

# Private Health Insurance (Risk Equalisation Administration) Rules 2015

## EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

*Private Health Insurance Act 2007*, subsection 333-25.

On 26 June 2015, APRA made the *Private Health Insurance (Risk Equalisation Administration) Rules 2015* (the Rules). The Rules are made under subsection 333-25 of the *Private Health Insurance Act 2007* (the Act) for the purposes of section 318-15 and must be complied with by private health insurers. The Rules commence on the day item 166 of Schedule 1 to the *Private Health Insurance (Prudential Supervision) (Consequential Amendments and Transitional Provisions) Act 2015* (the PHIPS Consequential Amendments 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. APRA will also take over responsibility for administration of the risk equalisation trust fund at this time, which will become the risk equalisation special account.

### **2. Purpose and operation of the instruments**

As part of the reforms, the Act has been amended so that APRA may make Private Health Insurance (Risk Equalisation Administration) Rules, similar to those formerly made by PHIAC, providing for matters such as record-keeping for insurers liable for the Risk Equalisation Levy or entitled to risk equalisation payments.

The objective of these Rules is to provide seamless transition of the current requirements administered by PHIAC, 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 Rules replicate record keeping requirements applying to private health insurers under the *Private Health Insurance (Risk Equalisation Administration) Rules 2007* (the 2007 Rules).

These Rules set requirements for insurers that are liable to the Risk Equalisation Levy to keep particular kinds of records. These Rules specify general requirements for records to be kept for each fund and specify further records to be kept for the purposes of the high cost claimants pool. Further information regarding the operation of these Rules can be found in the Explanatory Statement accompanying the 2007 Rules. Requirements relating to the provision of quarterly risk equalisation returns and the audit of those returns that were included in the 2007 Rules have not been included in these Rules. Those requirements have been superseded by a new reporting standard made by APRA under the *Financial Sector (Collection of Data) Act 2001*.

These Rules apply to all private health insurers and include substantially the same content, with some minor and technical changes to align with changes to the Act as

amended by the PHIPS Consequential Amendments 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 APRA's prudential standards and Rules 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*

#### **Private Health Insurance (Risk Equalisation Administration) Rules 2015**

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 Instrument prescribes requirements applicable to private health insurers, to give effect to the transfer of relevant PHIAC functions to APRA. The instrument continues 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.