

11 September 2020

General Manager  
Policy Development  
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Australian Prudential Regulation Authority  
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Dear Sir/Madam

## **Supplementary submission to the APRA PHI Capital Standards Review: Mutual Capital Instruments (MCIs)**

Further to its 18 August 2020 submission, Members Health has prepared a supplementary paper on MCIs.

Set out in the [Treasury Laws Amendment \(Mutual Reforms\) Act 2019](#), an MCI is a share in a mutual entity that meets requirements relating to voting rights and other matters.

MCIs present a new and innovative approach for mutuals to raise capital without relying solely on debt or compromising their member owned status. As such, Members Health welcomes APRA's proposal to allow health funds to issue Mutual Equity Interests (MEIs) as it would allow mutuals to access Common Equity Tier 1 capital (CET1 capital) beyond retained earnings. However, an issue with the current formulation of APRA's requirements for MEIs (for mutual ADIs) arises for the 63 per cent of health funds that are classified as not-for-profit (NFP) under the Private Health Insurance Act.

To maintain income tax exempt status, an NFP must not, broadly, make distributions of profits to members (including on a winding up). In that context, the prudential requirements for MEIs will be critical to confirm whether a mutual PHI can both (i) access MEI capital and (ii) retain its tax exemptions as an NFP PHI.

APRA has proposed to make the MEI requirements for health funds in a form "comparable" to its current MEI requirements for mutual banks. Those requirements state that MEIs should carry non-cumulative distributions of profit to MEI holders, and MEI holders are entitled to participate in the surplus on a winding up (subject to a cap equivalent to the subscription price paid for the MEIs).

If those requirements were replicated in the private health insurance prudential standards, and the mutual private health fund amends its constitution to provide for such MEIs, there is a risk that a mutual health fund may lose income tax exempt status.

To protect the not for profit status of insurers, Members Health encourages APRA to work with Treasury and the ATO to provide the health insurance industry with certainty around how MEIs will impact the tax status of NFP health insurers.

Yours sincerely,



**CEO, Members Health Fund Alliance**

### **Putting members' health before profit**

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