

Life insurance (prudential standard) determination No.14 of 2007

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority

Life Insurance Act 1995, paragraph 230A(1)(a) and subsection 230A(5)

Under paragraph 230A(1)(a) of the *Life Insurance Act 1995* (**Life Act**), APRA has the power to determine (in writing) standards in relation to prudential matters to be complied with by all life companies, including friendly societies. Subsection 230A(5) of the Life Act empowers APRA to vary or revoke a standard in writing.

Life Insurance (prudential standard) determination No.2 of 2006 determined *Prudential Standard LPS 510 Governance (LPS 510)* to take effect from 1 October 2006. Life insurance (prudential standard) determination No.14 of 2007 revokes LPS 510 from 1 January 2008 and determines a new LPS 510 to take effect from 1 January 2008.

1. Background

As part of the Government's response to *Rethinking Regulation: the Report of the Taskforce on Reducing Regulatory Burdens on Business (Rethinking Regulation)*, the *Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007 (SRR Act)* removes a number of provisions from the Life Act. In particular, the amendments reflect Recommendation 5.4 of Rethinking Regulation, which states that the Government should ensure that APRA has sufficient flexibility to tailor requirements to accommodate differing circumstances.

The SRR amendments necessitate a number of minor changes to LPS 510 to update references to the Life Act.

APRA is also amending LPS 510 to maintain its consistency with the ASX Corporate Governance Council's recommendations for the independence of board directors. In assessing whether a director is independent, LPS 510 previously required a Board to apply the definition of independence set out in the ASX Corporate Governance Council's *Principles of Good Corporate Governance and Best Practice Recommendations*.

In August 2007, the ASX Corporate Governance Council released the 2nd edition of this document, titled *Corporate Governance Principles and Recommendations (ASX Principles)*. This document no longer provides a definition of independence but identifies a number of "relationships affecting independent status" that Boards should consider in determining a director's independence.

In developing LPS 510, APRA has, where possible, aligned its requirements and definitions with the ASX Principles. APRA intends to continue an alignment with these principles, while maintaining APRA's approach of providing certainty about its expectations for the independence of directors of APRA-regulated institutions, an approach which has worked well in practice. APRA intends LPS 510 to reflect some of the revisions to the ASX Principles with respect to incorporating the wording of Box 2.1 of the ASX Principles that sets out the 'relationships affecting independent status' but in APRA's governance standard these relationships will be circumstances

that exclude a director from being independent for the purpose of serving on the Board of an APRA-regulated institution.

APRA also intends to require that the Board has a formal policy on Board renewal incorporating the need for explicit consideration of the length of service of a director as part of this policy.

2. Outline of the Determination

The substantive changes are:

- revised paragraph 11 to remove direct reference to the ASX Principles. Also, reference is made to the revised Attachment A regarding the specific circumstances that will not satisfy the principle of independence as defined under paragraph 11;
- revised paragraph 57 (now paragraph 56) to explicitly require the Board renewal policy to give consideration to the length of service of directors and whether this could interfere with a director's ability to act in the best interests of the institution;
- removal of transition provisions (paragraphs 61 and 62), which no longer have effect; and
- alignment of Attachment A with the ASX Principles' wording on 'relationships affecting independent status'.

3. Consultation

APRA consulted with industry participants from 2 August to 31 August 2007 by means of the discussion paper: *Transition to the Revised Life Insurance Act*. APRA also consulted with industry participants from 10 September to 28 September 2007 on the changes relating to the ASX Principles.