

Private Health Insurance Rules

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Private Health Insurance (Prudential Supervision) Act 2015, subsection 174(1).

Under subsection 174(1) of the *Private Health Insurance (Prudential Supervision) Act 2015* (the Act), APRA may, by legislative instrument, make rules prescribing matters required or permitted by the Act, or necessary or convenient in order to carry out or give effect to the Act. The Act commences on 1 July 2015.

On 26 June 2015, APRA made the following instruments ('APRA Rules'):

- (1) *Private Health Insurance (Prudential Supervision) Rules 2015*;
- (2) *Private Health Insurance (Registration) Rules 2015*; and
- (3) *Private Health Insurance (Health Benefits Fund Enforcement) Rules 2015*;

APRA Rules must be complied with by private health insurers.

The instruments take effect on the day the Act commences, namely 1 July 2015.

1. Background

As part of the *Smaller Government – additional reductions in the number of Australian Government bodies* initiative announced in the 2014-2015 Budget, the prudential regulation functions of the Private Health Insurance Administration Council (PHIAC) will be transferred to APRA. From 1 July 2015, APRA will take on all prudential regulation functions for private health insurers.

2. Purpose and operation of the instruments

As part of the reforms, the Act will become the primary piece of legislation for the prudential regulation of private health insurance. The instruments made under the Act, together with APRA's prudential standards, ensure the continued application of the existing prudential framework.

The objective of APRA's prudential requirements is to provide seamless transition of the requirements administered by PHIAC prior to 1 July 2015, under the *Private Health Insurance Act 2007* (the Private Health Insurance Act) and Rules made under that Act, so that the same requirements continue to have effect in substance following the transfer of responsibilities to APRA. This will minimise the disturbance to the private health industry. These APRA Rules replicate a range of procedural and administrative matters applying to private health insurers issued by PHIAC and the Minister for Health under the Private Health Insurance Act.

The *Private Health Insurance (Prudential Supervision) Rules 2015* set rules in relation to the expenditure and application of health benefit funds, restructure of health benefit funds, mergers and acquisitions of health benefit funds and reporting

and notification requirements. They largely replicate existing rules made in the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007* (including amendments made by the *Private Health Insurance Health Benefits Fund Administration) Amendment Rules 2008 (No. 1)*. These Rules:

- deal with matters relating to borrowings, mortgages and charges which a private health insurer is permitted to enter into for the purposes of its health benefits funds;
- specify requirements relating to the restructure or merger and acquisition of the health benefits funds of an insurer. The requirements cover what must be included in an application for approval, criteria for APRA approval, the time when a restructure or transfer is taken to have effect and policyholder notification requirements; and
- specify that private health insurers must notify APRA about certain matters, including details of the current chief executive officer, changes in board membership or details of a director.

Further information regarding the operation of these Rules can be found in the Explanatory Statements accompanying the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007* and the *Private Health Insurance (Health Benefits Fund Administration) Rules 2008 (No. 1)*. These Rules do not include rules defining the risk equalisation jurisdictions; rules on those matters will be made by the Minister for Health under the Private Health Insurance Act effective 1 July 2015.

The *Private Health Insurance (Registration) Rules 2015* set rules in relation to applications for registration and restricted access insurers. Section 14 of the Act provides that APRA rules may set out criteria for the registration of bodies as private health insurers. Rule 4 sets out the criteria for registration, which reflect the substance of the *Private Health Insurance (Registration) Rules 2009 (No. 2)* and certain provisions previously included in Division 126 of the Private Health Insurance Act. These Rules also contain the description of groups for restricted access insurers and confirms limits on insurance provided by restricted access insurers (in these respects they replicate the *Private Health Insurance (Registration) Rules 2009 (No. 2)*, as amended, made under the Private Health Insurance Act). Further information regarding the operation of these Rules can be found in the Explanatory Statement accompanying the *Private Health Insurance (Registration) Rules 2009 (No. 2)*.

Private Health Insurance (Health Benefits Fund Enforcement) Rules 2015 set rules in relation to various enforcement matters. They largely replicate the *Private Health Insurance (Health Benefits Fund Enforcement) Rules 2007*, made under the Private Health Insurance Act, with some minor updating to address amendments to Part 5.3A of the Corporations Act made after the 2007 Rules were made. These Rules provide for procedural matters relating to voluntary deeds of arrangement, external manager recommendations that can be made in reports to APRA, and the actions that APRA may take in response. These Rules also apply certain provisions of Part 5.3A of the *Corporations Act 2001* to health benefit funds that are under external management, subject to certain modifications set out in these Rules. Further information regarding the operation of these Rules can be found in the Explanatory Statement accompanying the *Private Health Insurance (Health Benefits Fund Enforcement) Rules 2007*.

Divisions 6, 7 and 8 of Part 3 of the new Act contain provisions relating to external and terminating managers of health benefits funds that cannot meet their obligations or otherwise require management.

The APRA Rules apply to all private health insurers and include substantially the same content as the PHIAC rules, with some minor and technical changes to align with the new Act. The net result is that the obligations of private health insurers under APRA's prudential requirements are substantively unchanged from the requirements administered by PHIAC. As the APRA prudential standards and Rules effectively maintain the status quo for the regulation of the private health industry, there are no regulatory impacts or costs incurred through the transition to APRA. Private health insurers are able to continue their practices with minimal disruption.

3. Consultation

APRA undertook extensive consultations on the proposed prudential and reporting framework for APRA's supervision of private health insurers. The consultation was undertaken from March to May 2015. APRA received input from private health insurers, industry bodies, and other interested parties.

The following consultation papers were released:

- March 2015: Discussion paper on the proposed prudential and reporting framework for APRA's supervision of private health insurers in Australia, together with draft prudential standards, Rules and reporting standards; and
- June 2015: Response to submissions on the proposed prudential and reporting framework for APRA's supervision of private health insurers in Australia, together with final prudential standards, Rules and reporting standards.

APRA has considered both formal and informal feedback from stakeholders throughout the consultation process. 12 submissions were received in response to the discussion paper. In addition to the formal consultation, APRA held a number of consultation sessions and meetings with industry stakeholders.

Industry feedback did not raise any significant concerns with APRA's proposals on the APRA Rules. Submissions focused on the technical changes that were necessary to align with the new legislation. As a result, APRA made a number of minor amendments to the consultation documents. These amendments sought to address some minor errors and omissions, and maintain the current requirements applying to private health insurers.

4. Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for the instruments.

5. Statement of compatibility prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

A Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at Attachment A to this Explanatory Statement.

Attachment A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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The Legislative Instruments are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

Overview of the Legislative Instrument

The Legislative Instruments prescribe requirements applicable to private health insurers, to give effect to the transfer of relevant PHIAC functions to APRA. The instruments continue the current prudential requirements applying to private health insurers administered by PHIAC.

Human rights implications

APRA has assessed these Legislative Instruments and is of the view that they do not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the HRPS Act. Accordingly, in APRA's assessment, the instruments are compatible with human rights.

Conclusion

These Legislative Instruments are compatible with human rights because they do not raise any human rights issues.