Financial Sector (Collection of Data) (reporting standard) determination No. 12 of 2021

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

*Financial Sector (Collection of Data) Act 2001*, sections 13 and 15

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. Such standards relate to reporting financial or accounting data and other information regarding the business or activities of the entities.

On 22 March 2021, APRA made Financial Sector (Collection of Data) (reporting standard) determination No. 12 of 2021 which determines *Reporting Standard HRS 605.0 Private Health Insurance Reform Data Collection* (HRS 605.0).

The instrument commences on 22 March 2021.

1. Background

APRA collects information from financial sector entities under the Act for a number of purposes, including to assist other agencies to perform their functions or exercise their powers.

In October 2017, the Department of Health (the Department) announced a range of private health insurance reform measures (reforms) which were implemented from 1 April 2018[[1]](#footnote-2). The Department requested APRA to collect data for the monitoring and analysis of the effects of the reforms on consumers and private health insurers (PHIs). HRS 605.0 collects data on the reforms from PHIs.

1. Purpose and operation of the instrument

The purpose of the instrument is to determine HRS 605.0.

HRS 605.0 sets out requirements for the provision of information to APRA relating to a private health insurer’s implementation of private health insurance reforms. HRS 605.0 will formalise the existing, informal Microsoft Excel-based reporting of reforms data which commenced in 2019.

Where the reporting standards refer to an Act, Regulation, Prudential Standard, Reporting Standard, Australian Accounting or Auditing Standard, this is a reference to the document as it exists from time to time**,** and which is available on the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au/).

There are a number of powers that may be exercised by APRA in reporting standards which involve an element of discretion and which may impact the interests of the financial sector entity to which the reporting standard applies. These decisions include APRA refusing to change a reporting period or due date for a PHI to provide information required by HRS 605.0. Decisions made by APRA exercising those powers are not subject to merits review.

APRA considers decisions made by APRA exercising discretions under its reporting standards should not be subject to merits review as they are financial decisions with a significant public interest element.

APRA’s reporting standards collect financial and operational data from regulated entities. In the case of HRS 605.0, this data contains important indicators of a PHI’s implementation of the reforms, including details of insured persons, policies, and treatments and benefits provided. APRA will provide data collected under HRS 605.0 to the Department.

This data will be used by the Department to assess the impact of the reforms on the private health insurance industry. Data on the reforms will be used by Government in future policy planning to support affordable and quality private health insurance.

Delays caused by an entity seeking merits review of APRA’s decisions under a reporting standard could significantly compromise APRA’s ability to provide timely, comprehensive information to the Department, affecting its ability to monitor the impact of the critical reforms on private health insurers and consumers.

The Department also publishes quarterly summary statistics on the reforms. Delays caused by an entity seeking merits review could significantly compromise these publications. As the publications are done at an aggregate level, any lack of data from one entity caused by merits review claim may jeopardise the release of the entire publication.

1. Consultation

APRA, with input from the Department, has consulted extensively on proposed changes in HRS 605.0. APRA undertook a public consultation from September 2019 to December 2020, and has met with and discussed the proposed changes with a number of interested parties. APRA received a total of eleven submissions from PHIs and service providers on its initial consultation released in September 2019. Based on submissions, APRA made changes to the reporting instructions to provide PHIs with additional clarity for reporting, responding to submissions in December 2019.

APRA flagged a delayed implementation and further changes to HRS 605.0 in March 2020. APRA made these changes in response to feedback received from PHIs, commencing consultation in September 2020. APRA received four submissions on this consultation, responding to submissions in December 2020. There were minor comments on reporting of reform measures which have been addressed through the consultation and response process.

4. Regulation Impact Statement

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

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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The 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**

The purpose of the instrument is to make a new *Reporting Standard HRS 605.0 Private Health Insurance Reform Data Collection* (HRS 605.0)*.*

HRS 605.0 sets out requirements for the provision of information to APRA relating to a private health insurer’s implementation of private health insurance reform measures (reforms) announced by the Department of Health (the Department) in October 2017[[2]](#footnote-3).

Under HRS 605.0, APRA will collect data on behalf of the Department. This data will be used by the Department to assess the impact of the reforms on the private health insurance industry. Data on the reforms will be used by Government in future policy planning to support affordable and quality private health insurance. The Department also publishes quarterly summary statistics on the reforms.

**Human rights implications**

APRA has assessed the Legislative Instrument and is of the view that they do 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 instruments are compatible with human rights.

The instrument facilitates the collection of detailed information provided to APRA by PHIs in accordance with HRS 605.0. While HRS 605.0 does not collect identifying information such as names or addresses, the granular nature of the data collected by HRS 605.0 may create records that contain personal information under the *Privacy Act 1988* (Privacy Act). The Privacy Act requires that where APRA has possession or control of a record that contains personal information, it shall not disclose that information to a person, body or agency (other than the individual concerned) except under specific circumstances. APRA will comply with its obligations under the Privacy Act in collecting any personal information, and in disclosing any personal information collected under HRS 605.0 to the Department.

APRA does not publish any personal information which it collects. Information provided to APRA under reporting standards is protected information for the purposes of section 56 of the *Australian Prudential Regulation Authority Act 1998* and cannot be disclosed except under a limited range of circumstances provided for under that section. While APRA does publish some protected information collected under reporting standards, APRA reviews all releases of data received under reporting standards to ensure that no information pertaining to an individual person can be deduced from the data.

**Conclusion**

The instrument is compatible with human rights because to the extent that the reporting standard limits human rights, those limitations are reasonable, necessary and proportionate.

1. <https://www.health.gov.au/health-topics/private-health-insurance/private-health-insurance-reforms?utm_source=health.gov.au&utm_medium=callout-auto-custom&utm_campaign=digital_transformation> [↑](#footnote-ref-2)
2. <https://www.health.gov.au/health-topics/private-health-insurance/private-health-insurance-reforms?utm_source=health.gov.au&utm_medium=callout-auto-custom&utm_campaign=digital_transformation> [↑](#footnote-ref-3)