



Ministerial Powers (APRA) Instrument 2020

I, Jane Hume, Assistant Minister for Superannuation, Financial Services and Financial Technology, make the following instrument.

Dated 15 January 2020

Jane Hume
Assistant Minister for Superannuation, Financial Services and Financial Technology

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Part 1—Preliminary

1 Name

This instrument is the *Ministerial Powers (APRA) Instrument 2020*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Banking Act 1959*;
- (b) the *Financial Sector (Shareholdings) Act 1998*;
- (c) the *Financial Sector (Transfer and Restructure) Act 1999*;
- (d) the *Insurance Acquisitions and Takeovers Act 1991*.

4 Interpretation

- (1) An expression has the same meaning in a provision of this instrument as it has in the Act referred to in the heading to the Part in which that provision occurs.
- (2) In this instrument:

ADI means an authorised deposit-taking institution within the meaning of the Banking Act 1959.

APRA means the Australian Prudential Regulation Authority.

APRA member has the same meaning as in section 3 of the *Australian Prudential Regulation Authority Act 1998*.

value of total assets has the meaning given by section 5.

Section 5

5 Working out value of total assets at a given time

For an ADI

- (1) For the purposes of this instrument, the **value of total assets** of an ADI at a particular time (the **test time**) is the total assets of the ADI as last reported to APRA, for a reporting period ending before the test time, under whichever of these reporting standards under the *Financial Sector (Collection of Data) Act 2001* applied to the ADI for that reporting period:
 - (a) *Reporting Standard ARS 720.0 ABS/RBA Statement of Financial Position*;
 - (b) *Reporting Standard ARS 323.0 Statement of Financial Position (Licensed ADI)*.
- (2) However, if the ADI has not reported as mentioned in subsection (1), the **value of total assets** of the ADI at the test time is its total assets at the end of the last reporting period before the test time, as those total assets would have been worked out in order to comply with whichever of those reporting standards applied to the ADI at the test time.

For a general insurer

- (3) For the purposes of this instrument, the **value of total assets** at a particular time of a company authorised under the *Insurance Act 1973* to carry on insurance business is the value at that time, for the purposes of paragraph 28(a) of that Act, of the company's assets in Australia that are taken into account in determining whether the company complied at that time with section 28 of that Act.

For a life insurer

- (4) For the purposes of this instrument, the **value of total assets** at a particular time of a company registered under section 21 of the *Life Insurance Act 1995* is the total of the book values at that time of:
 - (a) unless paragraph (b) of this subsection applies—all assets then held by the company (including assets of its statutory funds within the meaning of that Act); or
 - (b) if the company is an eligible foreign life insurance company as defined by section 16ZD of that Act—the assets at that time of the statutory funds (within the meaning of that Act) of the company that relate to life insurance business that the company carries on in Australia, as determined under section 34 of that Act.

Part 2— Delegations under the *Banking Act 1959*

6 Delegation of the Treasurer's powers

- (1) All previous delegations made under subsection 63(5) of the *Banking Act 1959* are revoked.
- (2) All of the Treasurer's functions and powers under section 63 (other than subsection 63(8)) of the *Banking Act 1959* are delegated to each person holding, occupying, or performing the duties of, any of these offices:
 - (a) APRA member;
 - (b) Executive Director of APRA;
 - (c) General Manager of APRA.
- (3) However, the Treasurer's functions and powers under subsection 63(1) of the *Banking Act 1959* are delegated only so far as, when the function or power is performed or exercised, the value of total assets of the ADI concerned, as worked out under subsection 5(1) or (2) of this instrument, does not exceed \$5 billion.

Section 7

Part 3— Delegations under the *Financial Sector (Shareholdings) Act 1998*

7 Delegation of the Minister's powers

- (1) All previous delegations made under section 44 of the *Financial Sector (Shareholdings) Act 1998* are revoked.
- (2) The functions and powers of the Treasurer listed in subsection (3) are delegated, subject to the limitations in that subsection, to each person holding, occupying, or performing the duties of, any of these offices:
 - (a) APRA member;
 - (b) Executive Director of APRA;
 - (c) General Manager of APRA.
- (3) The delegated functions and powers of the Treasurer are:
 - (a) all functions and powers under sections 12, 20, 21, 25 and 32 of, and clause 8 of Schedule 1 to, the *Financial Sector (Shareholdings) Act 1998*; and
 - (b) all functions and powers under sections 14, 15, 16, 17, 18, 23, 24 and 31 of that Act, but only so far as, when the function or power is performed or exercised, the financial sector company concerned is covered by subsection (4) of this section.
- (4) This subsection covers a financial sector company at a particular time if, at that time:
 - (a) the company is an authorised deposit-taking institution and the value of total assets of the company, as worked out under subsection 5(1) or (2), does not exceed \$5 billion; or
 - (b) the company is an authorised insurance company and the value of total assets of the company, as worked out under subsection 5(3) or (4), does not exceed \$5 billion; or
 - (c) the company is a holding company of one or more other financial sector companies, and this subsection covers every financial sector company of which the first-mentioned company is a holding company.

8 Direction about exercise of some powers

- (1) Before exercising a power under section 12, 25 or 32 of the *Financial Sector (Shareholdings) Act 1998*, a delegate must inform the Minister of the proposed exercise of the power. However, if circumstances of urgency require that the power be exercised immediately, the delegate must inform the Minister of the exercise of the power at the earliest opportunity.
- (2) The validity of an exercise of a delegated power is not affected by failure to comply with the direction in subsection (1).

Part 4— Determination under the *Financial Sector (Transfer and Restructure) Act 1999*

9 When Minister's consent not required

- (1) All previous determinations made under section 15 of the *Financial Sector (Transfer and Restructure) Act 1999* are revoked.
- (2) The Minister's consent is not required in relation to the class of transfers that meet these conditions:
 - (a) the transfer is a voluntary transfer of business under Part 3 of the Financial Sector (Transfer and Restructure) Act 1999; and
 - (b) when the application for approval of the transfer is made in accordance with section 10 of that Act:
 - (i) the body is an ADI and the value of total assets of the ADI, as worked out under subsection 5(1) or (2) of this instrument, does not exceed \$5 billion; or
 - (ii) the body is a life insurance company, and the value of total assets of the company, as worked out under subsection 5(4) of this instrument, does not exceed \$5 billion.

Section 10

Part 5— Delegations under the *Insurance Acquisitions and Takeovers Act 1991*

10 Delegation of the Minister's powers

- (1) All previous delegations made under section 69 of the *Insurance Acquisitions and Takeovers Act 1991* are revoked.
- (2) The powers of the Minister listed in subsection (3) are delegated, subject to the limitations in that subsection, to each person holding, occupying, or performing the duties of, any of these offices:
 - (a) APRA member;
 - (b) Executive Director of APRA;
 - (c) General Manager of APRA.
- (3) The delegated powers of the Minister are:
 - (a) all powers under sections 41, 43, 44, 46, 55, 57, 58 and 60 of the *Insurance Acquisitions and Takeovers Act 1991*, but only so far as, when:
 - (i) notice of the trigger proposal is given in accordance with section 38 or 52, as the case requires, of that Act; or
 - (ii) if notice is not so given—the power is exercised; the value of total assets of the Australian-registered insurance company concerned, as worked out under subsection 5(3) or (4) of this instrument, does not exceed \$5 billion; and
 - (b) all powers under sections 48 and 62 of that Act, but only so far as, when the power is exercised, the value of total assets of the Australian-registered insurance company concerned, as worked out under subsection 5(3) or (4) of this instrument, does not exceed \$5 billion; and
 - (c) all powers under section 63, paragraph 66(1)(b) and section 73 of that Act; and
 - (d) all powers to make an order under a provision (the **primary provision**) because of section 64 of that Act, but only so far as a delegate could have made that order under the primary provision if the scheme or the part of the scheme had not achieved the purpose mentioned in paragraph 64(1)(b) of that Act; and
 - (e) all powers under subsections 66(3) and (5) of that Act to review a decision under section 41, 43, 44, 46, 55, 57, 58 or 60 of that Act, but only so far as, when:
 - (i) notice of the trigger proposal was given in accordance with section 38 or 52, as the case requires, of that Act; or
 - (ii) if notice is not so given—the decision was made; the value of total assets of the Australian-registered insurance company concerned, as worked out under subsection 5(3) or (4) of this instrument, did not exceed \$5 billion; and
 - (f) all powers under subsections 66(3) and (5) of that Act to review a decision under section 48 or 62 of that Act, but only so far as, when the decision was made, the value of total assets of the Australian-registered insurance

company concerned, as worked out under subsection 5(3) or (4) of this instrument, did not exceed \$5 billion; and

- (g) all powers under subsections 66(3) and (5) of that Act to review a decision under paragraph 66(1)(b) of that Act.

11 Direction about exercise of some powers

- (1) Before exercising a power under section 44, 58, 63 or 64 of the *Insurance Acquisitions and Takeovers Act 1991*, a delegate must inform the Minister of the proposed exercise of the power. However, if circumstances of urgency require that the power be exercised immediately, the delegate must inform the Minister of the exercise of the power at the earliest opportunity.
- (2) The validity of an exercise of a delegated power is not affected by failure to comply with the direction in subsection (1).