

**Banking, Insurance, Life Insurance and Health Insurance (prudential standard)  
determination No. 2 of 2018**

**EXPLANATORY STATEMENT**

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

*Banking Act 1959*, section 11AF

*Insurance Act 1973*, section 32

*Life Insurance Act 1995*, section 230A

*Private Health Insurance (Prudential Supervision) Act 2015*, section 92

APRA may, in writing, determine, vary or revoke a prudential standard that applies to an institution regulated by APRA under:

- (1) subsections 11AF(1) and (3) of the *Banking Act 1959* (Banking Act), in relation to authorised deposit-taking institutions (ADIs) and authorised non-operating holding companies (authorised banking NOHCs);
- (2) subsections 32(1) and (4) of the *Insurance Act 1973* (Insurance Act), in relation to general insurers, authorised non-operating holding companies (authorised insurance NOHCs), and subsidiaries of general insurers and authorised insurance NOHCs;
- (3) subsections 230A(1) and (5) of the *Life Insurance Act 1995* (Life Insurance Act), in relation to life companies, friendly societies, registered non-operating holding companies (registered life NOHCs), and subsidiaries of life companies and registered life NOHCs; and
- (4) subsections 92(1) and (5) of the *Private Health Insurance (Prudential Supervision) Act 2015* (PHIPS Act), in relation to registered private health insurers.

On 14 September 2018, APRA made the following determination (the instrument):

Banking, Insurance, Life Insurance and Health Insurance (prudential standard) determination No. 2 of 2018, which revokes *Prudential Standard CPS 520 Fit and Proper* (CPS 520) made under Banking, Insurance and Life Insurance (prudential standards) determination No. 9 of 2016, and determines CPS 520.

The instrument commences on 1 July 2019.

## **1. Background**

APRA's mandate is to ensure the safety and soundness of prudentially regulated financial institutions so that they can meet their financial promises to depositors, policyholders and fund members within a stable, efficient and competitive financial system.

APRA carries out this mandate through a multi-layered prudential framework that encompasses licensing and supervision of institutions. APRA is empowered under the Banking Act, the Insurance Act, the Life Insurance Act and the PHIPS Act to issue legally binding prudential standards that set out specific prudential requirements with which APRA-regulated institutions in each industry must comply. These standards are supported by prudential practice guides which clarify APRA's expectations with regard to prudential requirements.

In addition to improvements in financial strength and asset quality, it is also critical to the long term health of the financial system that the Australian community has a high degree of confidence that individual financial institutions are well governed and prudently managed. Robust governance practices that support sound decision-making are essential to ensure regulated institutions remain resilient and able to adapt quickly to changes in the broader operating environment, while remaining prudentially sound.

Following three years of review and extensive consultation with the private health insurance industry, this instrument extends coverage of the cross-industry fit and proper prudential standard to private health insurers. The instrument does not impose new prudential requirements on general insurers, life companies, ADIs or groups.

## **2. Purpose of the instrument**

The purpose of the instrument is to extend the application of CPS 520 to private health insurers.

The new cross-industry prudential framework is expected to strengthen existing practices for private health insurers by ensuring that responsible persons have the technical competence and integrity to perform their roles for the benefit and protection of the institution and policy holders.

## **3. Operation of the instrument**

Key aspects of CPS 520 which will now apply to private health insurers are:

### **Fit and Proper Policy**

All APRA-regulated institutions are required to maintain a Fit and Proper Policy that meets the requirements of this Prudential Standard. The policy forms a key part of the institution's broader risk management framework.

### **Responsible persons**

Responsible persons of a regulated institution are those persons whose conduct has the potential to impact significantly on the financial soundness and stability of the institution. The standard includes directors, the Chief Executive Officer, senior managers, the Appointed

Actuary and the Appointed Auditor in this definition. A regulated institution can also include other members of staff or external providers under its fit and proper policy where the institution has identified that the person's activities may materially affect, either directly or indirectly, the financial affairs of the institution.

APRA may also determine if other persons working for an APRA-regulated institution are responsible persons. APRA will ordinarily only make such a determination after discussion with the institution.

### **Criteria to determine if a person is fit and proper**

All APRA-regulated institutions must document the competencies required for each responsible person position depending on the person's role and the risk assessment for that position. The standard sets out the base criteria to ensure the fitness and propriety of a responsible person and additional criteria to be considered when considering the appointment of the Appointed Auditor and the Appointed Actuary.

### **Process for assessment of fitness and propriety**

The Fit and Proper Policy must identify the processes for assessing, appointing, re-appointing and removing responsible persons.

### **Whistleblowing**

The fit and proper policy must include adequate provisions to allow whistleblowing if a person has information that a responsible person does not meet the institution's fit and proper criteria.

### **Relevance to other APRA regulated industries**

The instrument makes no material changes to CPS 520 for general insurers, life companies and ADIs.

In CPS 520, unless the contrary intention appears, a reference to an Act, Regulations or Prudential Standard is a reference to the Act, Regulations or prudential standard as in force from time to time.

#### **4. Consultation**

In August 2016, APRA released a three stage Prudential Policy Roadmap for the private health insurance industry. Stage two of the Roadmap contained a proposal for extending the application of CPS 520 to include private health insurers.

In February 2018, APRA released for public consultation *Discussion Paper: Governance, Fit and Proper, Audit and Disclosure Requirements*. This document outlined the proposed requirements for PHIs from the existing cross-industry *Prudential Standard CPS 520 Fit and Proper* and provided a twelve week consultation period.

APRA presented the reforms via a wide range of industry forums and held round table discussions with private health insurers on the proposed requirements. Several insurers advised they already adhered to a fit and proper policy which was available on their websites.

All nine written submissions in response to the Discussion Paper were strongly supportive of the standard, subject to a minor clarification as to the requisite level of experience for PHI auditors. This issue was addressed in a response letter to the industry.

#### **5. Regulation Impact Statement**

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this determination.

#### **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*

#### **Banking, Insurance, Life Insurance and Health Insurance (prudential standards) determination No. 2 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**

This Legislative Instrument revokes *Prudential Standard CPS 520 Fit and Proper (CPS 520)* made under Banking, Insurance and Life Insurance (prudential standard) determination No. 9 of 2016 and determines a new CPS 520. The instrument extends the coverage of CPS 520 to private health insurers under the *Private Health Insurance (Prudential Supervision) Act 2015*.

The instrument promotes sound governance practices. The prudential framework contained in CPS 520 supports sound decision-making to ensure regulated institutions remain resilient and able to adapt quickly to changes in the broader operating environment, while remaining prudentially sound.

The instrument does not impose new prudential requirements on existing APRA-regulated institutions previously covered by CPS 520 made under Banking, Insurance and Life Insurance (prudential standard) determination No. 9 of 2016.

#### **Human rights implications**

APRA has assessed this Legislative 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**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.