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# ***Consultation on changes to the Private Health Insurance Act 2007***

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## **Background**

1.1 As part of the *Smaller Government – additional reductions in the number of Australian Government bodies* initiative announced in the 2014-15 Budget, the Private Health Insurance Administration Council (PHIAC) will cease to exist as a statutory body. The prudential supervision of the private health insurance industry managed by PHIAC under the *Private Health Insurance Act 2007* (PHI Act) will be transferred to the Australian Prudential Regulation Authority (APRA).

## **Legislative approach**

1.2 It is intended that a new Act, the *Private Health Insurance (Prudential Supervision) Act 2015* will be enacted, containing the provisions under which APRA will administer the prudential regulation of the private health insurance industry.

1.3 At the same time, it is intended that the *Private Health Insurance Amendment Act (No. 1) 2015* will repeal provisions of the PHI Act relating to the establishment, functions and responsibilities of PHIAC (referred to in the PHI Act as the Council).

1.4 The PHI Act will retain provisions relating to private health insurance policy such as the establishment and administration of the premiums reduction scheme (the Private Health Insurance Rebate), lifetime health cover and the rules for complying health insurance products (including the community rating principle), as well as enforcement provisions relevant for these provisions and certain reporting provisions required to support these obligations.

1.5 An exposure draft of the *Private Health Insurance (Prudential Supervision) Bill 2015* is currently available for the private health insurance industry and other interested stakeholders to review and comment on. This document complements the exposure draft by summarising the corresponding changes that are proposed to be made to the PHI Act by the *Private Health Insurance Amendment Act (No. 1) 2015*. Drafting of this amendment Act is expected to commence in January 2015.

## **Proposed changes to the *Private Health Insurance Act 2007***

### **Chapter 1: Introduction**

1.6 A number of minor amendments will be made to remove reference to matters that are no longer dealt with under the PHI Act following the transfer of the Council's functions to APRA, and also to amend any remaining references to the Council to be references to APRA.

### **Chapter 2: Incentives**

1.7 This chapter provides for incentives to encourage individuals to take out private health insurance. There are no proposed changes to this chapter of the PHI Act.

### **Chapter 3: Complying health insurance products**

1.8 This chapter details the requirements that must be met by private health insurance products that are made available to the public, including the community rating requirement. There will be a number of amendments to this chapter to remove references to the Council where they are no longer necessary. Currently, the Council has the power under section 84-10 of the PHI Act to seek an injunction from the Federal Court in relation to contraventions or potential contraventions of section 63-1 of the PHI Act (the obligation to ensure that only complying health insurance products are offered) or offences or potential offences under section 84-1 of the PHI Act (advertising, offering or insuring under non-complying policies). It is not intended that APRA will assume this power when the Council's functions are transferred to it. It is intended that the Minister for Health (and any other person) will retain the power to seek injunctions under section 84-10. It is also intended that insurers will not be required to provide standard information statements to APRA under Division 96 of the PHI Act, although APRA will have discretionary information-gathering powers under the *Private Health Insurance (Prudential Supervision) Act 2015*.

### **Chapter 4: Private health insurers**

1.9 This chapter outlines the registration of private health insurers and the obligations of registered insurers, such as the requirement to have health benefits funds and rules for the operation of funds. The Council currently administers a large number of responsibilities under Chapter 4; as such there will be significant changes to this part of the PHI Act.

1.10 It is anticipated that the following Divisions will be repealed from Chapter 4 of the PHI Act:

- the prohibition on providing private health insurance business while not registered, including the enforcement and penalties for non-compliance (Division 118);
- registration of private health insurers (Division 126);
- the requirement of insurers to have health benefits funds and the operation of health benefits funds (Divisions 134 and 137);
- the solvency and capital adequacy standards and directions for health benefits funds (Divisions 140 and 143);
- the restructure, merger and acquisition and termination of health benefits funds (Divisions 146 and 149);
- the duties and liabilities of directors of insurers as well as other obligations of private health insurers, such as the obligation to remedy contraventions of the Part notified by the Council (Division 152); and
- other obligations of private health insurers, including appointing actuaries, compliance with prudential standards and the disqualification of persons from senior management or directorship of insurers by the Council (Divisions 157, 160, 163 and 166).

1.11 The reporting and notification requirements outlined under Division 169 will also be repealed from the PHI Act, with the exception of section 169-10, which requires private health insurers proposing to change their fund rules to notify the Secretary of the Department of Health. The reference to the Council in this section will be amended to APRA, so that if the Minister directs an insurer not to change its rules a copy of that direction must be given by the Minister to the prudential regulator.

1.12 There will be a few minor amendments to Division 172 as follows:

- section 172-1 will be repealed; and
- section 172-15 will be amended to remove the references to Divisions 149, 152 and 293 as these Divisions will be repealed from the PHI Act.

1.13 It is proposed that Divisions 115 and 121 (which deal with and define ‘health insurance business’), and Division 131 (which defines ‘health benefits fund’ and ‘health related business’) will remain in the PHI Act. The Minister for Health will retain administrative responsibility for these provisions. To ensure that any change to the scope of health insurance business, health benefits funds or health related business made by the Minister for Health through delegated legislation does not have unforeseen effects on the stability of the private health insurance industry, there will be a requirement for the Minister for Health to consult with APRA prior to making any changes to rules made under these sections.

## **Chapter 5: Enforcement**

1.14 This chapter of the PHI Act currently gives the Minister for Health and the Council powers that enable them to find out whether a private health insurer is complying with its enforceable obligations under the PHI Act (or in the case of the Council, its Council-supervised obligations), and to encourage or compel an insurer to comply with those obligations. While some enforcement measures in Chapter 5 may only be exercised by just the Minister for Health or just the Council, a number of provisions may be exercised by either to the extent they relate to ‘enforceable obligations’ or ‘Council-supervised obligations’ (as appropriate).

1.15 It is anticipated that a number of Divisions will be repealed from Chapter 5, as they relate to enforcement measures exclusively administered by the Council and will be redundant following APRA’s assumption of the Council’s functions under the *Private Health Insurance (Prudential Supervision) Act 2015*. These are:

- the enforcement of health benefits fund requirements (Division 211);
- the investigation into private health insurer affairs (Division 214),
- the external management of health benefits funds (Division 217); and
- ordering of the termination of health benefits funds (Division 220).

1.16 The following enforcement-related provisions will remain in the PHI Act, although they will be amended to repeal references to the Council (where necessary) to reflect the removal of the prudential supervisory provisions from the PHI Act:

- introduction to general enforcement methods (Division 185, although the definition of ‘Council-supervised obligations’ in section 185-10 will be repealed);
- performance indicators (Division 188);
- explanation of a private health insurer’s operations (Division 191);
- investigation of private health insurer’s operations (Division 194);
- enforceable undertakings (Division 197);
- ministerial and Council directions (Division 200);
- remedies in the Federal Court (Division 203); and
- revoking entitlement to offer a rebate as a premium reduction (Division 206).

## Chapter 6: Administration

1.17 This chapter deals with a range of administrative matters under the PHI Act, including the establishment of the Council, administration of the premiums reduction scheme, external and terminating management of health benefits funds, private health insurance levies and the disclosure of information under the PHI Act. There will be significant changes to this part of the PHI Act consequential on APRA’s assumption of the Council’s functions under the *Private Health Insurance (Prudential Supervision) Act 2015*.

1.18 The following parts of this chapter will be repealed:

- all provisions under Part 6-3, which provides for the establishment and powers, functions and duties of the Council; and
- all provisions under Part 6-5, which outlines a number of administrative matters relating to the appointment and powers of external managers and terminating managers and the roles of officers and directors of insurers while a fund is under management.

1.19 Part 6-6 of the PHI Act provides for a number of private health insurance levies. The collapsed insurer, risk equalisation and Council administration levies are currently collected by the Council. It is intended

that APRA will take over the collection of these levies from 1 July 2015. Part 6-6 of the PHI Act will therefore be amended as follows:

- references to the collapsed insurer, Council administration and risk equalisation levies will be removed or amended as appropriate;
- Divisions 310 and 313 will be amended to remove requirements on insurers to provide levy-related information to the Council and also to remove the Council's enforcement powers under those Divisions;
- reference to the Council in subsection 310-5(2) will be amended to reference the Secretary of the Department, so that the Secretary will be able to approve forms in which insurers must keep levy-related records other than electronic records; and
- reference to the Council in section 313-20 will be amended to reference the Secretary of the Department, so that identity cards can continue to be issued to authorised officers for the purposes of entering premises to search for levy-related documents (in relation to those levies still administered under the PHI Act).

1.20 The arrangements for the Risk Equalisation Trust Fund are outlined in Part 6-7. It is proposed that provisions relating to the establishment of the Fund, amounts to be paid into the Fund and the operation of the Fund (including the power for the Minister to make the Private Health Insurance (Risk Equalisation Policy) Rules) will remain in the PHI Act. APRA will be responsible for the practical administration of the Fund.

1.21 The prohibition on the disclosure of information obtained by a person in the course of performing duties or functions, or exercising powers, under the PHI Act (or as a result of subsequent disclosures), and exceptions to the prohibition, are dealt with in Part 6-8 of the PHI Act. APRA and its officers will not be performing duties or functions, or exercising powers, under the PHI Act when overseeing the prudential regulation of the private health insurance industry. It will therefore be necessary for Part 6-8 to be amended to reflect this.

1.22 There are a number of decisions made by the Council under the PHI Act that can be reviewed by the Administrative Appeals Tribunal (AAT). These decisions are specified in the table to section 328-5 of the PHI Act. Where the provisions under which those decisions will be repealed from the PHI Act, the corresponding reference in the table to

section 328-5 of the PHI Act will also be repealed. Additionally, as the Minister for Health will no longer make decisions to waive late payment of the collapsed insurer levy under section 307-25 of the PHI Act, AAT review for such a decision will not be available under the PHI Act.

1.23 The PHI Act currently provides at section 333-25 for a number of Private Health Insurance Rules to be made by the Council. It is anticipated all of these Rules, or, where appropriate, equivalent prudential standards, will be made by APRA under the *Private Health Insurance (Prudential Supervision) Act 2015*, section 333-25 will be repealed in its entirety. Also, APRA will take over responsibility for making a number of rules that relate to their prudential supervision functions or associated activities. These rules, currently made under section 333-20 of the PHI Act by the Minister for Health, are:

- Private Health Insurance (Health Benefits Fund Enforcement) Rules;
- Private Health Insurance (Registration) Rules; and
- Private Health Insurance (Management) Rules.

1.24 With the abolition of the Council, the Private Health Insurance (Council) Rules, which deal with matters relating to the establishment and governance of the Council, such as terms and conditions of appointment of members, will become redundant. The table in section 333-20 will be amended to remove reference to these five rules.