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Dear Ms Gray

Thank you for the opportunity to comment on PHIAC's draft Standard Operating Procedure (SOP) – *Issuing a Council Direction*.

HIRMAA understands that the SOP canvasses four separate powers which the Council may employ to protect the interests of consumers and to ensure the prudential safety of individual insurers:

- a direction to comply with the solvency standard – section 140-20 of the Private Health Insurance Act 2007 (the Act);
- a direction to comply with the capital adequacy standard – section 143-20;
- a direction to comply with a prudential standard – section 163-15; and,
- a direction to prevent or address a contravention of a Council supervised obligation – section 200-1.

HIRMAA further understands that this SOP is a guideline as to when such directions may be used and emphasises the preventative element of some of these powers. HIRMAA notes the PHIAC statement that the SOP “highlights the needs for insurers to be fully aware of their obligations under the Act.”

While HIRMAA is supportive of the overall direction of the draft SOP, the following observations are offered.

### ***Elements common to Council directions***

HIRMAA is uncertain as to why there is direct reference to restricted insurers in paragraph 12. This example is not self-explanatory and has caused confusion amongst such insurers. All other paragraphs in this section appear to be reasonable within the policy context with specific reference to paragraph 14 which should encourage co-operation between insurer and regulator during, what must be a difficult period.

### ***Solvency and capital adequacy directions***

HIRMAA understands the determination of PHIAC to ensure that insurers meet their obligations in such matters. It is understood that PHIAC would have processes in place regarding the issuing of such directions however the SOP does not detail the

policy, process or procedure. On this point, HIRMAA notes the comment in the submission by Police Health that:

*“It would also be expected that, prior to issuing a solvency standard direction (capital adequacy direction), some form of process is followed up to the point where it is recommended to the Council that the best course of action is to issue a direction. An insight into that process would assist in the transparency of any PHIAC action and provide necessary guidance to the private health insurance industry.”*

This suggestion by Police Health is further strengthened by the ambiguous nature of paragraph 24.

HIRMAA notes the importance of paragraph 26 that *“a solvency direction represents the most serious of all Council directions because it strongly suggests that a health benefits fund conducted by an insurer may no longer be viable. It may also be used in conjunction with other powers to minimise risk to the policyholders. In reality the Council is more likely to intervene earlier and rely on the broader directions of section 200-1 of the Act, or a capital adequacy direction to restore the capital position of a fund.”* HIRMAA notes the latter sentence in paragraph 26 and concurs that this should be the far more likely and desirable scenario.

Further, HIRMAA notes the very serious nature of paragraph 27 that *“breaches of the solvency standard or a solvency direction are preconditions for the appointment of an external manager to a health benefits fund under section 217-15 of the Act”* and similarly in paragraph 41 that *“if an insurer breaches a capital adequacy direction, the Council may rely on the breach as a precursor to appoint an external manager under section 217-15 of the Act.”* HIRMAA contends that it would be of benefit for the SOP to detail the differing factors which triggers a decision to appoint an external manager between a solvency direction and a capital adequacy direction.

Paragraph 41 also refers pursuing remedies in the Federal Court without detailing what remedies are available to the Council.

### ***Directions to comply with a prudential standard***

Paragraph 45 contains the very open-ended statement that in addition to governance and appointed actuary standards, *“Council is committed to developing additional standards as issues arise within the industry.”*

Paragraph 47 is ambiguous. HIRMAA notes the comments of Queensland Teachers' Union Health (TUH) in its submission and concurs.

Paragraph 51 offers the example of issuing a prudential standards direction with regard to the qualifications of board members of an insurer. As an observation, it would be hoped that such issues would always be resolved through discussion and negotiation and thereby avoiding the necessity of issuing such inflexible directions.

In relation to paragraph 51, similar to our contention above, HIRMAA believes that it would be of benefit for the SOP to provide guidance regarding the policy, process and

procedure behind appointing an external manager when a direction to comply with a prudential standard is breached.

***Section 200-1 Directions to prevent or address a breach of a Council supervised obligation (section 200-1 direction)***

Paragraph 61 refers to requirements for insurers to modify day to day operations or rules pertaining but not limited to:

- changing elements of an insurer's claims management system
- improving data integrity
- amending growth strategies
- modifying product benefits
- liquidity issues
- fraud control

As all of these issues relate to the core business of the insurer, and therefore go to the collective and individual reputation of the board and management, it is hoped that, whenever possible, such matters will be subject to discussion and negotiation before the formal issuing of a direction.

Paragraph 65 refers to the publication within 5 working days on the PHIAC website of the details of the section 200-1 direction. HIRMAA notes the observation in the Police Health submission that:

*"However a private health insurer has 28 days to appeal a section 200-1 direction. It would appear that, in the interests of natural justice, the 200-1 direction should only be published after the appeal period has passed or any appeal process completed. This is because reputation is very important and there is potential that, as a result of the publishing of a direction, the reputation of a private health insurer would be damaged. The Private Health Insurance Act should be amended accordingly."*

HIRMAA supports this contention.

HIRMAA also notes the comments of TUH regarding the removal of information and material from the PHIAC website:

*"It is submitted that the SOP should provide some guideline when a Council direction will be removed from the website. The inclusion of out-dated information on the PHIAC website could lead to confusion among consumers or depict a health insurer in a way that is not accurate. For example, a media release dated 6 June 2003 on PHIAC's website indicates that an administrator has been appointed to Queensland Teachers' Union Health Fund "after a number of financial and administrative irregularities were found to require further examination". There is no update anywhere on PHIAC's website that these irregularities have been satisfactorily addressed or that the conditions referred to in the media release no longer apply. TUH continues to get occasional queries from consumers and members about the currency of this information."*

*In the event that PHIAC is not willing or not able to remove information from its website that is more historical than current, it is submitted that an update be issued when a direction is complied with or is no longer relevant, and that the update be*

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*added in proximity to the original direction. This would allow consumers and others to be able to obtain current information regarding compliance with PHIAC requirements in respect of any particular health insurer.”*

This contention by TUH is strongly supported by HIRMAA.

## **Conclusion**

Amongst HIRMAA's seventeen constituent funds there is a wide variation of views about the issues and proposals canvassed in this SOP. They range from full support of the direction of the SOP to significant concerns that the spirit of the SOP is to utilize very subjective assessments to invoke a framework of powers and penalties. With regard to the latter viewpoint, it is argued that these proposals allow PHIAC to invoke wide-ranging subjective assessments which may result in serious outcomes for individual insurers and their boards and/or management. Against this background, there does not appear to be a sufficient compensating onus on PHIAC to provide either a warning mechanism or sufficient detail explaining the background to its decision/s.

HIRMAA is grateful for the opportunity to lodge these observations and comments.

Yours sincerely

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