

Australian Prudential Regulation Authority Instrument fixing charges

No. 1 of 2019

Charges to be paid in relation to: friendly society rules and rule amendment applications; applications for authorisation as a Private Health Insurer; transfer of business applications and applications to hold a Restricted Authorised Deposit-taking Institution (ADI) licence and progression to an ADI.

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Australian Prudential Regulation Authority Act 1998, Paragraph 51(1)(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. 1 of 2019* made under paragraph 51(1)(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 fixes the charges set out in the Schedule to the instrument, in respect of Friendly Society rules and rule amendment applications, applications for authorisation as a Private Health Insurer, transfer of business applications for general insurers (GI), life companies including friendly societies (LI), authorised deposit-taking institutions (ADI), private health insurers (PHI) and applications to hold a Restricted ADI licence and progression to an ADI.

1. Background

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.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that when 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 power exercisable in the like

manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary in any such instrument.

2. Purpose and operation of the instrument

The Instrument sets out the charges in respect of applications for approval of Friendly Society rules and rule amendments under sections 16L and 16Q of the *Life Insurance Act 1995*; applications for authorisation as a private health insurer under section 12 of the *Private Health Insurer (Prudential Supervision) Act 2015*; transfer of business applications (for GIs under Division 3A of Part III of the *Insurance Act 1973*, LIs including friendly societies under Part 9 of the *Life Insurance Act 1995*, ADIs under section 10 of the *Financial Sector (Business Transfer and Group Restructure) Act 1999*, PHIs under section 33 of the *Private Health Insurance (Prudential Supervision) Act 2015*): and applications to hold a Restricted ADI licence) and progression to an ADI under Section 9 of the *Banking Act 1959*.

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 refused, withdrawn or not proceeded with, 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 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 a charge.

Schedule of charges.

Type of charge	Amount of charge
Applications for Friendly Society rules and rule amendments.	\$3,000
Applications for authorisation as a Private Health Insurer.	\$110,000
Applications for transfers of business for GIs, LIs including friendly societies, PHIs and ADIs.	\$11,000
Applications to hold a Restricted ADI licence.	\$80,000
Application for a Restricted ADI to progress to an ADI.	\$30,000

Each of the charges is 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 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

A suite of new charging activities were reviewed during 2016-17 to ascertain if such activities were appropriate to enable charging, the appropriate level of such charges and to ensure compliance 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 26 February 2019¹ has been prepared and captures the charges.

As indicated in the Cost Recovery Implementation Statement:

“A review was conducted during 2016-17 of a suite of new and other existing charging activities to:

- ascertain if such activities were appropriate to enable charging;
- ascertain the appropriate level of such charge; and
- ensure review methodology is consistent with Cost Recovery Guidelines.”

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

The charges reflect current resourcing and task activity. These charges, once established by a fixed instrument, will be reviewed every five years as per 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:

¹ This Cost Recovery Implementation Statement (CRIS) replaces one dated 1 June 2018. A charge covering applications to hold stakes in a financial sector company – ADI, GI and LI has been removed.

- 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 has previously advised similar charges are 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*.

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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 for applications for approval of friendly society rules and rule amendments; applications for authorisation as a Private Health Insurer; and applications for approval of transfers of business for GIs, LIs, ADIs and PHIs and applications to hold a Restricted ADI licence and progression to an ADI.

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. 1 of 2019 is compatible with human rights as it does not raise any human rights issues.