Private Healthcare Australia
Better Cover. Better Access. Better Care.

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Hon Dr Michael Armitage
CHIEF EXECUTIVE OFFICER

Mr Pat Brennan
General Manager,
Policy Development Policy, Statistics and International
Australian Prudential Regulation Authority
GPO Box 9836
SYDNEY NSW 2001

Dear Mr Brennan,

Private Health Insurance Changes

Thank you for the opportunity to comment on the latest batch of proposed documentation to transfer the functions of the Private Health Insurance Administration Council (PHIAC) to the Australian Prudential Regulation Authority (APRA).

Private Healthcare Australia is the Australian private health insurance industry's peak representative body that represents 21 health funds throughout Australia and collectively covers approximately 97% of the private health insurance industry. Private health insurance today provides healthcare benefits for over 13 million Australians.

Our goal is to ensure that private health insurance members receive the best possible healthcare at the best possible prices.

We note that the PHIAC-APRA transition is a "machinery of government" change with no intended impact on the industry, apart from reducing the impost on the industry.

Throughout the consultation process regarding the PHIAC-APRA transition, the industry has maintained a strong position that our preference is to retain the status quo. This position has been backed by all stakeholders, including APRA.

APRA has, however, asked for legislative changes to ensure "consistency" with other industries that you regulate. Wherever possible, and for the most part, the private health insurance industry has compromised and accepted your "consistency" positions.

Unfortunately, the drive for "consistency" with other industries regulated by APRA is likely to result in an increase in red tape for the private health insurance (PHI) industry.

PHI is a "social" not "financial" good, with very different underpinnings from other industries regulated by APRA. Unlike other industries, PHI has had NO major issues that have impacted detrimentally on consumers. In fact, a number of consumer protections provisions are inbuilt into product design and operation of private health insurance (eg community rating, portability, etc.) outside of the pure prudential framework.

We note APRA's publicly stated position that there will be "no substantive changes to the prudential standards, rules or reporting arrangements".

This letter confirms our discussions to date on the following concerns in your consultation package:

1) Data provision and confidentiality;

2) Continued AAT reviewability of prudential decisions;

3) Other; and
4) Important questions unanswered.

1 Data Provision & Confidentiality

Please provide a simple legislative provision to ensure that the regulator continues to provide detailed quarterly data provided for over 25 years to the individual health funds and Private Healthcare Australia, while ensuring this data remains confidential and unable to be the subject of any Freedom of Information requests.

The issue was introduced in the draft legislation proposed by APRA/Treasury that seeks to capture PHI data collection requirements under the Financial Sector (Collection of Data) Act.

The industry has asked for this to be changed since it was proposed in January. The industry has accepted APRA and Treasury's assurances that there will be no change to the current arrangements and that including the industry in these Acts simply allows APRA to collect data. Given these repeated assurances, it is appropriate to request that this change be removed so that the status quo can continue.

The industry wants to continue the current arrangements, which are important for transparency. For example,

- data/calculation anomalies are immediately picked up by other insurers and/or Private Healthcare Australia; and
- to provide contemporary data as requested by consumers, other regulators, Members of Parliament and others to show industry returns to members.

APRA's proposals are a fundamental change to longstanding, accepted practice (over 25 years). The Private Health Insurance Act 2007 (PHI Act) was drafted to permit existing practice to continue (with some specific exclusions that are not relevant to data provision). We believe that APRA's current interpretation of the PHI Act is overly narrow.

Please introduce a simple legislative provision to ensure this longstanding practice continues and continues to be confidential.

Please confirm that APRA will continue to publish the Quarterly Statistics, currently published at http://phiac.gov.au/industry/industry-statistics/quarterly-statistics/

2 AAT Reviewability of Decisions

The number of decisions that are AAT reviewable has decreased while regulatory powers have increased. As stated in our submissions on the exposure draft legislation, we believe that all existing decisions that are AAT reviewable should remain so and new regulatory powers should be AAT reviewable.

Treasury states that all decisions (except one) that are currently AAT reviewable remain so. However, we note that the APRA consultation package says that AAT reviewability has been removed for some decisions, including under HPS 100, 110 and 510 (proposed new solvency, capital adequacy and governance standards).

Please reinstate the current AAT reviewability of decisions made under HPS 100, 110 and 510, in line with APRA's commitment of "no substantive changes from the status quo".

Please ensure that all new prudential powers are AAT reviewable.

Please clarify how AAT reviewability could have been removed for some prudential decisions when Treasury states that all currently AAT reviewable decisions remain so.

To assist the industry to understand the proposed changes, please provide a document mapping all decisions and their review process currently and under the proposed new regime, under both the legislation, any subordinate legislation or otherwise.

3 Other issues

3.1 Additional Powers for APRA

The consultation documents state that APRA will now have the power to make 'adjustments and exclusions' to governance standards for individual insurers. This power does not currently exist for PHIAC. We understand that this power would enable additional governance standards to be imposed on an individual insurer without the need for consultation and further that such a decision would not be reviewable within APRA or by the AAT.

The discussion paper states that this change is being made because 'APRA adopts this approach in its prudential standards applying to other regulated industries and it is a valuable tool to ensure flexibility in, and proportionate application of, the prudential framework.' However, this is another fundamental change to the status quo and is likely to increase the red tape on the PHI industry.

We query how this aligns with APRA's publicly stated position that there will be "no substantive changes to the prudential standards, rules or reporting arrangements".

Please provide an explanation of the possible issues that APRA considers would warrant the inclusion of these new, additional regulatory powers.

Should you retain these additional powers, please ensure they (a) require industry input and discussion beforehand and (b) are reviewable within APRA and by the AAT.

3.2 Additional Scope for Confusion Between APRA/Health Roles

Some of the APRA Rules deal with areas that we have been informed come under the Department of Health's (DoH) responsibility. To have an area of DoH responsibility dealt with by an APRA Rule introduces unnecessary scope for confusion. We need to be careful to ensure that policy lines are clear and respected to avoid unnecessary overlap that doesn't correspond with APRA's prudential supervision role.

- Rule 15 of the disclosure standard comes under the DoH portfolio, not APRA. It specifically relates to community rating and is usually used because a policyholder is committing fraud.
- Registration Rule –now includes a criterion for registration that is worded differently to the current Rules and has a substantially different outcome to the current criteria. The criterion is:

> APRA can be satisfied that the rules of the applicant do not permit improper discrimination in relation to the applicant's complying health insurance policies;

This is to be contrasted with the following in the current Rules:

> information on the application provided in writing by, or on behalf of, the Secretary of the Department, including information as to whether the applicant is likely to be able to comply with the obligations imposed by or under the Act on private health insurers.

This seems to provide APRA with a role in determining whether or not the rules of the insurer are in breach of the community rating principle set out in the PHI Act. This is clearly the responsibility or role of the Health Minister and therefore the Department of Health.

The note to the provision states that APRA will consult with DoH in relation to this matter. However, given that community rating is a clear Health responsibility, it would seem more appropriate to retain responsibility for community rating within the Health portfolio and therefore DoH should provide advice to APRA on community rating, and any other Health responsibilities.

Please revert to the wording in the current Rules.

Please remove community rating from APRA's Rules so that it remains a clear responsibility of the Department of Health.

3.3 Impost Reduction for Industry

We note that the changes are proposed to reduce the impost on the industry.

Please provide details on how the impost on industry will reduce, and how PHIAC's remaining operating surplus will be returned to industry.

3.4 Cost-Benefit Analysis Information

We note your comments in Chapter 6 of your Discussion Paper. We are concerned that the current changes are being proposed to reduce the impost on the industry but that no details of this impost reduction have been provided in the consultation documents to date. We note that Treasury regularly performs this analysis for the Government as part of the Budget and Regulatory Impact Statement processes.

Please provide your estimated cost-benefit analysis for the proposed changes.

3.5 Industry's Work on Streamlining Rules

Since 2014, the industry has been discussing with Government its proposals to streamline the Private Health Insurance Rules, to remove outdated provisions and unnecessary red tape.

We understand that the proposed legislative package has been updated to ensure that references to all Private Health Insurance-related Rules are flexible enough to accommodate these changes.

We note that APRA has introduced changes from the PHIAC Rules to introduce "consistency" with other industries it regulates.

We are disappointed that the industry's work has not been included in the current Rule changes, in particular quick, easy red tape reductions. For example, it would be quick and easy to remove double notification requirements to separate Government agencies in different formats/timeframes. Further information on double notification requirements is in Attachment Two.

We look forward to progressing this work with APRA at the earliest available opportunity.

We seek a commitment that APRA will seek to implement this important work by 31 March 2016.

3.6 Changes from PHIAC Standards

The APRA Rules have introduced changes from the PHIAC Standards. It is unclear whether the changes are policy decisions or simple oversights. I have listed these below.

First, in the Governance Standard HPS 510, APRA have introduced a new adjustment and exclusions power (s46) (a similar power does not appear in the PHIAC Governance Standard). However, in the Disclosure, Actuaries and Outsourcing Standard, APRA has kept the PHIAC wording of "exemptions and modifications". This creates an inconsistent wording of the power across the standards.

We note that the adjustment and exclusions power in HPS 510 refers to a "regulated institution", where elsewhere in the Standard, "private health insurer" is used.

Please provide an explanation for why these changes were thought necessary and remove the identified inconsistencies.

Secondly, the proposed new Governance Standard has taken the example objectives for Board performance assessment from the PHIAC standard and made them into numbered sections (see s31 and s32 of HPS 510).

Under the PHIAC Governance Standard, these examples were for guidance only, and not enforceable as they were not a formal part of the instrument. Given they are now numbered sections under HPS 510, their status as guidance material only may have changed.

Please ensure that the examples retain their "guidance" nature.

On the other hand, the example under s22 of HPS510 has not been numbered. We don't understand the reason for this inconsistency, or is it a simple oversight?

Please provide an explanation how this operates.

Thirdly, the new PHI (Risk Equalisation Administration) Rules do not specifically detail risk equalisation jurisdiction rules. This area was captured previously under Section 5 of the outgoing PHI (Health Benefit Fund Administration) Rules 2007.

Please clarify where the governing authority for risk equalisation jurisdictions will now be found.

We assume that they will be covered now under the Department of Health's updated Private Health Insurance Rules. Could you please advise us when we will see, and be provided with the opportunity to provide feedback on, this important part of the proposed legislative change package?

Fourthly, the "Part 3 – Transition" section within APRA's draft Private Health Insurance (Risk Equalisation Administration) Rules. The current rules as detailed by Part 3 of the outgoing Private Health Insurance (Health Benefit Fund Administration) Rules 2007 refer to quarterly returns and the requirement pertaining to both the form of these reports, as well as independent audit requirements.

However, the definition of "Quarterly Return" within the new rules now refers to the Financial Services (Collection of Data) Act 2001.

Please confirm that, as stated within Part 3 – Transition, the quarterly returns and independent audit process will remain as is.

4 Important Questions Unanswered

The current exposure material does not provide details about some fundamental aspects of private health insurance industry regulation or how its regulation will be affected. These include the following issues.

4.1 Premium Change Process

The annual premium change process is another area that differs significantly from other APRA-regulated industries. The process begins around August each year, ahead of an announcement before March.

The premium change process is a significant part of the current operation of private health insurers and it is vital that the industry understands exactly how this process will be managed going forward, including for the 2015/16 year.

This uncertainty is likely to increase compliance costs for the industry, impacting premiums.

We would like to understand how the system will be administered/managed going forward, noting the fundamental differences between health (a social good) and the financial goods that APRA currently regulates.

Our understanding is that the Department of Health will undertake this process. Please confirm so that we can request further details from DoH regarding the 2016 premium setting process and beyond.

4.2 Standard Operating Procedures

The Standard Operating Procedures (SOPs) were drafted by PHIAC in consultation with the industry and provide the following benefits:

- reduce confusion; and
- increased goodwill between the regulator and the industry.

The SOPs detail how conflicts will be dealt with by the regulator.

We note that APRA has stated the SOPs align with its enforcement approach. Given these parallels, it should be a simple process for APRA to update the SOPs and/or map them to its proposed approach.

Please provide the proposed new process for dealing with regulatory issues and a map of how the SOPs align with APRA's proposed approach.

Any attempt to remove/not update the SOPs introduces unnecessary confusion.

The industry has a strong preference to continue using the SOPs, as they have been a useful and successful regulatory tool.

4.3 Risk Equalisation

Risk Equalisation is an important support for community rating, which underlies the Australian private health insurance system. It deals with large amounts of money on a quarterly basis. It differs significantly from other APRA-regulated industries.

We would like to understand how the system will be administered/managed going forward, including how insurers will continue to be given the appropriate data to:

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- benchmark and understand risk equalisation outcomes; and
- note if it is out of kilter with the rest of the industry on a State-by-State and quarter-by-quarter basis (may indicate eg data/business issues).

Please provide details on how this will be managed going forward.

4.4 Any Industry Analysis Performed By PHIAC But Not Yet Finalised Or Published

We note that PHIAC engages in a considerable amount of industry analysis and not all of this has been finalised or published.

Please provide details on what will be done with this industry analysis.

We remain concerned that the exposure draft material will result in increased industry regulation, contrary to the Government's stated objective to reduce red tape and regulation. Given that there is no proposed reduction in the levy on the industry, we query whether the proposed documentation as currently drafted will fulfil the Government's objectives.

Given that we have access to only part of the package, our current comments are interim in nature. We look forward to receiving the rest of the package of regulatory changes, including DoH's proposed Rule changes, the updated APRA documents and the final draft legislation, so that we can provide you with our full comments and feedback.

We are keen to meet with you to further discuss ways to ensure that the PHIAC to APRA legislative package reduces red tape and unnecessary regulation. Please contact me on 6202 1000 with any queries.

Yours sincerely,

Michael Armitage

HON DR MICHAEL ARMITAGE

CHIEF EXECUTIVE OFFICER

18.5.15

Attachment One:	Data – More Information
Attachment Two:	Double Notification Requirements
Cc:	Martin Codina, Chief of Staff for the Assistant Treasurer
	Martin Bowles PSM, Secretary, Department of Health
	John Fraser, Secretary, Treasury

ATTACHMENT ONE: Data – More Information

PHIAC has provided industry data back to the industry for benchmarking and monitoring purposes around Risk Equalisation (formerly known as reinsurance) for over 25 years.

Data Uses

The funds and Private Healthcare Australia use the data to:

- understand, benchmark and estimate risk equalisation outcomes;
- estimate trends in the drivers of quarterly risk equalisation payments (which can vary greatly depending on system issues in the big insurers);
- respond effectively to consumer, media and MP enquiries;
- inform epidemiological research within industry in the pursuit of efficacious quality healthcare;
- protect consumers of private health insurance;
- rapidly identify any data quality anomalies; and
- rapidly identify formula/calculation errors the regulator may have made.

Private Healthcare Australia compiles the data to provide consumers and health funds with key industry statistical information, including:

- hospital benefits and out of pocket per person/episode;
- breakdown of hospital treatment costs;
- breakdown of ancillary treatment costs;
- trends in chronic disease management programs;
- trends in policies with co-payments and exclusions; and
- trends in extras/ancillary benefits and out of pocket.

Data Content

- membership and benefits paid by private health insurers and details on key membership, utilisation, benefit and financial statistics on a quarterly basis;
- number of insured persons for hospital treatment and general treatment and the proportion of the population these persons represent, on both a quarterly and an annual basis, including hospital treatment by age cohort;
- data on in-hospital medical services - the proportion of services for which there was no gap or known gap and the average gap payment by State;
- data on prosthetic benefits paid by private health insurers by major prosthetic category;

- data on services, benefits paid and gap payments by MBS Specialty Block Groupings for medical services paid by private health insurers; and
- statistical trends in membership and benefits paid in two separate publications that detail trends since September 1997 in the number of insured persons and benefits paid for hospital and general treatment.

More Information

PHIAC collects four quarterly returns:

- PHIAC1 on membership and benefits paid;
- PHIAC2 on financials and capital adequacy;
- PHIAC3 prostheses stats; and
- PHIAC4 medical-service statistics.

PHIAC publishes:

- PHIACA state/national aggregates from the P1 template;
- PHIACB regurgitated PHIAC1 sets - only to insurers, with insurer-v-industry benchmarking;
- PHIAC3 state/national aggregates from the P3 template (very close);
- PHIAC4 state/national aggregates from the P4 template;
- National last-4-quarters financial performance and prudential position (as part of quarterly statistics);
- Insurers also get a financial statistical report analysis of performance across the last five quarters against rest, size peers, access peers; and
- Membership stats on policies and persons by HT/GT by state/national.

ATTACHMENT TWO: Double Notification Requirements

	Notifications Required
Notify of a change in CEO or contact details	HPS350 – Disclosure Rule 8(d) requires ASIC Form 484 to be lodged with APRA. This form contains the details of the change in CEO/contact details **Timing**: Immediate/At same time as lodging the form with ASIC
	Private Health Insurance (Prudential Supervision) Rules Part 5 Rule 16 Requires change in CEO or contact details to be notified to APRA on an APRA Form (assuming it will be the rebadged PHIAC form. Qualifications/Skills and Experience need to be attached to the form. This detail is not included in the ASIC form **Timing**: Within 28 days of the change
Notify of a change in Director or Contact details	HPS350 – Disclosure Rule 8(d) requires ASIC Form 484 to be lodged with APRA This form contains the details of the change in CEO/contact details **Timing**: Immediate/At same time as lodging the form with ASIC
	Private Health Insurance (Prudential Supervision) Rules Part 5 Rule 16A Requires change in CEO or contact details to be notified to APRA on an APRA Form (assuming it will be the rebadged PHIAC form. Qualifications/Skills and Experience need to be attached to the form. This detail is not included in the ASIC form **Timing**: Within 28 days of the change