



INSTRUCTION GUIDE

Application form – Conversion to for profit status

September 2015

Disclaimer and Copyright

While APRA endeavours to ensure the quality of this publication, it does not accept any responsibility for the accuracy, completeness or currency of the material included in this publication and will not be liable for any loss or damage arising out of any use of, or reliance on, this publication.

© Australian Prudential Regulation Authority (APRA)

This work is licensed under the Creative Commons Attribution 3.0 Australia Licence (CCBY 3.0). This licence allows you to copy, distribute and adapt this work, provided you attribute the work and do not suggest that APRA endorses you or your work. To view a full copy of the terms of this licence, visit <https://creativecommons.org/licenses/by/3.0/au/>

Contents

Contents	3
Introduction	4
Guidance on completing the conversion to for profit form	6
Part A – General information	6
Part B – Supporting Documentation	8
Glossary	14

Introduction

This Instruction Guide provides general information on making an application for conversion to for profit status using the approved *Application Form – Conversion to for profit status (HCFPS form)*. It does not constitute legal advice.

For further information, visit APRA's website at www.apra.gov.au or contact 1300 55 88 49 or by email at info@apra.gov.au.

What are the requirements for an Insurer to apply to APRA to convert to for profit status?

An Insurer that is registered with APRA that wishes to change its registration status to 'for profit' status, must apply using the approved application form. The form must be lodged at least 90 days before the date specified in the application as the day on which the Insurer proposes to become registered as a 'for profit' Insurer.

Additional guidance, where necessary, regarding the application of requirements to the Applicant is provided throughout this Instruction Guide.

What is the application process?

APRA's application process, as with its approach to supervision, is consultative and each Applicant is assigned a responsible supervisor who is the main contact for the entity on all APRA-related matters.

The approved HCFPS form is available on the APRA website. An Applicant will be able to submit a draft application by providing either hard copies or electronic versions to enable consultation with APRA prior to making an application for the purposes of s. 20 of the PHIPS Act. APRA's preference is for all documentation to be provided electronically via the APRA Extranet: <https://extranet.apra.gov.au/funds/fundnameacronym>.

While there is no legal obligation for APRA to comment on draft applications, APRA will endeavour to provide comments on draft applications as practicable.

Applicants are strongly encouraged to submit a draft application and discuss their proposals with APRA before making an application for the purposes of s. 20 of the PHIPS Act.

Penalties for false information

An Applicant should note that giving false or misleading information is a serious offence (see s.136.1, s.137.1 and s.137.2 of the *Criminal Code Act 1995*). Where information is disclosed to APRA as part of this application, APRA may in turn disclose that information in any of the circumstances permitted by s.56 of the *Australian Prudential Regulation Authority Act 1998*.

Guidance on completing the conversion to for profit form

Part A – General information

Part A of the HCFPS form must be completed by ALL Applicants.

Part A of the HCFPS form requests general information about the Applicant and the impact of the conversion, including:

- the Applicant's details;
- the Applicant's views as to whether the conversion involves demutualisation of the Applicant;
- advice as to whether a Scheme of Arrangement is being entered into; and
- details of other Government Agencies that have been or will be notified about this application (if any).

DRAFT Conversion to for profit status application

The Applicant needs to select whether the application is to be treated as an application for the purposes of s. 20 of the PHIPS Act or it is intended only as a draft application.

Where the application is to be treated as an application for the purposes of s. 20 of the PHIPS Act, the Applicant must sign Part C in accordance with the requirements of the approved form.

A1 – Applicant details

Name of Applicant and ABN

The Applicant must be a registered private health Insurer under s. 15 of the *Private Health Insurance (Prudential Supervision) Act 2015* on or after 1 July 2015, or a private health Insurer registered under s. 126-20 of the *Private Health Insurance Act 2007* prior to 1 July 2015.

Contact person – primary

The contact person must be available and have appropriate knowledge of the application to assist with any queries that APRA may have.

A2 – Particulars of Conversion

Proposed Date of Conversion

The Applicant must provide details of the proposed 'date of conversion'. This date must be at least 90 days from the date the final application is lodged.

A3 – Demutualisation

Prior to lodgement, the Applicant must assess whether the proposed conversion will involve demutualisation of the Insurer.

- If the answer is 'Yes', provide the mandatory documentation requested in section B2 of the application form.
- If the answer is 'No', provide a copy of the analysis the Applicant has relied upon to make this assessment.

Where the conversion includes a demutualisation, APRA is required to advertise under s. 20(4) of the PHIPS Act. Advertising provides interested parties with an opportunity to submit comment on the conversion to APRA. In particular, advertising provides an opportunity for policy holders to express their views to APRA as to whether they consider they are not being treated equitably.

The Applicant must ensure that the public are able to readily access details of the proposed conversion scheme during the consultation period.

Under s. 20(4) of the PHIPS Act, APRA must, at least 45 days before the conversion date inform policy holders of the Applicant's proposed conversion by way of a public advertisement.

A4 – Scheme of Arrangement

The Applicant must advise if it will be entering into a Scheme of Arrangement as part of the proposed conversion.

A5 – Changes to restricted or open access status

The Applicant needs to determine if the conversion will involve also a change in the restricted or open access status of the Insurer.

In the event that the conversion also involves a change in the restricted or open access status of the Insurer, the Applicant will also need to lodge the approved form – *Notification of change of registration status* to APRA in accordance with s. 19 of the PHIPS Act.

A6 – Advice to other Government Agencies

If the Applicant has informed, or will inform, any other Government Agency of this application, this must be advised on the HCFPS form.

Part B – Supporting Documentation

Part B requests documents to support the application for conversion to for profit status and to confirm whether the conversion will involve demutualisation.

The information provided in this Instruction Guide is not intended to be a complete summary of all the relevant requirements and the considerations set out in the private health insurance legislation and Prudential Standards. An Applicant is advised to refer to the relevant legislation and any relevant prudential standards and prudential practice guides (where applicable) for further information.

B1 – Proposed Conversion

Part B1 of the HCFPS form must be completed by ALL Applicants.

B1.1 – Proposed conversion scheme

Insurers applying for approval to convert to 'for profit' status under s. 20(1) of the PHIPS Act must attach a conversion scheme to their application. The conversion scheme must include information relating to the proposed corporate restructure.

The conversion scheme must also identify whether the change of status involves a demutualisation of the Insurer.

Where a demutualisation is involved the conversion scheme must demonstrate that the change to 'for profit' status (refer to 'Mutuality Evaluation Statement' section below):

- will not result in a financial benefit to any person who is not a policy holder of, or another person insured through a health benefits fund conducted by the Insurer; and
- will not result in financial benefits from the scheme being distributed inequitably between such policy holders and insured persons.

Where the Applicant has determined that the conversion scheme does not involve a demutualisation, the reasons are to be provided in the 'Mutuality Evaluation Statement' section below.

B1.2 – Mutuality Evaluation Statement

Attach relevant documents which demonstrate the analysis undertaken by the Applicant to satisfy itself that the conversion will, or will not, involve demutualisation of the Insurer. For example, post conversion:

- do policy holders have voting rights?
- do members have control of both the governing body of the Insurer and the fund?
- can members appoint trustees or directors of the fund?
- do all members contribute and participate in the fund as policy holders?
- is it possible for policy holders to become members?

- will policy holders participate in profits?
- what changes to premiums or benefits will policy holders receive?
- what rights will policy holders have on a winding up of the health benefits fund?
- what is the tax treatment of the entity?
- any other relevant matter.

B1.3 – Reason for Change Statement

The Applicant must attach all relevant documents which demonstrate the analysis undertaken by the Applicant on the proposed restructure and provide an outline of the business case for applying to convert its registration status to 'for profit' status. This will include all documents adopted by the Board approving the change of status that detail all or any of the following:

- the reason or rationale for the change of status;
- which health benefit fund(s) of the Applicant will be impacted by the change;
- reasons why the Applicant believes the conversion application does not involve a demutualisation (this could refer back to the previous section);
- the financial impact of the change on the Applicant and health benefits fund/s conducted by the Applicant;
- the impact on the health benefit fund reserves as a result of the change;
- any projected change to the management and administrative expenses of the health benefits fund;
- the dividend policy for the first three years post conversion;
- details demonstrating how the health benefits fund will be able to continue to comply with HPS 100 and HPS 110 (i.e. the Solvency and Capital Adequacy Standards) post conversion; and
- any other relevant matter.

B1.4 – Proposed timeline for conversion

Under s. 20(3) of the PHIPS Act, APRA must:

- determine if the proposal involves in substance a demutualisation (within 30 days of receipt of the final application lodged);
- determine if the application is in the approved form and made at least 90 days before the proposed conversion date; and
- if the proposal involves a demutualisation advertise to provide interested parties with an opportunity to submit comment on the conversion scheme to APRA (at least 45 days before the day specified in the application as the day on which the Insurer proposes that it becomes registered as a 'for profit' Insurer).

The Applicant must outline the proposed timeline for the conversion process, including details of:

- Applicant's Board approval of the application;
- communication with policy holders on the proposed conversion;
- where relevant any planned meeting of members to approve the change of status and any proposed changes to the Applicant's Constitution and/or Rules;
- Federal Court hearing dates (if the application includes a Scheme of Arrangement – see section B3 below);
- lodgement of ASIC 205 form: 'Notification of resolution' (where applicable);
- proposed conversion date; and
- effective date of any changes to the health benefit fund rules or constitution.

Any changes to the proposed conversion date post lodgement of the application will not stop APRA's consideration of the application.

However, it is important that APRA be notified if the proposed conversion date is changed, and the reason/s for this change.

B1.5 – History of past health benefit fund mergers or acquisitions of the Applicant and constitution changes impacting policy holder rights

The history of any past health benefit fund mergers, acquisitions of the Applicant and constitution changes impacting policy holders. In particular, how the policy holders were treated in relation to any 'proceeds of sale' distributions.

B2 – Demutualisation

Section B2 of the HCFPS form must be completed ONLY if the Applicant believes the conversion involves a demutualisation.

If the Applicant has assessed that the conversion will involve the demutualisation of the Applicant, the following documentation is required at the time of lodgement.

B2.1 – Financial Impact Statement

Attach relevant documents which demonstrate the analysis undertaken by the Applicant to determine the financial impact of the conversion on the Applicant's ongoing operations.

Financial impact may include consideration of:

- projected changes to the management and administrative expenses of the health benefits fund;
- impact of the conversion on fund reserves;
- the proposed dividend policy for the first three years;

- details demonstrating that each health benefit fund of the Applicant will be able to continue to comply with HPS 100 and HPS 110 (i.e. the Solvency and Capital Adequacy Standards) post conversion; and
- any other relevant matters.

B2.2 – Policy Holder Impact Statement

Attach a copy of the Policy Holder Impact Statement or similar documents advising policy holders how and when the change of registration status will impact policies and entitlements.

B2.3 – Summary of changes to the Applicant’s fund rules

Attach relevant documents which demonstrate the analysis undertaken by the Applicant, a summary of the proposed changes to the fund rules, and a marked up copy of the proposed amended fund rules.

Division 169 of the PHI Act requires Insurers to notify DoH of any proposed changes to the fund rules before the day on which the Insurer proposes the change to take effect.

B2.4 – Summary of changes to the Applicant’s constitution

Attach relevant documents which demonstrate the analysis undertaken by the Applicant, provide a summary of the proposed changes and a marked up copy of the amended constitution.

B2.5 - Expert fees in the conversion

Attach relevant documents which provide details of all expert fees and success retainers paid to experts and other consultants employed for the conversion. Experts may include lawyers, auditors, accountants and actuaries. The documentation should detail names, amounts to be paid and when the payments are expected to be paid for each service.

B2.6 - Payments to officers, members, policy holders and staff arising from the conversion

Attach details of any proposed additional fees, bonuses and/or remuneration (including redundancy) payments as a result of the conversion – detailing name, amount to be paid and when the payments are expected to be paid for each person.

B2.7 - List of proposed donations arising from the conversion

Provide details of any donations to any organisation as a result of the conversion: detailing name, amount to be paid, when the payments are expected to be paid, and why the payment is being made.

B2.8 - Details of proposed corporate structure post demutualisation

Provide details outlining the proposed new corporate structure post demutualisation including the full reporting lines, roles and responsibilities. A diagrammatic representation would be useful.

B2.9 - Appointed Actuary supporting statement

Attach a statement by the Appointed Actuary in respect of the proposed conversion. The statement should include:

- impact of the proposal on policy holders;
- analysis identifying whether the Applicant's impact statement and financial projections are reasonable and consistent;
- what effect the change of registration may have on the premiums for and benefits under each policy group over the next three years; and
- a basis for the share allocation methodology (if applicable).

The share allocation methodology should be understandable, readily calculated and verifiable as accurate.

B3 – Scheme of Arrangement

Section B3 of the HCFPS form must be completed ONLY if the Applicant believes the conversion involves a demutualisation.

Where the demutualisation involves restructuring the Insurer by way of a Scheme of Arrangement under Chapter 5.1 of the *Corporations Act 2001*, the conversion must include reference to the Scheme of Arrangement. A copy of the Scheme of Arrangement must also be provided with the application.

B3.1 - Copy of Scheme of Arrangement

A Scheme of Arrangement is a binding court-approved agreement that allows the reorganisation of the rights and liabilities of members and creditors of a company. The Applicant must obtain ASIC's consent and satisfy the Federal Court that the Scheme has not been proposed to avoid compliance with the takeover requirements in Chapter 6 of the *Corporations Act 2001*.

B4 – Additional Information

Section B4 of the HCFPS form is optional.

B4.1 Additional Matters

Applicants should attach any additional relevant documentation they consider is relevant for consideration of the application.

Part C - Attestation

Where the application is an application for the purposes of s. 20 of the PHIPS Act, the attestation in Part C must be completed by at least two directors of the Insurer in accordance with the requirements of the approved form.

If the Applicant has indicated in Part A that it is a draft application, the Applicant is not required to sign the attestation at Part C.

Checklist – Part B – Supporting documentation

Use the checklist below to ensure that all relevant supporting documentation, where applicable, is attached.

B1	Proposed Conversion	Attached
B1.1	Proposed conversion scheme	<input type="checkbox"/>
B1.2	Mutuality Evaluation Statement	<input type="checkbox"/>
B1.3	Reason for Change Statement (including Board Approval)	<input type="checkbox"/>
B1.4	Proposed timeline for conversion	<input type="checkbox"/>
B1.5	History of past health benefit fund mergers or acquisitions of the Applicant and constitution changes impacting policy holder rights	<input type="checkbox"/>
B2	Demutualisation	
B2.1	Financial Impact Statement	<input type="checkbox"/>
B2.2	Policy Holder Impact Statement	<input type="checkbox"/>
B2.3	Summary of changes to the Applicant's fund rules	<input type="checkbox"/>
B2.4	Summary of changes to the Applicant's constitution	<input type="checkbox"/>
B2.5	Expert fees in the conversion	<input type="checkbox"/>
B2.6	Payments to officers, members, policy holders and staff arising from the conversion	<input type="checkbox"/>
B2.7	List of proposed donations arising from the conversion	<input type="checkbox"/>
B2.8	Details of proposed corporate structure post demutualisation	<input type="checkbox"/>
B2.9	Appointed Actuary supporting statement	<input type="checkbox"/>
B3	Scheme of Arrangement	
B3.1	Copy of Scheme of Arrangement	<input type="checkbox"/>
B4	Additional Information	
B4.1	Additional matters demonstrating compliance with legislation and prudential standards post conversion	<input type="checkbox"/>

Glossary

ABN	Australian Business Number
Applicant	a private health Insurer registered under s. 15 of the <i>Private Health Insurance (Prudential Supervision) Act 2015</i> on or after 1 July 2015, or a private health Insurer registered under s. 126-20 of the <i>Private Health Insurance Act 2007</i> prior to 1 July 2015
APRA	Australian Prudential Regulation Authority
APRA Rules	<i>Private Health Insurance (Prudential Supervision) Rules 2015</i>
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
DoH	Department of Health
FSCOD Act	<i>Financial Sector (Collection of Data) Act 2001</i>
HCFPS form	the conversion to for profit status form – the approved form, as required by s. 20(2) of the PHIPS Act
HPS 100	<i>Prudential Standard HPS 100 Solvency Standard</i>
HPS 110	<i>Prudential Standard HPS 110 Capital Adequacy</i>
Insured Person	Any person whose treatment may give rise to a claim under a private health insurance policy
Insurer	a registered private health Insurer (see definition of Applicant)
Officer	As defined in s. 4 of the PHIPS Act
Ombudsman	Private Health Insurance Ombudsman
Open access insurer	means a private health insurer that is registered not as a restricted access insurer under Division 3 of Part 2 of the PHIPS Act
PHI Act	<i>Private Health Insurance Act 2007</i>
PHIPS Act	<i>Private Health Insurance (Prudential Supervision) Act 2015</i>
Policy Holder	the holder of a policy that is referable to a health benefits fund of a registered private health Insurer
Prudential Standards	those made under s. 92 of the PHIPS Act
Scheme of Arrangement	as regulated under Part 5.1 of the <i>Corporations Act 2001</i>



 APRA