

Table 1: Issues raised in industry submissions to the inquiry into the Private Health Insurance (Prudential Supervision) Bill 2015 and related bills and response

Issue	Response
<p>Continued provision of data</p>	<p>Industry sought the retention of existing provisions in the <i>Private Health Insurance Act 2007</i> to ensure that the disclosure of public information currently undertaken by PHIAC can continue.</p> <p>Amendments to the <i>Financial Sector (Collection of Data) Act 2001</i> will enable APRA to continue collecting the data which PHIAC currently collect.</p> <p>APRA will have the power to continue to make available the same data as currently provided under provisions in the <i>Australian Prudential Regulation Authority Act 2001</i>.</p> <p>Further, section 167 of the Private Health Insurance Prudential Supervision Bill 2015 (the bill) requires APRA to publish an annual report on the operation of private health insurers.</p> <p>For further details see paragraphs 10.6-10.13 and paragraphs 11.55-11.57 of the Explanatory Memorandum.</p>
<p>Penalties under <i>Financial Sector (Collection of Data) Act 2001</i> are ‘significantly higher’ than those currently in place, including a penalty of up to five years</p>	<p>Given the Government’s decision to transfer the prudential regulation of the private health insurance industry to APRA it is appropriate that APRA administered legislation that applies to all industries regulated by APRA also apply to the private health industry. It would be inappropriate and inefficient to grant exemptions to particular industries in relation to general legislation.</p> <p>Furthermore, penalties in the <i>Financial Sector (Collection of Data) Act 2001</i> largely resemble the penalties in the <i>Private Health Insurance Act 2007</i>.</p> <p>For example, the <i>Private Health Insurance Act 2007</i> provides for a penalty of up to 60 penalty units for the offence of failing to lodge a census day return for a levy, and the corresponding penalty under the <i>Financial Sector (Collection of Data) Act 2001</i> is up to 50 penalty units (subsection 13(9)).</p> <p>One of the provisions which industry has raised concerns about is section 17 D of the <i>Financial Sector (Collection of Data) Act 2007</i>, which provides for custodial sentences of up to five years. However this provision is applicable only where an attempt has been made to give false or misleading information to an auditor. This provision is modelled on section 1309 of the <i>Corporations Act 2001</i>. This provision does not apply in relation to the audit of business-as-usual reporting documents.</p>

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<p>Power to determine remuneration of external managers is too broad (subsection 77(3))</p>	<p>Subsection 77(3) mirrors subsection 296-1(1)(b) of the <i>Private Health Insurance Act 2007</i>. This gives APRA the power when a health benefits fund is in external management to determine how the external manager will be paid. Unless APRA or the court determines otherwise, remuneration will be paid out of the health benefits fund.</p>
<p>Private Health Insurance Supervisory Levy (previously PHIAC Administration Levy)</p>	<p>APRA is a cost recovered agency and is subject to the Government's Cost Recovery Guidelines (CRGs). Under the CRGs, APRA's supervisory levies are set at a level that enables APRA to offset their costs of regulating an industry, with any over- or under- recovery of levies from industry corrected in the subsequent financial year.</p> <p>The transfer of PHIAC's regulatory functions to APRA will, over time, result in increased efficiencies and lower costs than would have been the case under the previous arrangements. However, in 2015-16 the sum of APRA's transitional costs and supervisory costs are expected to equal the amount already legislated to be recovered from the private health insurance industry in 2015-16. These transitional costs are broadly related to the movement of staff and the transfer of IT and equipment from PHIAC to APRA. As future savings are realised by APRA, they will be reflected in lower levies for the private health insurance industry.</p> <p>In addition, APRA's ongoing costs of supervision for the private health insurance industry will be transparently communicated in the Government's annual consultation paper on the Financial Institutions Supervisory Levies. This process will provide the private health insurance industry with the opportunity to engage with the Government on the industry's total levy payable, as well as the distribution of the levy within the private health insurance industry.</p>
<p>Collapsed Insurer Levy</p>	<p>The power to impose the Collapsed Insurer Levy on industry currently lies with the Minister for Health with PHIAC being responsible for its administration and is used should a private health insurer become insolvent. The Collapsed Insurer Levy will be imposed by the Treasury Minister and become the responsibility of APRA through the transfer, and does not represent a new levy for the private health insurance industry.</p> <p>Through the Collapsed Insurer Levy, APRA would seek to raise funds to ensure as far as possible that it is possible to satisfy collapsed insurer's liabilities to members insured under its complying health insurance policies, as well as APRA's costs of administering the levy. This is consistent with the operation of the Financial Claims Scheme levy.</p> <p>APRA would seek to recover the costs of administering the levy to ensure that, in line with the Government's CRGs, these costs are not offset with revenue collected from other industries supervised by APRA that should be spent solely on those industries.</p>

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PHIAC Reserves	<p>The Consequential Amendments and Transitional Provisions Bill contains provisions to enable the transfer of the assets and liabilities of PHIAC to APRA (Division 2, item 22). Should certain assets or liabilities not be required to transfer to APRA the relevant Treasury Minister has the power to vest these with the Commonwealth. This is a generic power to provide flexibility should assets or liabilities be identified that should not transfer to APRA. It is the Government's intention to credit all remaining cash reserves (as an asset of PHIAC) held by PHIAC at 30 June 2015, to the APRA Special Account.</p>
Interest earned on Risk Equalisation Pool	<p>As part of the transfer of PHIAC's functions to APRA, the Risk Equalisation Trust Fund will be abolished and replaced with the Risk Equalisation Special Account. This brings the treatment of the risk equalisation pool into line with current practices in relation to funds administered for a special purpose.</p> <p>This is necessary because PHIAC is legally separate to the Commonwealth and could therefore hold money, and earn interest, on the risk equalisation pool (which was held outside consolidated revenue fund) its own behalf.</p> <p>APRA, as a Commonwealth entity holds money on behalf of the Commonwealth (subsection 11(5) of the Australian Prudential Regulation Authority Act 1998). As a result, APRA does not earn interest on any money that it collects.</p>
Scope of directions power (section 97) – including the meaning of 'financial accommodation'	<p>The scope of the direction-making powers, including the meaning of 'financial accommodation' in this context, is limited by the extrinsic materials, including the Explanatory Memorandum.</p> <p>Paragraphs 5.27-5.33 of the Explanatory Memorandum provide context for the scope of the direction making powers. Paragraph 5.33 states that APRA would generally only give a direction where there is a serious prudential concern. For example, a direction not to issue a policy or to refrain from providing financial accommodation would normally only be given to prevent the insurer from increasing its exposures where there is a serious financial concern that affects the interests of policy holders.</p>
Revocation or variation of a direction given by APRA – formal right of review of a direction (section 96)	<p>There is a formal right of review in relation to directions under paragraphs 96(1)(a), (b) or (c) of the bill.</p> <p>A decision to refuse to revoke or vary is reviewable if the direction was given under paragraphs 96(1)(a), (b) or (c), see section 168, item 10 of the table of reviewable decisions of the bill.</p>

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Administrative Appeals Tribunal (AAT) reviewable decisions – reviewable nature of a refusal to agree to a variation or revocation of an enforceable undertaking (section 168)	<p>Enforceable undertakings are a remedy that APRA can use as an alternative to pursuing legal action in court. Insurers can decide not to enter into an enforceable undertaking.</p> <p>APRA requires certainty when entering into enforceable undertakings to ensure that APRA can use enforceable undertakings to finalise issues and to avoid ongoing litigation. See paragraph 8.7 of the Explanatory Memorandum.</p>
Investigations by APRA – change in powers in the new legislation (section 130)	<p>The investigation powers for APRA do not depart from the <i>Private Health Insurance Act 2007</i>. The new provisions combine the powers in Divisions 194 and 214 of the <i>Private Health Insurance Act 2007</i> (which will be repealed under the Consequential Amendments and Transitional Provisions Bill) as explained in paragraphs 7.7, 7.18 and 7.19 of the Explanatory Memorandum.</p>