funds**

ACA Health Benefits Fund Ltd

CBHS Health Fund Ltd

Defence Health Ltd

Health Care Insurance Ltd

Health Partners Ltd

Lysaght Peoplecare Ltd

Navy Health Ltd

Phoenix Health Fund Ltd

Police Health Ltd

Queensland Country Heath Ltd

Queensland Teachers' Union Health Fund Ltd

Railway and Transport Health Fund Ltd

Reserve Bank Health Society Ltd

Teachers Federation Health Ltd

The Doctors' Health Fund Ltd

Transport Health Pty Ltd

Westfund Ltd