

Health insurance (prudential standard) determinations Nos. 1 to 7 of 2015

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Private Health Insurance (Prudential Supervision) Act 2015, subsection 92(1)

Under subsection 92(1) of the *Private Health Insurance (Prudential Supervision) Act 2015* (the new Act), APRA has the power to determine standards (prudential standards), in writing, in relation to prudential matters to be complied with by private health insurers. The Act commences on 1 July 2015.

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

- (1) Health Insurance (prudential standard) determination No. 1 of 2015 (the instrument) which determines *Prudential Standard HPS 001 Definitions* (HPS 001);
- (2) Health Insurance (prudential standard) determination No. 2 of 2015 (the instrument) which determines *Prudential Standard HPS 100 Solvency Standard* (HPS 100);
- (3) Health Insurance (prudential standard) determination No. 3 of 2015 (the instrument) which determines *Prudential Standard HPS 110 Capital Adequacy* (HPS 110)
- (4) Health Insurance (prudential standard) determination No. 4 of 2015 (the instrument) which determines *Prudential Standard HPS 231 Outsourcing* (HPS 231)
- (5) Health Insurance (prudential standard) determination No. 5 of 2015 (the instrument) which determines *Prudential Standard HPS 320 Actuarial and Related Matters* (HPS 320)
- (6) Health Insurance (prudential standard) determination No. 6 of 2015 (the instrument) which determines *Prudential Standard HPS 350 Disclosure to APRA* (HPS 350)
- (7) Health Insurance (prudential standard) determination No. 7 of 2015 (the instrument) which determines *Prudential Standard HPS 520 Governance* (HPS 510)

The instruments take effect on the day the *Private Health Insurance (Prudential Supervision) Act 2015* 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 new Act will become the primary piece of legislation for the prudential regulation of private health insurance. The instruments made under the new Act determine prudential standards that, together with APRA Rules, ensure the continued application of the existing prudential framework.

The objective of APRA's prudential requirements 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.

The prudential standards largely replicate existing Rules which apply to private health insurers issued by PHIAC ('PHI Rules'), although some minor and technical changes are necessary to align with the new Act.

HPS 001 is a new standard setting out key definitions used in other prudential standards (discussed further below). The wording in these definitions largely replicate definitions contained in the PHI Rules.

HPS 100 replicates the existing solvency and liquidity management requirements in the PHI Rules¹, created to ensure as far as practicable, that at any time the financial position of a health benefits fund conducted by a private health insurer is such that the private health insurer will be able to meet, out of the fund's assets, all liabilities that are referable to the fund, as those liabilities become due.

HPS 110 replicates the existing capital adequacy and capital management requirements of the PHI Rules, created to ensure, as far as practicable, that there are sufficient assets in a health benefits fund conducted by a private health insurer to provide adequate capital for the conduct of the health benefits fund.

Further information regarding the operation of HPS 100 and 110 can be found in the Explanatory Statement accompanying the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007* and the *Private Health Insurance (Health Benefits Fund Administration) Amendment Rule 2013 (No.1)*.

HPS 231 largely replicates the existing requirement in the PHI Rules², created to ensure reasonable, risk-based business judgements and monitoring with respect to outsourcing arrangements.

¹ The PHIAC solvency and capital standards were made under the *Private Health Insurance (Health Benefits Fund Administration) Rules 2007*, as amended by the *Private Health Insurance (Health Benefits Fund Administration) Amendment Rule 2013 (No.1)*.

² The PHIAC outsourcing standard was made under the *Private Health Insurance (Insurer Obligation) Rules 2009*, as amended by the *Private Health Insurance (Insurer Obligation) Amendment Rule 2012 (No 1)*.

HPS 320 largely replicates the existing requirements in the PHI Rules³, created to specify certain eligibility criteria for the appointment of a private health insurer's Appointed Actuary and other requirements of the Appointed Actuary.

HPS 350 largely replicates the existing requirements in the PHI Rules⁴ created to specify copies of certain documents that must be provided to APRA and specific issues APRA must be notified of.

HPS 510 largely replicates the existing requirements in the PHI Rules⁵ created to specify requirements with respect to board size and composition, board renewal and procedures for assessing board performance, and the establishment of a board audit committee.

Further information regarding the operation of HPS 231, 320, 350 and 510 can be found in the Explanatory Statements accompanying the *Private Health Insurance (Insurer Obligations) Rules 2009*, the *Private Health Insurance (Insurer Obligations) Amendment Rule 2010 (No. 1)*, the *Private Health Insurance (Insurer Obligations) Amendment Rule 2011 (No. 1)*, the *Private Health Insurance (Insurer Obligations) Amendment Rule 2012 (No. 1)* and the *Private Health Insurance (Insurer Obligations) Amendment Rule 2013 (No. 1)*.

APRA's requirements apply to all private health insurers and include substantially the same content, 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 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

³ The PHIAC appointed actuaries standard was made under the *Private Health Insurance (Insurer Obligation) Rules 2009*, as amended by the *Private Health Insurance (Insurer Obligations) Amendment Rule 2011 (No. 1)* and the *Private Health Insurance (Insurer Obligations) Amendment Rule 2013 (No. 1)*.

⁴ The PHIAC disclosure standard was made under the *Private Health Insurance (Insurer Obligation) Amendment Rule 2010 (No. 1)*.

⁵ The PHIAC governance standard was made under the *Private Health Insurance (Insurer Obligation) Rules 2009*.

- 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 prudential standards. 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 determine new prudential standards applicable to private health insurers, to give effect to the transfer of relevant PHIAC functions to APRA. The prudential standards 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.