

**Financial Sector (Collection of Data) (reporting standard) determination
No. 22 of 2016**

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Financial Sector (Collection of Data) Act 2001, subsection 13(1)

Acts Interpretation Act 1901, section 33

Under subsection 13(1) of the *Financial Sector (Collection of Data) Act 2001* (the Act), APRA has the power to determine reporting standards, in writing, with which financial sector entities must comply. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to issue an instrument the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to revoke any such instrument.

On 31 August 2016, APRA made Financial Sector (Collection of Data) (reporting standard) determination No. 22 of 2016, which revokes *Reporting Standard HRS 601.0 Statistical Data by State* made under Financial Sector (Collection of Data) (reporting standard) determination No. 31 of 2015 and determines *Reporting Standard HRS 601.0 Statistical Data by State* (HRS 601.0).

This instrument commences upon registration on the Federal Register of Legislation.

1. Background

On 1 July 2015, APRA assumed responsibility for the prudential regulation of private health insurers, and the administration of the Risk Equalisation Trust Fund (RETF) via the *Private Health Insurance (Risk Equalisation Levy) Act 2003*.

The RETF and the associated risk equalisation levy support the principle of community rating (which prohibits private health insurers from discriminating against persons seeking private health insurance). APRA calculates the levy on the basis of risk equalisation jurisdictions based on the Australian states and territories.

On 1 July 2016, the Department of Health enacted the [*Private Health Insurance Legislation Amendment \(Risk Equalisation Jurisdiction\) Rules 2016*](#) to amend the *Private Health Insurance (Health Benefits Fund Policy) Rules 2015* and the *Private Health Insurance (Risk Equalisation Policy) Rules 2015* to add Norfolk Island into the combined risk equalisation jurisdiction of NSW/ACT and to adjust the Lifetime Health Cover penalty provisions for Norfolk Island residents. This change necessitates various changes to the reporting standard HRS 601.0

2. Purpose and operation of the instrument

The purpose of this legislative instrument is make the necessary changes to HRS 601.0. It does this by requiring the submission of data by private health insurers that replicates the current required data, other than to require reporting of data on Norfolk Island policy holders in the NSW section of the reporting form rather than considering

them as overseas visitors.¹ A number of miscellaneous changes have been made to the reporting instructions to provide guidance on the reporting of Norfolk Island policy holders and to update outdated references.

The reporting standard specifies the information that must be provided, and attaches the related instructions specifying how the form is to be completed. It sets out:

- the purpose for which data is being collected;
- the legal authority under which it is collected;
- that specified data in an attached form is to be provided according to prescribed instructions;
- the method and timing for submission;
- the required approach to auditing and quality control; and
- who can authorise the submission of data on behalf of a private health insurer.

3. Consultation

The private health insurance industry and the Department of Health were consulted in the preparation of this reporting standard. APRA released a draft of this instrument for a four week consultation period on 25 July 2016. All submissions were supportive of the document and no changes were necessary.

4. Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for this legislative instrument.

5. Statement of compatibility prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

A Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at Attachment A to this Explanatory Statement.

¹ Due to the changes made in the *Private Health Insurance Legislation Amendment (Risk Equalisation Jurisdiction) Rules 2016*, APRA must determine whether data should be reported in the NSW section of the form or the ACT section of the form. The requirement to report in the NSW section has no impact on the amount payable or receivable because the NSW and ACT are data combined before calculating the levy.

Attachment A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

Overview of the Legislative Instrument

This Legislative Instrument prescribes requirements applicable to private health insurers, to provide for the administration of the RETF and provides for the collection of data relating to Norfolk Island residents.

Human rights implications

APRA has assessed this Legislative Instrument and is of the view it does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the HRPS Act. Accordingly, in APRA's assessment, the instrument is compatible with human rights.

Conclusion

This Legislative Instrument is compatible with human rights because it does not raise any human rights issues.