

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Treasurer**

#### *Australian Prudential Regulation Authority Supervisory Levies Determination 2021*

The *Australian Prudential Regulation Authority Supervisory Levies Determination 2021* (the Determination) ensures the recovery, from industries that are prudentially regulated by Australian Prudential Regulation Authority (APRA), of the costs incurred in connection with supporting the integrity and efficiency of markets in which leviable bodies operate, promoting the interests of consumers in the financial system.

The legislative framework for these levies is established by the *Financial Institutions Supervisory Levies Collection Act 1998*, which prescribes the timing of payment and the collection of levies, and by levy imposition Acts that impose levies for each sector and enable the determination of levy amounts.

The Determination commences on 1 July 2021 and relates to the 2021-22 financial year (the current financial year).

Part 1 of the Determination contains machinery provisions, including the commencement provision, a list of the authorising provisions, and definitions.

Part 2 of the Determination states the amount of levy revenue for the current financial year that is allocated under each of the various levy imposition Acts to cover the cost to the Commonwealth of funding certain regulatory activities and other industry funded activities.

Parts 3 to 9 determine the amount of levy payable and other relevant parameters for the respective leviable bodies.

Details of the respective Parts contained in the Determination are set out in Attachment A.

The finance sector has been consulted on the 2021-22 supervisory levies through a Treasury and APRA discussion paper released on the Treasury website on 18 May 2021. The discussion paper discussed the potential impacts of the levies on each industry sector and type of institution regulated by APRA. The consultation period closed on 11 June 2021. Seven submissions were received during the consultation process. As a result of consultation, changes were made to the maximum restricted levy amounts determined, which affects the distribution of levy paid across regulated industries.

The Office of Best Practice Regulation has previously advised that a Regulatory Impact Statement is not required as supervisory levies are considered machinery in nature.

This Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in Attachment B.

**Details of the Australian Prudential Regulation Authority Supervisory Levies Determination 2021**

**Part 1—Preliminary**

Part 1 of the Determination contains machinery provisions, including the commencement provision, a list of the authorising provisions, and definitions.

The Determination is made under the following imposition Acts, which impose levies on regulated industries:

- the *Australian Prudential Regulation Authority Act 1998*;
- the *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998*;
- the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998*;
- the *General Insurance Supervisory Levy Imposition Act 1998*;
- the *Life Insurance Supervisory Levy Imposition Act 1998*;
- the *Private Health Insurance Supervisory Levy Imposition Act 2015*;
- the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998*; and
- the *Superannuation Supervisory Levy Imposition Act 1998*.

Subsection 1-5(1) provides that an expression used in Parts 2 to 9 of the Determination has the same meaning as in the Act referred to in the definition of ***the Act*** in the respective Parts, unless a contrary interpretation appears.

Section 1-6 explains references to Reporting Standards with a particular identifier. These are references to reporting standards determined by APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001*. As APRA sometimes remakes a Reporting Standard with the same identifier, section 1-6 ensures that the correct version is applied for the purposes of the Determination, based on the application provision in the version, and the relevant reporting period. If the relevant Reporting Standard has been replaced by one with a different identifier, the later Reporting Standard applies instead.

**Part 2—Australian Prudential Regulation Authority (Commonwealth costs)**

Section 2-1 sets out definitions that are relevant to this Part.

Subsection 50(1) of the *Australian Prudential Regulation Authority Act 1998* (APRA Act) requires the Minister, by legislative instrument, to make a determination of the amount of “levy” (as defined under subsection 50(6) of the APRA Act) that is to be available to cover the costs to the Commonwealth:

- incurred in connection with supporting the integrity and efficiency of markets in which leviable bodies operate;
- incurred in connection with promoting the interests of consumers in markets in which leviable bodies operate;
- relating directly or indirectly to the regulation of leviable bodies;
- incurred in connection with administering the function of making determinations about the release on compassionate grounds of benefits that are in a superannuation entity or retirement savings account; or
- incurred in connection with governing and maintaining the Superannuation Transaction Network.

This is done by specifying a retainable amount for each class of levy (under paragraph 50(1)(b) of the APRA Act).

Section 2-2 of the Determination states the amount of levy revenue for the current financial year that is allocated under each of the various levy imposition Acts to:

- the Australian Securities and Investments Commission (ASIC);
- the Australian Taxation Office (ATO);
- the Australian Competition and Consumer Commission (ACCC); and
- the Gateway Network Governance Body Ltd (GNGB).

These funds are allocated to the ASIC and the ATO activities in so far as those agencies support, on behalf of the Commonwealth, the integrity and efficiency of markets in which leviable bodies operate; to the ACCC in investigating specific competition issues in Australia's financial system; and to the GNGB in promoting the efficiency and effectiveness of the Superannuation Transaction Network. The funds will contribute towards the costs of ASIC, ATO, ACCC and GNGB undertaking those functions.

The following table details the amounts allocated to activities undertaken by ASIC, ATO, ACCC and GNGB under each of the financial sector levy imposition Acts.

<b>Item</b>	<b>Matter</b>	<b>Amount (\$)</b>	<b>Purpose of amount</b>
1	Amount of the levy money payable to the Commonwealth under the <i>Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998</i> .	\$3 500 000	\$3 500 000 of the amount is for the ACCC in investigating specific competition issues in Australia's financial system.

Item	Matter	Amount (\$)	Purpose of amount
2	Amount of the levy money payable to the Commonwealth under the <i>General Insurance Supervisory Levy Imposition Act 1998</i> .	\$0	
3	Amount of the levy money payable to the Commonwealth under the <i>Life Insurance Supervisory Levy Imposition Act 1998</i> .	\$0	
4	Amount of the levy money payable to the Commonwealth under the <i>Superannuation Supervisory Levy Imposition Act 1998</i> .	\$37 600 000	<p>\$100,000 of the amount is for ASIC, in relation to the operation of the Superannuation Complaints Tribunal.</p> <p>\$16 000 000 of the amount is for the ATO, in administering the Superannuation Lost Member Register and Unclaimed Superannuation Money frameworks, and \$20 800 000 for the early Compassionate Release of Super program.</p> <p>\$700 000 of the amount is for the Gateway Network Governance Body which governs the Superannuation Transaction Network.</p>

Section 2-3 also states that under subsection 50(1A) of the APRA Act, the proportion of amounts of levy money paid to APRA, on behalf of the Commonwealth for the current financial year is to be credited to the APRA Special Account on an ongoing basis.

### Part 3—Authorised deposit-taking institutions supervisory levy

Part 3 of the Determination relates to levy imposed by the *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998* on authorised deposit-taking institutions (ADIs).

Section 3-1 sets out definitions that are relevant to this Part.

Subsection 7(3) of the *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998* requires the Treasurer, by legislative instrument, to determine:

- the maximum restricted levy amount for each financial year;
- the minimum restricted levy amount for each financial year;
- the restricted levy percentage for each financial year;
- the unrestricted levy percentage for each financial year; and
- how an ADI's levy base is to be worked out.

The table in section 3-2 provides the amounts and percentages that have been determined under that subsection for respective classes of ADI.

Section 3-3 provides for how an ADI's levy base is to be worked out.

Part 3 incorporates matters from:

- Reporting Standard ARS 720.0 ABS/RBA Statement of Financial Position; and
- Reporting Standard ARS 323.0 Statement of Financial Position (Licensed ADIs).

Those Reporting Standards are disallowable legislative instruments, and are available on the Federal Register of Legislation.

#### Part 4—Authorised non-operating holding companies supervisory levy

Part 4 of the Determination relates to levy imposed by the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998* on authorised non-operating holding companies (NOHC) in the general insurance and authorised deposit-taking institution sectors.

Section 4-1 sets out definitions that are relevant to this Part.

Subsection 7(1) of the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998* requires the Treasurer to determine, by legislative instrument, the amount of levy payable by a NOHC for a financial year.

Section 4-2 determines the amount of levy payable by a NOHC in relation to the current financial year.

#### Part 5—General insurance supervisory levy

Part 5 of the Determination relates to levy imposed by the *General Insurance Supervisory Levy Imposition Act 1998* on companies registered under the *Insurance Act 1973*.

Section 5-1 sets out definitions that are relevant to this Part.

Subsection 8(1AA) of the *General Insurance Supervisory Levy Imposition Act 1998* specifies that the amount of levy payable by a general insurance company for a financial year is the sum of the general component and the special component.

#### *The current financial year general component levy*

For the current financial year, the general component will fund the operations of the APRA.

In relation to the general component, subsection 8(3) of the *General Insurance Supervisory Levy Imposition Act 1998* requires the Treasurer, by legislative instrument, to determine:

- the maximum restricted levy amount for each financial year;
- the minimum restricted levy amount for each financial year;

- the restricted levy percentage for each financial year;
- the unrestricted levy percentage for each financial year; and
- how a general insurance company's levy base is to be worked out.

The table in section 5-2 provides the amounts and percentages that have been determined under that subsection for a general insurance company.

Section 5-3 provides for how a general insurance company's levy base is to be worked out.

*The current financial year special component levy*

For the current financial year, the special component will fund the costs of the National Claims and Policies Database. This component was levied for the first time in the 2006-07 financial year following amendments to the *General Insurance Supervisory Levy Imposition Act 1998*.

In relation to the special component, subsection 8(3) of the *General Insurance Supervisory Levy Imposition Act 1998* requires the Treasurer to determine:

- the special maximum levy amount for each financial year;
- the special minimum levy amount for each financial year;
- the special levy percentage for each financial year; and
- how a general insurance company's eligible premium income (EPI) is to be worked out.

Section 5-4 provides for how a general insurance company's special levy component is to be worked out.

Section 5-5 determines how a general insurance company's eligible premium income is to be worked out to calculate the special component.

Part 5 incorporates matters from:

- Reporting Standard GRS 300.0 Statement of Financial Position;
- Reporting Standard GRS 800.1 Policy Data: Public and Product Liability and Professional Indemnity Insurance; and
- Reporting Standard LOLRS 800.1 Policy Data: Public and Product Liability and Professional Indemnity Insurance.

Those Reporting Standards are disallowable legislative instruments, and are available on the Federal Register of Legislation.

Part 6—Life insurance supervisory levy

Part 6 of the Determination relates to levy imposed on life insurance entities by the *Life Insurance Supervisory Levy Imposition Act 1998*.

Section 6-1 sets out definitions relevant to this Part.

Subsection 7(3) of the *Life Insurance Supervisory Levy Imposition Act 1998* requires the Treasurer, by legislative instrument, to determine:

- the maximum restricted levy amount for each financial year;
- the minimum restricted levy amount for each financial year;
- the restricted levy percentage for each financial year;
- the unrestricted levy percentage for each financial year; and
- how a life insurance company's levy base is to be worked out.

The table in section 6-2 provides the amounts and percentages that have been determined under that subsection for a life insurance company.

Section 6-3 provides for how a life insurance company's levy base is to be worked out.

Although this Determination does not specifically mention friendly societies, they are leviable bodies because they are registered under the *Life Insurance Act 1995* and consequently fall under the definition of 'life insurance company' in the *Financial Institutions Supervisory Levies Collection Act 1998*. As subsection 16C(1) of the *Life Insurance Act 1995* notes, item 11 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act 1999* provided that friendly societies existing then are taken to be registered under the *Life Insurance Act 1995*.

Part 6 incorporates matters from Reporting Standard LRS 300.0 Statement of Financial Position. This Reporting Standard is a disallowable legislative instrument, and is available on the Federal Register of Legislation.

#### Part 7—Private health insurance supervisory levy

Part 7 of the Determination relates to levy imposed on private health insurance entities by the *Private Health Insurance Supervisory Levy Imposition Act 2015*.

Section 8 of the *Private Health Insurance Supervisory Levy Imposition Act 2015* requires the Minister, by legislative instrument, to determine:

- the levy amount, which must be calculated having regard to the number of complying health insurance policies on issue (subject to a maximum supervisory levy amount that is applicable per policy); and
- the day on which health insurance providers must assess the number of each type of policy they have on issue for the purposes of determining the amount of supervisory levy payable.

The purpose of Part 7 is to ensure that the cost of supervising private health insurance providers will be recovered through a levy on all complying health insurance policies that apply on the census day. Section 7-4 provides the day that is the census day.<sup>1</sup>

Section 7-1 sets out definitions that are relevant to this Part.

Section 7-2 provides for the amount of levy for a single policy and a policy that is not a single policy.

Section 7-3 provides for how the amount of levy is worked out for a single policy.

The amount of levy for each single policy will be the total cost to supervise private health insurance providers divided by the sum of the aggregate number of single policies and twice the number of other policies on issue on the census day, but not exceeding \$2 per single policy.

The amount of levy for all other policies will be twice the levy amount for a single policy. The amount of supervisory levy for policies with more than one person insured is the same regardless of the actual number of people covered.

#### Part 8—Retirement savings account providers supervisory levy

Part 8 of the Determination relates to levy imposed on providers of retirement savings accounts (RSA providers) by the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998*.

Subsection 7(3) of the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998* requires the Treasurer, by legislative instrument, to determine:

- the maximum restricted levy amount for each financial year;
- the minimum restricted levy amount for each financial year;
- the restricted levy percentage for each financial year;
- the unrestricted levy percentage for each financial year; and
- how an RSA provider's levy base is to be worked out.

Section 8-1 sets out the definitions that are relevant to this Part.

The table in section 8-2 provides the amounts and percentages that have been determined under that subsection for an RSA provider.

Section 8-3 provides for how an RSA provider's levy base is to be worked out.

#### Part 9—Superannuation supervisory levy

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<sup>1</sup> The data to be used for levy calculation purposes is based on the data provided to APRA under form *HRF 601.0 Statistical Data – Cover Page and form HRF 601.1 Statistical Data – by State* (which forms part of Reporting Standard HRS 601.0) and is the data as per the end of June in the previous financial year.



Part 9 of the Determination relates to levy imposed by the *Superannuation Supervisory Levy Imposition Act 1998* on superannuation entities.

Section 9-1 sets out definitions that are relevant to this Part.

Subsection 7(3) of the *Superannuation Supervisory Levy Imposition Act 1998* requires the Treasurer, by legislative instrument, to determine:

- the maximum restricted levy amount for each financial year;
- the minimum restricted levy amount for each financial year;
- the restricted levy percentage for each financial year;
- the unrestricted levy percentage for each financial year; and
- how a superannuation entity's levy base is to be worked out.

The table in section 9-2 provides the amounts and percentages that have been determined under that subsection for a superannuation entity.

Section 9-3 provides for how a superannuation entity's levy base is to be worked out.

Part 9 incorporates matters from:

- Accounting Standard AASB 1056 *Superannuation Entities*
- Reporting Standard SRS 320.0 Statement of Financial Position; and
- Reporting Standard SRS 800.0 Financial Statements.

Those instruments are disallowable legislative instruments, and are available on the Federal Register of Legislation.

### Schedule 1 – Amendments

Item 1 repeals the *Australian Prudential Regulation Authority Supervisory Levies Determination 2020*.

Section 7 of the *Acts Interpretation Act 1901* ensures that the repeal does not affect any obligation or liability incurred under the repealed determination.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Australian Prudential Regulation Authority Supervisory Levies Determination 2021***

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*.

**Overview of the Legislative Instrument**

The Determination ensures the recovery of APRA's costs, and the costs incurred in connection with supporting the integrity and efficiency of markets and promoting the interests of consumers in the financial system, from industries that are prudentially regulated by APRA. The legislative framework for these levies is established by the *Financial Institutions Supervisory Levies Collection Act 1998*, which prescribes the timing of payment and the collection of levies, and various levy imposition Acts.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

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