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Insurance and Superannuation Unit  
Financial System and Services Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
Email: [phiconsultation@treasury.gov.au](mailto:phiconsultation@treasury.gov.au)

Dear Sir/Madame

The Australian Private Hospitals Association (APHA) welcomes the opportunity to comment on the draft *Private Health Insurance (Prudential Supervision) Bill 2015* and consequential changes proposed to the *Private Health Insurance Act 2007*.

Our interest rests on the fact that private hospitals provide 80% of all privately insured episodes of hospital care covered by private health insurance. As such the APHA has particular interest in:

- powers held by the Private Health Insurance Advisory Council (PHIAC) in relation to complying products that will not be assumed by APRA
- referencing of the Private Health Insurance (Health Benefits Fund Policy) Rules
- the collection and publication of data previously undertaken by PHIAC.

#### **Current powers of the PHIAC that will not be assumed by APRA**

The current powers that PHIAC has under the Private Health Insurance Act 2007 include the power (Section 84-10) to seek an injunction from the Federal Court in relation to contraventions or potential contraventions under sections 63-1, pertaining to complying products, and section 84-1, advertising, offering or insuring under non-complying policies.

It is understood that these powers will not be passed on to APRA under the new legislation. As a consequence this power will rest with the Minister or “any other person”.

The APHA regards it as essential that scrutiny of private health insurance products remain strong in order to protect consumers and ensure integrity in the private health insurance market.

#### **Private Health Insurance (Health Benefits Fund Policy) Rules**

Under current legislation the Private Health Insurance (Health Benefits Fund Policy Rules) are made by the Minister for Health. These rules are referred to in two sections of the Private Health Insurance Act (2007) which have been proposed for repeal:

- Chapter 4, Part 4-4, Division 137 – The operation of health benefits funds,
- Chapter 4, Part 4-4, Division 149 – Approving the termination of health benefits funds,

However no mention is made of the Private Health Insurance (Health Benefits Fund Policy Rules) in the equivalent sections of the proposed Private Health Insurance (Prudential Standards) Bill 2015. Rather mention of these rules has been specifically omitted from the following paragraphs:

- Private Health Insurance (Prudential Standards) Bill 2015, Part 3, Division 3, Section 27 (1).
- Private Health Insurance (Prudential Standards) Bill 2015, Part 3, Division 3, Section 28 (2).
- Private Health Insurance (Prudential Standards) Bill 2015, Part 3, Division 5, Section 37 (1)

Furthermore there appears to be no provision in the proposed Private Health Insurance (Prudential Standards) Bill 2015 that would be equivalent to the following provision within the Private Health Insurance Act 2007 Chapter 4, Part 4-4 Division 137:

#### 137-30 Operation of health-related businesses through health benefits funds

If a private health insurer has a \*health benefits fund in respect of its \*health insurance business and some or all of its \*health-related businesses, the insurer must comply with any requirements specified in the Private Health Insurance (Health Benefits Fund Policy) Rules relating to how the health-related businesses are to be conducted.

The document “Consultation on changes to the Private Health Insurance Act 2007” mentions that APRA will take responsibility for making rules previously made by PHIAC under the Private Health Insurance Act and that APRA will also have responsibility for making some of the rules that are currently made by the Minister for Health under section 333-20 of the Private Health Insurance Act:

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

However this consultation document is silent on the issue of the Private Health Insurance (Health Benefits Fund Policy) Rules. The APHA is concerned that the exposure draft of the Private Health Insurance (Prudential Standards) Bill 2015 appears to have overlooked the importance of maintaining a link between APRA’s role overseeing the operation of health benefits funds and the Minister of Health’s role in specifying the Private Health Insurance (Health Benefits Fund Policy) Rules.

### **Reporting requirements**

The APHA has been given to understand that the role hitherto undertaken by PHIAC in collecting and publishing data in relation to private health insurance membership, policies, premiums and benefits paid will be passed to APRA.

The APHA would like to take this opportunity to stress the importance of PHIAC’s role in the provision of public information as specified in the Private Health Insurance Act Chapter 6, Part 6-3 Division 264, Paragraph 264-10 and in providing an independent report on private health insurers as specified in the Private Health Insurance Act Chapter 6, Part 6-3 Division 264, Paragraph 264-15. In light of the fact that all provisions under Part 6-3 will be repealed, it is vital that APRA be empowered and required to continue this function.

The quarterly reports currently produced by PHIAC must continue in order to ensure timely accountability and effective monitoring of the private health insurance market in the interests of consumers. This data is essential to the effective management of crucial elements of private health insurance policy including risk equalisation and as such it is a vital source of policy makers and all stakeholders in the industry.

It should be noted that the data referred to here – published as PHIAC Report A and associated summary reports - are separate from the data provided by health funds to the Secretary of the Department of Health under the Private Health Insurance (Data Provision) Rules. They are also additional to matters dealt with under the Financial Sector (Collection of Data) Act 2001.

Indeed the APHA regards it as being in the public interest that the scope of data collected and reported be widened to allow more accurate reporting of important trends in the sector including trends in consumer preference for health insurance policies that include restrictions and exemptions of one type or another. These issues are central to the future viability of the private health insurance sector and the maintenance of affordable access to private health care for Australian consumers. Current data collections are insufficient to satisfactorily inform government policy.

The APHA strongly advocates that publication of statistics relating to the industry (quarterly and annually) should continue.

I would be happy at any time to provide further clarification on the issues raised above.

Yours sincerely

A handwritten signature in black ink that reads "Lucy Cheetham". The signature is written in a cursive, flowing style.

**Lucy Cheetham**  
**Acting Chief Executive Officer**  
**2 February 2015**