

**Banking (prudential standard) determination No. 2 of 2022**

**Insurance (prudential standard) determination No. 5 of 2022**

**Life Insurance (prudential standard) determination No. 1 of 2022**

**Health Insurance (prudential standard) determination No. 1 of 2022**

**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, vary or revoke a prudential standard that applies to an APRA-regulated institution under:

- (1) subsections 11AF(1) and (3) of the *Banking Act 1959* (Banking Act), which applies to all 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), which applies to all 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), which applies to all life companies, including friendly societies, and non-operating holding companies (registered life NOHCs) and subsidiaries of life companies or registered life NOHCs; and
- (4) subsections 92(1) and (5) of the *Private Health Insurance (Prudential Supervision) Act 2015* (PHIPS Act), which applies to all registered private health insurers.

On 12 August 2022, APRA made the following determination instruments (collectively, the Instruments):

- Banking (prudential standard) determination No. 2 of 2022, which revokes *Prudential Standard APS 001 Definitions* made under Banking (prudential standard) determination No. 2 of 2017 and determines a new *Prudential Standard APS 001 Definitions* (APS 001);
- Insurance (prudential standard) determination No. 5 of 2022, which revokes *Prudential Standard GPS 001 Definitions* made under Insurance (prudential

standard) determination No. 1 of 2022 and determines a new *Prudential Standard GPS 001 Definitions* (GPS 001);

- Life Insurance (prudential standard) determination No. 1 of 2022, which revokes *Prudential Standard LPS 001 Definitions* made under Life Insurance (prudential standard) determination No. 2 of 2018 and determines a new *Prudential Standard LPS 001 Definitions* (LPS 001); and
- Health Insurance (prudential standard) determination No. 1 of 2022, which revokes *Prudential Standard HPS 001 Definitions* made under Health Insurance (prudential standard) determination No. 2 of 2018 and determines a new *Prudential Standard HPS 001 Definitions* (HPS 001).

The instruments commence on 22 August 2022.

## **1. Background**

In recent years, APRA has incorporated greater proportionality within the prudential framework by subjecting smaller and less complex entities to simpler requirements. This has been a feature of the recently finalised prudential standards for remuneration and ADI capital, and the proposed draft prudential standards for financial contingency and resolution planning.

Under these prudential standards, entities determined to be significant financial institutions (SFIs) have been subject to higher requirements, compared to those entities that are not SFIs (non-SFIs). SFIs are entities with assets above a certain size or entities determined as such by APRA, taking into account matters such as complexity and group membership.

In April 2022, APRA consulted on minor amendments to align and centralise the definition of an SFI. Under the proposed approach, all prudential standards would use the same definition of an SFI, with the aligned definition located in central definitions prudential standards for banking and insurance.

## **2. Purpose and operation of the instruments**

The purpose of these instruments is to revoke the four existing definitions standards for banking and insurance (standards), and replace them with corresponding standards which incorporate the appropriate amendments. In the new versions of each standard, the definitions of an SFI and non-SFI have been included. In the new version of LPS 001, the term ‘Registered NOHCs’ has also been defined. The instruments do not make any other changes.

Where the standards refer to an Act, Regulation, prudential standard or Australian Accounting Standard,<sup>1</sup> this is a reference to the document as it exists from time to time, and which is available on the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au).

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<sup>1</sup> Australian Accounting Standards is defined in *Prudential Standard APS 001 Definitions* as the Australian Accounting Standards issued by the Australian Accounting Standards Board as may be amended from time to time.

The standards provide for APRA to exercise various discretions. Decisions made by APRA exercising those discretions are not subject to merits review. This is because these decisions are preliminary decisions that may facilitate or lead to substantive decisions which are subject to merits review.

Under the Banking Act, Insurance Act, Life Insurance Act and PHIPS Act, a breach of a prudential standard is a breach of the enabling legislation, as each enabling Act provides that regulated entities must comply with the standard. However, there are no penalties prescribed for breach of the prudential standards under any of these Acts. Instead, an entity's breach of the enabling legislation is grounds for APRA to make further, substantive decisions under the relevant enabling legislation in relation to the entity. Those decisions may include the decision:

- (a) to issue a direction to the regulated entity, including a direction to comply with the whole or part of a prudential standard (section 11CA of the Banking Act, section 104 of the Insurance Act, section 230B of the Life Insurance Act); and a direction to comply with all, or specified obligations, which includes prudential standards (section 96 of the PHIPS Act); and
- (b) to revoke an authority to carry on banking business (section 9A of the Banking Act); a banking NOHC authorisation (section 11AB of the Banking Act); an authority to carry on insurance business (section 15 of the Insurance Act); an insurance NOHC authorisation (section 21 of the Insurance Act); registration of life insurance business (section 26 of the Life Insurance Act); a life NOHC authorisation (section 28C of the Life Insurance Act).

It is only at this stage that an entity is exposed to a penalty: loss of licence or imposition of a penalty if it breaches the direction (50 penalty units each day under section 11CG of the Banking Act, section 108 of the Insurance Act and section 230F of the Life Insurance Act; 30 penalty units each day under section 104 of the PHIPS Act). In nearly all cases,<sup>2</sup> the decisions are preceded by a full consultation with the regulated entity to raise any concerns they may have in relation to the decision.

The decisions of APRA to impose a direction are subject to merits review (section 11CA of the Banking Act, section 104 of the Insurance Act, section 236 of the Life Insurance Act, section 168 of the PHIPS Act), which is appropriately available at the point where an entity could be exposed to a penalty.

All decisions to revoke authorisations/registrations under the Banking Act, Insurance Act and Life Insurance Act are subject to merits review, unless specifically excluded by the enabling legislation.

Revocation of an authorisation to carry on banking business or a banking NOHC authorisation is subject to merits review unless either:

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<sup>2</sup> The Banking Act, Insurance Act and Life Insurance Act specifically provide that APRA does not need to consult where APRA is satisfied that doing so could result in a delay in revocation that would be contrary to the national interest or the interests of depositors with the body corporate (subsection 9A(4) of the Banking Act), contrary to the national interest (subsection 15(4) of the Insurance Act), or contrary to the public interest (subsection 26(5) of the Life Insurance Act), respectively.

- (a) APRA has determined that access to natural justice and merits review is contrary to the national interest or contrary to the interests of depositors with the body corporate; or
- (b) (in the case of ADIs only) the authority is an authority that is to cease to have effect on a day specified in the authority (section 9A(8) of the Banking Act).

Revocation of an authorisation to carry on insurance business or an insurance NOHC authorisation is subject to merits review (ss 15 and 21 of the Insurance Act).

Revocation of registration as a life insurance company or a life NOHC authorisation is subject to merits review (section 236 of the Life Insurance Act). The situation in relation to cancellation of registration under the PHIPS Act is different to the other enabling legislation.

### **3. Consultation**

In April 2022, APRA undertook public consultation on the proposed changes to the standards.<sup>3</sup> In July 2022, APRA released a response to submissions.<sup>4</sup>

### **4. Regulation Impact Statement**

The Office of Best Practice Regulation advised that no Regulation Impact Statement was required as the changes to the standards are minor and machinery.

### **5. 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.

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<sup>3</sup> [Consultation on minor amendments to centralise the definition of a significant financial institution | APRA](#)

<sup>4</sup> [Minor amendments to centralise the definition of a significant financial institution | APRA](#)

## 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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These Legislative Instruments (the instruments) are 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 purpose of these instruments is to incorporate the definitions of a significant financial institution and a non-significant financial institution into the central definitions prudential standards for banking and insurance (APS 001, GPS 001, LPS 001 and HPS 001).

#### **Human rights implications**

APRA has assessed the instruments and is of the view that they do 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 instruments are compatible with human rights.

#### **Conclusion**

The instruments are compatible with human rights as they do not raise any human rights issues.