

Insurance (prudential standard) determination No. 2 of 2023

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Insurance Act 1973, section 32.

APRA may, in writing, determine, vary or revoke a prudential standard that applies to an APRA-regulated institution under subsections 32(1) and (4) of the *Insurance Act 1973* (the Act), in relation to general insurers, authorised non-operating holding companies (authorised insurance NOHCs), and subsidiaries of general insurers and authorised insurance NOHCs.

On 24 May 2023, APRA made Insurance (prudential standard) determination No. 2 of 2023 which revokes *Prudential Standard GPS 110 Capital Adequacy* made under Insurance determination No. 12 of 2019 and determines a new *Prudential Standard GPS 110 Capital Adequacy* (GPS 110).

The instrument commences on 1 July 2023.

1. Background

On 24 May 2023, APRA determined 19 general insurance and life insurance prudential standards with amendments that relate to the new accounting standard Australian Accounting Standards Board (AASB) 17 Insurance Contracts (AASB 17) and minor updates to the Life and General Insurance Capital (LAGIC) Framework.

Based on International Financial Reporting Standard 17 Insurance Contracts, AASB 17 will see all insurance contracts accounted for in a consistent manner, thereby facilitating comparisons across similar insurance companies. The requirements are designed to help users of financial statements better understand an insurer's exposure, profitability and financial position.

APRA's capital and reporting frameworks have close linkages with the accounting standards previously relied upon to determine the accounting treatment of insurance liabilities. As a result, APRA's capital and reporting frameworks required substantial updates to ensure compatibility with AASB 17.

Not making adjustments to APRA's capital and reporting frameworks may have resulted in unintended changes to reported capital levels across the insurance industries. It may have also significantly increased regulatory burden due to the need for insurers to maintain dual valuation, actuarial, accounting and reporting systems to meet the different requirements of AASB 17 and APRA's prudential framework.

In addition to this, although the LAGIC framework continues to achieve its objectives, APRA has taken the opportunity to make a number of updates to LAGIC to ensure it remains fit-for-purpose. The key changes include:

- removing the ability of insurers to use Internal Capital Models for regulatory capital purposes;
- aligning the measurement of capital instruments for ADIs and Insurers; and
- formalising reinsurance procedures and rules.

2. Purpose and operation of the instruments

The purpose of this instrument is to revoke GPS 110 and replace it with a corresponding new version of the prudential standards incorporating the amendments.

This instrument makes changes to better align APRA's prudential requirements with accounting concepts, as well as make a small number of other amendments to address minor prudential matters. The fundamental components or purpose of each standard has not changed.

GPS 110 requires a general insurer or Level 2 insurance group to maintain an adequate level and quality of capital commensurate with the scale, nature and complexity of its business and risk profile. A general insurer or Level 2 insurance group is also required to have a documented ICAAP, comply with any supervisory adjustment to capital imposed by APRA, obtain APRA's written consent before reducing its capital, and inform APRA of any significant adverse changes to its capital position.

Under GPS 110, a general insurer or Level 2 insurance group is required to maintain required levels of capital and determine its prescribed capital amount having regard to a range of risk factors that may adversely impact the insurer's ability to meet its obligations. These factors include insurance risk, insurance concentration risk, asset risk, asset concentration risk and operational risk.

Documents incorporated by reference

Under paragraph 14(1)(a) of the *Legislation Act 2003*, the prudential standard incorporates by reference as in force from time to time:

- Acts of Parliament and associated delegated legislation;
- Prudential Standards determined by APRA under:
 - subsection 11AF(1) of the *Banking Act 1959*;
 - subsection 32(1) of the *Insurance Act 1973*;
 - subsection 230A(1) of the *Life Insurance Act 1995*; and
 - subsection 92(1) of the *Private Health Insurance (Prudential Supervision) Act 2015*; and
- Reporting Standards determined by APRA under subsection 13(1) of the Act;
- the Australian Accounting Standards determined by the Australian Accounting Standards Board under section 334 of the *Corporations Act 2001* (Cth); and
- the Australian Auditing Standards determined by the Auditing and Assurance Standards Board under section 336 of the *Corporations Act 2001* (Cth).

These documents may be freely obtained at www.legislation.gov.au (all documents listed above except for Australian Accounting and Auditing Standards), <https://www.aasb.gov.au/pronouncements/accounting-standards/> (Australian Accounting Standards) and <https://auasb.gov.au/standards-guidance/auasb-standards/auditing-standards/> (Australian Auditing Standards).

Review of decisions

There are several powers that may be exercised by APRA in prudential standards that involve an element of discretion, and which may impact the interests of insurers to which the prudential standards apply.

Decisions made by APRA exercising those powers are not subject to merits review. APRA considers decisions made by APRA exercising discretions under its prudential standards should not be subject to merits review as they are financial decisions with a significant public interest element.

A breach of a prudential standard is also a breach of the Act, as the Act provides that an insurer must comply with the prudential standard. However, there are no penalties prescribed for such breaches. Instead, an insurer's breach of a provision in the Act is grounds for APRA to make further, substantive decisions under the Act.

3. Consultation

APRA began its engagement with industry on AASB 17 in 2017, subsequent engagement has taken a range of forms including letters to industry, information requests, quantitative impact studies, and four rounds of consultation:

- September 2019 – Letter issued outlining APRA's proposed directions and information request on preparedness;
- November 2020 – Discussion paper 'Integrating AASB 17 into the capital and reporting frameworks for insurers and updates to the LAGIC framework';
- December 2021 – Response paper 'Integrating AASB 17 into the capital and reporting framework for insurers and updates to the LAGIC framework'; and
- September 2022 – Response paper 'Finalisation and the integration of AASB 17 into the capital and reporting frameworks for insurers and updates to the LAGIC framework'.

Significant stakeholder feedback was received by APRA over each round of consultations. Submissions were broadly supportive of APRA's direction to align the prudential framework with AASB 17.

APRA is satisfied the consultation was appropriate and reasonably practicable.

4. Impact Analysis (IA)

The Office of Impact Analysis advised that no Regulation Impact Statement was required for the consequential amendments as the changes to the prudential 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.

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 instrument 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 revoke, *Prudential Standard GPS 110 Capital Adequacy* and replace it with a new version of the corresponding prudential standards with the appropriate amendments.

These instruments ensure that insurers are not subject to undue regulatory burden with the introduction of AASB 17 and sets up the insurance prudential framework to remain fit for purpose into the future.

Human rights implications

APRA has assessed the 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.