

Australian Prudential Regulation Authority

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DEPUTY CHAIRMAN

10 June 2015



Committee Secretary
Senate Economics Legislation Committee
PO Box 6100 Parliament House
CANBERRA ACT 2600

Dear Sir or Madam

**Inquiry into the Private Health Insurance (Prudential Supervision) Bill 2015 [Provisions]
and related bills**

APRA provides this letter and submission to assist the Senate Economics Legislation Committee in its consideration of the Private Health Insurance (Prudential Supervision) Bill 2015 and related bills.

APRA has been working closely with the Private Health Insurance Administration Council, Department of Health, Treasury, Department of Finance, and the private health insurance industry since it was announced by the Government in May 2014 that APRA would assume responsibility for the prudential regulation of the private health insurance industry from 1 July 2015.

There has been a high level of co-operation and support provided by the various stakeholders in preparing for the transition of responsibilities to APRA.

APRA has consulted with the private health insurance industry on draft prudential standards, which are based on the principle of minimal change from the existing PHIAC equivalent requirements. This means that there will be little disruption for the private health insurance industry, as substantively the same prudential regulatory requirements will apply following the transfer of PHIAC's prudential supervision responsibilities to APRA.

The transfer of responsibilities will be facilitated by ongoing support from the staff currently employed at PHIAC, the majority of whom will automatically transfer to APRA. This will help ensure that necessary expertise and experience is retained, and so the transition for the private health insurance industry will be seamless and effective.

APRA has been actively involved in the development of the proposed legislation, and supports the bills now before Parliament as they impact APRA.

APRA and PHIAC have engaged extensively over the last year and much work has been completed in preparation for the transfer. APRA's view is that it is important that the package of legislation is passed and the transfer proceeds on 1 July 2015 to maintain the momentum of the work undertaken to date and to provide clarity and certainty to the industry, and to PHIAC and APRA staff.

In short, APRA is ready and well-prepared to assume the responsibilities proposed for it.

Yours sincerely



Australian Prudential Regulation Authority

Inquiry into the Private Health Insurance (Prudential Supervision) Bill 2015 [Provisions] and related bills

Submission to the Senate Economics Legislation Committee

10 June 2015



Inquiry into the Private Health Insurance (Prudential Supervision) Bill 2015 [Provisions] and related bills

Introduction

APRA is the prudential regulator of banks, credit unions, building societies, general and life insurance companies and the majority of the superannuation industry in Australia. Its core mandate is to establish and enforce prudential standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by the financial institutions it supervises are met within a stable, efficient and competitive financial system. From 1 July 2015 APRA will assume responsibility for the prudential regulation of the private health insurance (PHI) industry, subject to the passing of the Private Health Insurance (Prudential Supervision) Bill 2015 and related bills.

This submission outlines the work done to date in preparation for these changes, and in particular the work undertaken by APRA on:

1. Legislation;
2. Prudential and Reporting frameworks;
3. Consultation with the Private Health Insurance (PHI) industry;
4. Broader engagement with the PHI industry; and
5. PHIAC staff.

1. Legislation

Key points

- The Private Health Insurance (Prudential Supervision) Bill 2015 establishes a framework for the prudential supervision of private health insurers based on relevant provisions in the *Private Health Insurance Act 2007* and APRA's current legislation for the supervision of regulated institutions (for example, the *Life Insurance Act 1995*). This includes the power to make prudential standards and rules currently made by PHIAC, and other measures common to prudential supervision legislation, such as a requirement for private health insurers to be registered, power to give directions and external management powers in relation to insolvent health benefits funds.
- APRA will also take over responsibility for the administration of the risk equalisation trust fund.
- The transitional legislation accompanying the Bill ensures that private health insurers will not have to re-register as a result of the transfer of responsibilities to APRA, and that any processes commenced under the Private Health Insurance Act (such as amalgamations of health benefits funds) continue under the new legislative regime.
- Reporting obligations of private health insurers will come under the *Financial Sector (Collection of Data) Act 2001*, which will enable APRA to collect from private health insurers all the data currently collected by PHIAC.
- The legislation also provides for the automatic transfer to APRA of the majority of PHIAC staff.

2. Prudential framework and reporting framework

Key points

- On 31 March 2015, APRA released a discussion paper outlining its proposed approach to the future prudential and reporting arrangements for private health insurers in

- Australia. The paper noted that APRA's key objective is to provide for a seamless transition of current requirements administered by PHIAC, so that substantively the same requirements will apply following the transfer of responsibilities to APRA.
- Importantly, while the discussion paper proposed some minor and technical amendments to take into account the changes proposed in the Private Health Insurance (Prudential Supervision) Bill 2015, APRA indicated a firm intention that the substance of any existing prudential regulatory obligations of private health insurers will not change at 1 July 2015 following the transfer of supervisory responsibilities to APRA.
 - Accompanying the paper were drafts of the following:
 - o prudential standards that would re-make the existing capital adequacy, solvency and prudential standards for private health insurers as APRA prudential standards. The obligations of private health insurers under the re-made prudential standards will be substantively unchanged from those under the existing capital, solvency and prudential standards contained in the Rules issued by PHIAC.
 - o APRA Rules that would re-make the existing Rules made by PHIAC (and some Rules currently made by the Minister for Health) in substantively the same form, to ensure that they continue to have effect following the transfer of responsibility to APRA. The operation of the Rules and the obligations of private health insurers would remain unchanged under the proposed APRA Rules.
 - o reporting standards that would re-make the existing reporting obligations of private health insurers as a series of reporting standards that replicate the reporting by private health insurers that is currently required by PHIAC. These reporting standards would be made under the Financial Sector (Collection of Data) Act 2001. Importantly, while the format of the relevant legal instruments would be different to the current PHIAC arrangements, the reporting obligations and methods of reporting would remain unchanged as a result of the proposals. APRA does not intend that these technical changes will cause private health insurers to change any substantive aspect of their current approach to reporting. The forms to be completed, and the instructions thereto, are substantively unchanged.
 - The discussion paper also outlined APRA's intention to continue to disseminate and publish data on a similar basis to that currently undertaken by PHIAC. To that end, the paper outlined proposals for certain data to be made non-confidential by APRA, to allow for the continued publication and dissemination given the confidentiality of data obligations imposed by section 56 (re confidentiality of data) of the Australian Prudential Regulation Authority Act 1998.

3. Consultation with the PHI industry

Key points

- Industry consultation is an important part of APRA's policy development process. APRA has consulted extensively with the private health insurance industry on its proposals for the future prudential and reporting frameworks for that industry. As noted above, APRA released a public consultation paper on 31 March 2015 and accepted submissions until 19 May 2015. During that period, APRA held face-to-face consultation sessions with representatives from the private health insurance industry in both Sydney and Melbourne on 24 April and again in Sydney on 11 May.
- APRA received 12 submissions. These provided feedback on the draft prudential standards, APRA rules and reporting standards which was largely confined to technical matters. Where appropriate, amendments will be made to reflect this feedback. None of these changes are substantive.

- A number of submissions raised issues related to APRA's ongoing approach to supervision and enforcement matters for private health insurers. In particular, submissions raised the future approach for:
 - o the Standard Operating Procedures (SOPs) promulgated by PHIAC to provide guidance on how certain enforcement powers might be exercised. In particular, industry has requested that APRA clarify the future application of the SOPs; and
 - o review of APRA decisions.
- APRA's general supervisory approach is forward-looking, primarily risk-based, consultative, consistent and in line with international best practice. Our approach to supervision involves identifying the key risks taken by supervised institutions, ensuring these risks are adequately measured, managed and monitored and assessing the adequacy of these institutions to access financial resources to withstand potential losses. APRA is conscious of the impact of its supervisory interventions can have on the operations of a supervised institution and these are generally well discussed with the institution before APRA takes action. These interventions may include imposing requirements (with or without legal force) on a supervised institution, making recommendations or suggestions and enforcement action. It is critical that APRA's interventions are proportionate to the prudential outcome desired.
- Enforcement refers to a special category of supervisory activity where specific intervention and remedial actions are pursued. These occur where APRA forms the view that an institution does not have the ability or willingness to rectify serious identified weaknesses that may threaten financial viability or safety. Enforcement activities are critical to ensuring financial promises to beneficiaries continue to be met.

Standard operating procedures

- As noted above, the SOPs provide guidance on how certain enforcement powers might be exercised by PHIAC. APRA has considered the SOPs and compared them to APRA's enforcement approach. They are broadly consistent with APRA's current practices and approach to taking enforcement action.
- APRA does not see a need to update the SOPs following the changes in legislation and they will remain available as guidance on the APRA website. APRA will have regard to the SOPs when considering enforcement action in the future, to the extent that they remain relevant under the revised legislation.

Review of APRA decisions

- Private health insurers will have a range of review mechanisms for APRA decisions available:
 - o In all cases, an insurer can apply to APRA for internal reconsideration of a decision. This is a streamlined, low cost and less legalistic review mechanism than AAT or judicial review.
 - o For many decisions, application may be made to the Administrative Appeals Tribunal (AAT) for review.
 - o Rights to judicial review of decisions are also available in certain circumstances.
- In APRA's experience, applications to the AAT are extremely rare. In APRA's view, this outcome is a demonstration of the effectiveness of the consultative supervisory approach outlined above.
- Consistent with the relevant legislation for other APRA-regulated industries, the PHI (PS) Bill does not provide for AAT review of certain types of decisions.

In particular, it does not provide for AAT review of supervisory decisions made under APRA prudential standards.

- Some submissions argued that certain decisions made under prudential standards should be made subject to AAT review.
- Based on APRA's experience with other industries, it is critical that APRA can act with certainty and in a timely manner to address identified prudential concerns, particularly where they relate to financial safety and stability concerns. Thus, as a matter of principle, APRA does not agree that supervisory decisions of this type should be subject to AAT review. In APRA's view, the review rights specified in the PHI (PS) Bill, together with APRA's internal review processes and the availability of judicial review, provide an appropriate set of checks and balances on APRA decision making.
- Submissions also addressed the proposed process to enable sharing of insurer-specific industry data, consistent with PHIAC's current practice which relies on the express or implied consent of the individual insurer's involved. APRA had proposed to continue to share this information with insurers using a mechanism that would not require consent from each insurer by determining the data to be non-confidential. In light of industry feedback, however, APRA now proposes to adopt a similar process to the current one and will seek explicit consent from each insurer. We believe this will largely allay residual industry concerns regarding potentially commercially sensitive information being made public.
- To provide clarity and certainty for the industry, APRA intends to release a public response to submissions and our proposed final requirements in the week commencing 15 June 2015. These proposed final requirements will necessarily be subject to any changes necessary to comply with the final form of the legislation.

Continued availability of information

- Submissions noted the importance of the continued availability of the current information (for industry, consumers and others). APRA will continue to collect all the data currently collected by PHIAC and will continue to publish all of the PHIAC statistical publications. APRA has an important public information function enshrined in section 3 of the Financial Sector (Collection of Data) Act, one of the objects of which is to enable APRA to collect data for the purposes of publication. The extensive statistical publications relating to other industries regulated by APRA that is available on the APRA website illustrates the approach taken.
- In addition to statistical publications, PHIAC currently provides a variety of consumer information on its website. Much of this information is provided via a click-through link to the PHIO website, www.privatehealth.gov.au. These arrangements will be continued. For example, the link to the "comparison tool" for consumers to compare private health insurers on www.privatehealth.gov.au will be maintained¹ as will the link to FAQs on www.privatehealth.gov.au. Much of the remaining consumer information will continue to be provided directly by APRA. For example, the list of registered private health insurers will continue to be published; and the consumer statistics will continue to be provided. The responsibilities for the update and hosting of the www.privatehealth.gov.au website will transfer to

¹ Note that the comparison is not based on PHIAC data but instead on the Standard Information Statements (SIS) private health insurers are required to make available to the public.

the Office of the Commonwealth Ombudsman ('OCO'). The OCO will retain all consumer information on the www.privatehealth.gov.au website as is.²

4. Broader Engagement with the PHI industry

Key points

- APRA's engagement with the private health insurance industry in collaboration with PHIAC staff has been ongoing. There have been quite a number of meetings held with the boards and management of private health insurers and with other private health insurance industry participants, including actuaries, industry associations and key service providers.
- Our main aim in undertaking this engagement has been to discuss APRA's regulatory and supervisory approach with the private health insurance industry and to make it clear that APRA intends that the transition of prudential regulation from PHIAC to APRA will be relatively seamless, with minimal changes to prudential and reporting requirements, as explained above.
- APRA has attended and presented at private health insurance industry conferences, including those organised by Private Healthcare Australia and hirmaa, to interact with private health insurance industry participants and ensure APRA's approach is well understood by the private health insurance industry, as well as to enhance APRA's understanding of the private health insurance industry. The conferences have given APRA opportunities to provide clarity, and deliver relevant messages, to a wide range of private health insurance industry participants at the same time.

5. People

Key points

- With the proposed transfer of private health insurance prudential supervision to APRA, APRA undertook a review of PHIAC employment terms, functions and roles to be transferred, to ensure there was no overall detriment for PHIAC staff.
- No PHIAC staff member will receive a decrease in remuneration on transfer to APRA.
- Of PHIAC's 34 FTE:
 - o 20 staff in the following teams will transfer permanently to APRA: Supervision, Actuarial, Policy, Premiums Research, Data Collection/Statistics, Legal, Enforcement, IT;
 - o 5 staff in the following teams will temporarily transfer to APRA for 6-12 months to assist with transition: Finance, Human Resources, Web and Records Management;
 - o Remaining staff, and statutory office holders, will be retrenched by PHIAC, or by operation of the legislation, on dissolution of PHIAC, including the Commissioner and Council members, Council Secretary, CEO, Personal Assistant, Director of Research and Research Officer.
- APRA has indicated that work will be transferred from the Canberra office over a period of up to 3 years. APRA is encouraging permanent staff to move to Sydney or Melbourne and will provide appropriate support for this. APRA will give 6 months' notice to each person when their role is to transfer from Canberra to either Sydney or Melbourne. If they choose not to transfer, they will be made redundant.

² The Department's submission to the Senate Inquiry into the PHIO Bill addressed this, as did the Minister's introduction speech and the speech when it was introduced into the Senate.

- As part of the assimilation of PHIAC staff into APRA, APRA and PHIAC have undertaken a number of activities aimed at facilitating knowledge transfer and developing a shared understanding of private health insurance between PHIAC and APRA staff members. PHIAC have conducted training sessions for APRA staff, and APRA will be placing some current APRA staff members into the PHIAC office following the passage of legislation to further assist with knowledge transfer.
- Further, APRA has a team of around 14 staff who undertake a range of industry analytical activities to assist our front line supervision teams - this team will extend its activities to the private health insurance industry once the legislation is passed.