

**Financial Sector (Business Transfer and Group Restructure) determinations
Nos. 1 and 2 of 2017**

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Financial Sector (Business Transfer and Group Restructure Act) 1999, section 46

Acts Interpretation Act 1901, section 33

Under section 46 of the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (the Act), APRA has the power to make, in writing, rules prescribing all matters required or permitted by the Act to be prescribed by transfer rules. Subsection 33(3) of the *Acts Interpretation Act 1901* confers power to revoke an instrument made under an enactment.

On 20 September 2017, APRA made the following determinations (the instruments):

- (1) Financial Sector (Business Transfer and Group Restructure) determination No. 1 of 2017 which revokes Transfer Rules No. 1 of 2007 made under Financial Sector (Business Transfer and Group Restructure) determination No. 1 of 2007 and makes new Transfer Rules 2017 - Restructures; and
- (2) Financial Sector (Business Transfer and Group Restructure) determination No. 2 of 2017 which revokes Transfer Rules No. 1 of 2015 made under Financial Sector (Business Transfer and Group Restructure) determination No. 1 of 2015 and makes new Transfer Rules 2017 – Voluntary Transfers.

The instruments commence on the date they are registered on the Federal Register of legislation (FRL).

1. Background

Financial Sector (Business Transfer and Group Restructure) determination No. 1 of 2007 made Transfer Rules No. 1 of 2007 for the purposes of:

- (a) subsection 36B(3) of the Act, prescribing the form and content of an application by an authorised deposit-taking institution (ADI), life insurance company or general insurer to enter an arrangement whereby the entity will become a subsidiary of a NOHC; and
- (b) subsection 36P(4) of the Act, prescribing the form and content of an application by an operating body for an amendment to an internal transfer certificate.

Financial Sector (Business Transfer and Group Restructure) determination No. 1 of 2007 will sunset on 1 October 2017 by operation of subsection 50(1) of the *Legislation Act 2003*. Under subsection 50(1) of the *Legislation Act 2003*, a legislative instrument registered after 1 January 2005 will sunset on the earlier of 1 April or 1 October, 10 years after the instrument was registered on the FRL.

Financial Sector (Business Transfer and Group Restructure) determination No. 1 of 2015 made Transfer Rules No. 1 of 2015 which prescribe matters in relation to voluntary transfer of business, under Part 3 Division 2 of the Act, from one ADI to another, or from one life insurance company to another. Transfer Rules No. 1 of 2015 contains minor errors which, while not affecting their substantive operation, require correction.

2. Purpose and operation of the instruments

Part 4A - Restructures of the Act facilitates the restructure of financial groups to create non-operate holding company (NOHCs). The operation of Part 4A - Restructures of the Act depends on Transfer Rules No. 1 of 2007.

The purpose of the Financial Sector (Business Transfer and Group Restructure) determination No. 1 of 2017 is to allow the rules in Transfer Rules No. 1 of 2007 to continue with only a minor change which clarifies the definition of *NOHC authorisation application*. APRA conducted an assessment of the effectiveness and efficiency of continuing Transfer Rules No. 1 of 2007. APRA concluded it was appropriate that Transfer Rules No. 1 of 2007 be remade without substantive amendment.

Financial Sector (Business Transfer and Group Restructure) determination No. 2 of 2017 remakes Transfer Rules No. 1 of 2015 without change, except for the correction of minor errors. In particular:

- Transfer Rules No. 1 of 2015 incorrectly bears the heading ‘Transfer Rules No. 1 of 2004’. The Financial Sector (Business Transfer and Group Restructure) determination No. 2 of 2017 replaces this heading with ‘Transfer Rules 2017 – Voluntary Transfers’.
- Transfer Rules No. 1 of 2015 states that the Rules ‘are made under s 46(1)’ of the Act. This reference is out of date, as subsection 46(1) was renumbered as section 46 in 2007. The Financial Sector (Business Transfer and Group Restructure) determination No. 2 of 2017 corrects the reference to ‘section 46’.
- Note 3 of paragraph 7 of Transfer Rules No. 1 of 2015 contains an outdated reference to the *Trade Practices Act 1974*. The Financial Sector (Business Transfer and Group Restructure) determination No. 2 of 2017 corrects this reference to the *Competition and Consumer Act 2010*.
- Transfer Rules No. 1 of 2015 refers to ‘information document’ and ‘information notice’. These two terms refer to the same document. The Financial Sector (Business Transfer and Group Restructure) determination No. 2 of 2017 change all references to ‘information notice’ to read ‘information document’ for consistency.

Consultation

The instruments are minor and machinery in nature and do not substantially alter existing arrangements. Consequently, APRA did not consult externally in relation to the instruments.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for Financial Sector (Business Transfer and Group Restructure) determination No. 1 of 2017 or for Financial Sector (Business Transfer and Group Restructure) determination No. 2 of 2017.

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

Financial Sector (Business Transfer and Group Restructure) determination Nos. 1 and 2 of 2017

These Legislative Instruments are 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*.

Overview of the Legislative Instruments

Financial Sector (Business Transfer and Group Restructure) determination No. 1 of 2017 revokes Financial Sector (Business Transfer and Group Restructure) determination No. 1 of 2007, including Transfer Rules No. 1 of 2007 made under section 46 of the Act for the purposes of subsections 36B(3) and 36P(4) of the Act, and remakes Transfer Rules No. 1 of 2007 without substantive change.

Financial Sector (Business Transfer and Group Restructure) determination No. 2 of 2017 revokes Financial Sector (Business Transfer and Group Restructure) determination No. 1 of 2015, including Transfer Rules No. 1 of 2015 made under subsection 10(2) and section 13 of the Act, and remakes Transfer Rules No. 1 of 2015 without substantive change.

These Legislative Instruments will be made for the purposes of:

- prescribing the form and content of an application for approval of restructure described in subsection 36B(1) of the Act by an ADI, general insurer or life insurer;
- prescribing the form and content of an application for approval of amendment to an internal transfer certificate described in subsection 36P(2) of the Act by an ADI, general insurer or life insurer; and
- correcting minor errors in prescribe matters in relation to voluntary transfer of business, under Part 3 Division 2 of the Act, from one ADI to another, or from one life insurance company to another.

Human rights implications

APRA has assessed the instrument and is of the view that 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

These Legislative Instruments are compatible with human rights as they do not raise any human rights issues.