



Australian Government
Department of Health

SECRETARY

11 June 2015

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

Dear Secretary

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

Thank you for the opportunity to provide a written submission to the Senate Economics Legislation Committee's inquiry into the *Private Health Insurance (Prudential Supervision) Bill 2015 and related bills*.

Please find attached the Department of Health's submission to this inquiry.

Yours sincerely

Martin Bowles PSM

SENATE ECONOMICS LEGISLATION COMMITTEE

INQUIRY INTO:

**PRIVATE HEALTH INSURANCE (PRUDENTIAL SUPERVISION) BILL 2015 AND
RELATED BILLS**

SUBMISSION BY THE AUSTRALIAN GOVERNMENT

DEPARTMENT OF HEALTH

11 JUNE 2015

Introduction

The *Private Health Insurance (Prudential Supervision) Bill 2015* (Prudential Supervision Bill) creates a regime for the prudential regulation of private health insurers by the Australian Prudential Regulation Authority (APRA).

The *Private Health Insurance (Prudential Supervision) (Consequential Amendments and Transitional Provisions) Bill 2015* (Consequential Amendments and Transitional Provisions Bill) makes consequential amendments to relevant legislation including the repeal of the provisions relating to the formation of the Private Health Insurance Administration Council (the Council) in the *Private Health Insurance Act 2007* (PHI Act). It also provides for necessary transitional arrangements to facilitate the transfer of the Council's prudential functions to APRA from 1 July 2015.

The *Private Health Insurance Supervisory Levy Imposition Bill 2015* (Supervisory Levy Imposition Bill), the *Private Health Insurance (Risk Equalisation Levy) Amendment Bill 2015* (Risk Equalisation Levy Bill) and the *Private Health Insurance (Collapsed Insurer Levy) Amendment Bill 2015* (Collapsed Insurer Levy Amendment Bill) provide for the continued imposition of levies upon the private health insurance industry.

In 2015-16, these levies will continue to be collected as currently calculated under their respective legislation, and are required to ensure adequate funding of APRA's supervision of the industry, the establishment of the Risk Equalisation Special Account (currently the Risk Equalisation Trust Fund) and to fund costs associated with a collapsed insurer, should this occur. Ahead of the 2016-17 financial year (and each subsequent financial year), consistent with the determination of APRA's other supervisory levies, Treasury and APRA will consult with the private health insurance industry on the appropriate supervisory levy rates to apply for that year.

Background

The Council is the prudential regulator of the private health insurance industry in Australia. It was first established in 1989, under the *National Health Act 1953* and continues its operations under the PHI Act.

The Council is responsible for monitoring the prudential performance of registered private health insurers. As part of the *Smaller Government – additional reductions in the number of Australian Government bodies* initiative announced as part of the 2014-15 Budget, the Council will cease to exist as a separate body, and its prudential supervisory functions will be transferred to APRA.

Impact of the bills

Impact on private health insurance consumers

These changes will not affect private health insurance policy holders. The private health insurance industry will continue to be regulated as currently provided under the PHI Act, with APRA as the new prudential regulator. All the same rules and procedures that the Council currently use to assist consumers, including publishing information relating to health benefit funds, will be re-made by APRA in substantively the same form. Additionally, most of the Council's public presence via the internet will also transition to APRA, with only changes to reduce duplication and removal of redundant information being made. Where any information that is important to consumers or industry and is not being transferred to APRA from PHIAC, it will be available on the Department of Health website.

Additionally, and separate to the transfer of functions of the Council to APRA, the consumer website privatehealth.gov.au, which is currently maintained by the Private Health Insurance Ombudsman, will also continue to operate as it does now.

Impact on private health insurers

Private health insurers will only be impacted to the extent that the regulatory requirements that they are currently subject to under the Council will now be imposed on them by APRA. To minimise disruption, and to ensure that the valuable knowledge held by Council staff regarding the regulation of the private health insurance industry is maintained and transferred to APRA, [26] of the allocated [33] staffing positions (around 80 per cent) are expected to transfer from the Council to APRA from 1 July.

Private health insurers who are compliant with the current prudential framework will not need to take any steps in order to be compliant when the new prudential framework begins on 1 July 2015. APRA has communicated to industry that there will be no substantive changes to any existing regulatory obligations for private health insurance industry as a whole before 1 July 2016. Any changes after 1 July 2016 will only be made following consultation with the private health insurance industry.

The private health insurance industry has been extensively consulted throughout the development of this legislation.

Impact on government agencies

Government agencies affected by the legislation include the Council, APRA, Treasury and the Department of Health. All of these agencies have been closely involved in the transition process and have had representation on both the Working Group (and relevant sub-committees) and the Steering Committee that were established to manage the transition of the Council's prudential supervisory functions to APRA.

Financial Impact

It is expected that this package of bills will, over time, generate savings for the private health insurance industry, compared to costs that would have otherwise been faced, through increased efficiencies and savings on 'back-office' expenses. Before these savings can be realised, however, a number of expenses related to the transfer of functions to APRA must be dealt with. Once all of these transitional expenses have been finalised any administrative savings will be passed onto industry.

Transitional Arrangements

The Consequential Amendments and Transitional Provisions Bill provides a number of transitional provisions to ensure the smooth transition of functions from the Council to APRA. These provisions are required to ensure that actions undertaken, or deemed to be undertaken, under the old regime immediately before the transition time are taken to be accepted under equivalent provisions in the Prudential Supervision Bill.

Implications of the bills

Private Health Insurance Act 2007

The PHI Act has been amended to abolish the Council and repeal provisions relating to the Council and its functions and responsibilities. These provisions are being repealed as they will be redundant and most are being reproduced, with any necessary changes, in the Prudential Supervision Bill.

The whole of the PHI Act will continue to be administered through Administrative Arrangements Orders by the Department of Health (despite APRA's role under some provisions relating to levies). An inter-departmental agreement is planned to be used to clarify Health and APRA's roles under the PHI Act.

Risk Equalisation Levy and Risk Equalisation Special Account

The *Risk Equalisation Levy Act* provides for the imposition of the Risk Equalisation Levy on private health insurers.

The Risk Equalisation Levy supports funding for the Private Health Insurance Risk Equalisation Special Account (currently known as the Risk Equalisation Trust Fund). The purpose of the Risk Equalisation Special Account is to ensure that no insurer is unduly impacted by costly claims because of the risk profile of its members. It does this by allowing for internal cross-subsidisation for aged, chronic and long-term acute care patients and other high-cost policy-holders within the private health insurance industry. This assists insurers to offset the effects of complying with the principle of community rating established under the PHI Act.

Part 6-7 of the PHI Act is being amended to establish a Private Health Insurance Risk Equalisation Special Account (Special Account). The Special Account will replace the Private Health Insurance Risk Equalisation Trust Fund. The Health Minister will retain overall policy responsibility for the Special Account, with APRA having a similar role administering the Special Account as the Council had administering the Risk Equalisation Trust Fund.

A Special Account is an appropriation mechanism that notionally sets aside amounts within the Consolidated Revenue Fund for expenditure for specific purposes. The conversion of the Risk Equalisation Trust Fund into a Special Account is required due to the different financial arrangements of APRA and the Council.

The Council is a legally separate entity to the Commonwealth and can hold money on its own behalf separately from the Consolidated Revenue Fund. APRA however, as a Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013*, holds money on behalf of the Commonwealth.

While APRA will not assume any of the Council's existing powers under Division 313 of the PHI Act, it will have the power to investigate concerns in relation to the Risk Equalisation Levy (Part 6 of the Prudential Supervision Bill).

Council Administration Levy

The Consequential Amendments and Transitional Provisions Bill repeals the *Private Health Insurance (Council Administration Levy) Act 2003*. This Act provided for the imposition of the Council Administration Levy by the Council. This function is redundant in light of the introduction of the Private Health Insurance Supervisory Levy to be imposed by APRA under the Supervisory Levy Imposition Bill. The Consequential Amendments and Transitional Provisions Bill also amends the *Financial Institutions Supervisory Levies Collection Act 1998* to cater for the collection of the Private Health Insurance Supervisory Levy by APRA.

Collapsed Insurer Levy

The Collapsed Insurer Levy Amendment Bill amends the *Private Health Insurance (Collapsed Insurer Levy) Act 2003* to replace references to the Council with references to APRA. The Administrative Arrangements Orders adjoining the *Private Health Insurance (Collapsed Insurer Levy) Act 2003* will also be amended to reflect that the Act is now the responsibility of the Treasurer rather than the Health Minister.

The Consequential Amendments and Transitional Provisions Bill amends the *Australian Prudential Regulation Authority Act 1998* to create a Special Account for the administration of the collapsed insurer levy by APRA. Amendments have also been made to the PHI Act and the *Financial Institutions Supervisory Levies Collection Act 1998* to provide for APRA to collect the Collapsed Insurer Levy under that Act. This was previously the responsibility of the Council under the PHI Act.

Additional Information

Application of the Financial Sector (Collection of Data) Act 2001

Consistent with the deregulation agenda, the Government's policy is to harmonise and streamline legislation, rather than creating separate reporting requirements. This will reduce administration costs for APRA which means that in the longer term the industry will benefit from these efficiencies.

All APRA reporting requirements are currently imposed under the *Financial Sector (Collection of Data) Act 2001*, and to ensure consistency, this will be the case for private health insurers. The *Financial Sector (Collection of Data) Act 2001* enables APRA to make reporting standards, under legislative instruments, which can be adapted if required.

Reporting and Data Requirements

Under the Prudential Supervision Bill, APRA is required to publish information relating to health benefits funds. This will reflect the current requirements applying to the Council in relation to content (previously section 264-15 of the PHI Act). Accordingly the legislation will provide for APRA to continue the publication of the annual report on the operations of private health insurers.

The legislation also provides for APRA to continue to provide the data that the Council made available to insurers. This includes the reports known as 'PHIAC 1' and 'PHIAC 2' which were provided to insurers on a quarterly basis. It is acknowledged that this data helps to build industry knowledge of market shares and activity levels, age and gender profiles of membership, and claims experience which have an important impact on market performance.