

**Australian Prudential Regulation Authority Instrument fixing charges**

**No. 4 of 2018**

**Charges to be paid by representative offices of foreign banks in Australia**

**EXPLANATORY STATEMENT**

**Prepared by the Australian Prudential Regulation Authority (APRA)**

*Australian Prudential Regulation Authority Act 1998, Paragraph 51(1)(a)(b)*

*Acts Interpretation Act 1901, Subsection 33(3)*

**Instrument to which this explanatory statement relates**

This explanatory statement relates to *Australian Prudential Regulation Authority Instrument fixing charges No. 4 of 2018* which is made under paragraph 51(1)(a)(b) of the *Australian Prudential Regulation Authority Act 1998* (the **APRA Act**) and subsection 33(3) of the *Acts Interpretation Act 1901*, and dated 7 June 2018 (**the Instrument**).

The Instrument revokes *instrument fixing charges No 2 of 2013 dated 8 March 2013* (**the revoked Instrument**<sup>1</sup>) and fixes the charges set out in the Schedule of charges, in respect of applications by foreign banks to APRA for consent to establish or maintain a representative office in Australia under section 67 of the *Banking Act 1959*, and for services provided by APRA in monitoring the activities of such representative offices in Australia and compliance with conditions imposed by APRA on the consent.

**1. Background**

*Legislative Framework*

The APRA Act is administered by APRA. APRA has statutory responsibility for the prudential regulation of most of the superannuation industry, the general, life (including friendly societies) and private health insurance industries, and authorised deposit taking institutions, which includes banks, building societies and credit unions.

Subsection 51(1) of the APRA Act provides that APRA may, by Legislative Instrument, fix charges to be paid to it by persons in respect of:

- (a) services and facilities which APRA provides to such persons; and
- (b) applications or requests made to APRA under laws of the Commonwealth.

Subsection 51(1) also specifies that an instrument fixing charges may provide for the waiver or refund of the charges.

Subsection 51(2) of the APRA Act provides that a charge fixed under subsection 51(1) must be reasonably related to the costs and expenses incurred or to be incurred in relation to the matters to which the charge relates, and must not be such as to amount to taxation.

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<sup>1</sup> FRLI reference F2013L00582.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) 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 repeal, rescind, revoke, amend, or vary any such instrument.

## 2. Purpose and operation of the Instrument

The Instrument sets out the charges in respect of applications for consent under section 67 of the Banking Act to establish or maintain representative offices of overseas banks in Australia and for the costs or expenses incurred or to be incurred by APRA in monitoring the activities of such representative offices in Australia and the overseas banks' compliance with the conditions imposed upon APRA's consent under section 67.

The Instrument also provides that the charges fixed are payable by the applicant when the application is lodged, are not refundable if the application is unsuccessful or if APRA, in the course of processing the application, informs the applicant that the application will be unsuccessful and may be waived or refunded by APRA in special circumstances, as permitted under subsection 51(1) of the APRA Act.

For the avoidance of doubt, it should be noted that the Foreign Bank Representative Office authorisation application charge is payable in respect of every new application, even one that is made after the refusal or withdrawal of an earlier application for which the applicant also paid an authorisation application charge.

### Schedule of charges

Type of charge	Amount of charge
Application for consent to establish or maintain a representative office of a foreign bank in Australia.	\$10,000
Annual monitoring by APRA of the operations of the foreign bank representative office and the foreign bank's compliance with the conditions imposed on the consent under subsection 67(2) of the Banking Act.	\$3,000

Each of these charges are GST exempt as per Division 81 of *A New Tax System (Goods and Services Tax) Act 1999*.

### Operation and commencement of the Instrument

The Instrument operates to repeal the revoked Instrument and fix the charges set out in the Schedule of charges. The Instrument commences on the date of registration on the Federal Register of Legislative Instruments.

### Charges must be reasonably related to the costs and expenses incurred

The charges set by this Instrument are fixed on a cost recovery basis and in line with the *Australian Government Cost Recovery Guidelines July 2014*. A Cost Recovery Implementation Statement (CRIS) has been prepared in support of this Explanatory Statement.

### **How the charges have been calculated**

The charges payable to APRA in respect of the representative offices of foreign banks in Australia were reviewed (along with other entity type charges) during the 2016-17 financial year to ascertain whether all existing charges continued to be fixed at appropriate levels and continued to be compliant with the cost recovery guidelines. Refer to section 4 for further information.

### **3. Consultation**

Consultation has not been undertaken as the changes are considered to be minor or machinery in nature and do not substantially alter existing arrangements within the meaning of paragraph 18(2)(a) of the *Legislative Instruments Act 2003*.

### **4. Cost Recovery Implementation Statement**

A Cost Recovery Implementation Statement, executed by APRA's Chairman and dated 1 June 2018 has been prepared and captures the charges.

As indicated in the Cost Recovery Implementation Statement:

“The 2016-17 application charging review entailed examining all existing resourcing and task activity as indicated from the previous 2010-11 review, to ascertain if such detail was still relevant to enable charge activity calculation and that the methodology was consistent with Cost Recovery Guidelines”.

This review included consultation with relevant areas in APRA and approved by APRA's Executive.

The outcome of the review was:

“All recommendations of the previous 2010-11 review be maintained, these being (amongst others):

- all licensing application charges should be charged at the same level, regardless of the industry type (with the exception of purchase payment facilities);
- all licensing application charges are to be increased to better reflect the actual cost incurred; and
- there should be no discount applied to licensing re-application charges.”

The charges have been amended to reflect current resourcing and task activity. These charges, once established by a fixed instrument, will be reviewed every five years in line with the Cost Recovery Guidelines.

In determining whether the cost of an activity would be best recovered by a charge or the supervisory levy, an assessment was made against a number of criteria laid down in the Cost Recovery Guidelines.

In principle, cost recovery by a charge is considered appropriate if the activity and its costs can be linked to a specific individual or organisation.

## **5. Regulation Impact Statement**

A Regulation Impact Statement (RIS) preliminary assessment was not conducted as:

- APRA, by subsection 51(1) of the APRA Act may, by legislative instrument, fix charges to be paid to it by persons in respect of:
  - (a) services and facilities which APRA provides to such persons; and
  - (b) applications or requests made to APRA under laws of the Commonwealth;
- these charges were included in Treasury's 2016-17 Portfolio Charging Review and included in an Expenditure Review Committee briefing in March 2017; and
- the Office of Best Practice Regulation advised for the 2010-11 review such charges were of a 'minor nature' and a RIS was not required.

## **6. 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*.

#### **Australian Prudential Regulation Authority Instrument fixing charges No. 4 of 2018**

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**

The Legislative Instrument will fix charges to be paid to APRA by foreign banks for applications for consent to establish or maintain a representative office in Australia and for services provided by APRA in monitoring the activities of such representative offices in Australia and monitoring compliance with conditions imposed by APRA on the consent.

#### **Human rights implications**

APRA has assessed this Legislative Instrument against the international instruments listed in section 3 of the HRPS Act and determined that this Legislative Instrument does not engage any of the applicable rights or freedoms, as the charges payable by the authorised corporations will not have any direct or indirect effect on the rights of individual persons.

#### **Conclusion**

Australian Prudential Regulation Authority Instrument fixing charges No. 4 of 2018 is compatible with human rights as it does not raise any human rights issues.