

## **Life Insurance (prudential standard) determination 14 of 2023**

### **EXPLANATORY STATEMENT**

**Prepared by the Australian Prudential Regulation Authority (APRA)**

*Life Insurance Act 1995*, section 230A

Under subsection 230A(1) and (5) of the *Life Insurance Act 1995* (the Act), APRA may, in writing determine, vary or revoke a prudential standard that applies to life companies, including friendly societies, registered non-operating holding companies (registered NOHCs) and subsidiaries of life companies and registered NOHCs.

On 21 November 2023, APRA made Life Insurance (prudential standard) determination No. 14 of 2023 (the instrument), which revokes *Prudential Standard LPS 310 Audit and Related Matters* made under Life Insurance determination No. 11 of 2023 and determines a new *Prudential Standard LPS 310 Audit and Related Matters* (LPS 310).

The instrument commences on 18 December 2023.

#### **1. Background**

APRA's mandate is to ensure the safety and soundness of prudentially regulated financial institutions so that they can meet their financial promises to depositors, policyholders and fund members within a stable, efficient and competitive financial system.

APRA carries out this mandate through a multi-layered prudential framework that encompasses licensing and supervision of institutions. APRA is empowered under the Banking Act, the Insurance Act, the Life Insurance Act and the PHI Act to issue legally binding prudential standards that set out specific prudential requirements with which APRA-regulated institutions in each industry must comply. These standards are supported by prudential practice guides which clarify APRA's expectations with regard to prudential requirements.

APRA regularly reviews its regulatory regime and amends its prudential requirements as a result of a number of factors including:

- international developments;
- changes in financial market conditions;
- changes in risk management practices, in response to identified weaknesses in the prudential framework; and
- to reduce potential negative impacts of emerging industry issues.

When amending its prudential requirements APRA has regard to, amongst others, the impact on industry in terms of both industry burden and matters of proportionality.

LPS 310 forms part of the prudential framework set out by APRA for life companies. LPS 310 sets out the roles and responsibilities of a life company's Auditor. It also sets out the

obligations of a life company to make arrangements to enable its Auditor to fulfil his or her responsibilities.

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

The purpose of this instrument is to revoke LPS 310 and replace it with the corresponding new version of the prudential standard incorporating minor corrections. The fundamental components and purpose the standard has not changed.

LPS 310 sets out the roles and responsibilities of a life company's Auditor, and the obligations of a life company to make arrangements to enable its Auditor to fulfil his or her responsibilities.

The key requirements of LPS 310 are set out below:

- the life company must make arrangements to enable the Auditor to undertake his or her role and responsibilities;
- the Auditor must prepare the reports required in accordance with the requirements of and timeframes specified in this Prudential Standard;
- the life company must submit to APRA all reports to be prepared by the Auditor;
- the Auditor must audit certain returns of the life company to APRA and provide a report to the Board of the life company; and
- the Auditor must review other aspects of the life company's operations on an annual basis and provide a report to the Board of the life company.

### ***Exercise of discretion by APRA***

LPS 310 provides for APRA to exercise various discretions. Decisions made by APRA in 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 Act, a breach of a prudential standard is a breach of the enabling legislation, as the enabling Act provides that regulated entities must comply with the standard. However, there are no penalties prescribed for breach of the prudential standards under the Act. 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 230B of the Act); or
- (b) to revoke registration of life insurance business (section 26 of the Act) or a life NOHC authorisation (section 28C of the 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 230F of the Act).

In nearly all cases,<sup>1</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 236 of the 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 Act are subject to merits review, unless specifically excluded by the enabling legislation.

Revocation of registration as a life insurance company or a life NOHC authorisation is subject to merits review (section 236 of the Act).

### ***Adjust and exclude power***

LPS 310 gives APRA the discretion to adjust or exclude a provision of the prudential standard (paragraph 34). The power to create such a discretion is provided for under subsection 230(A) of the Act.

APRA may exercise this power when it is satisfied that the adjustment or exclusion of a specific requirement for one or more specified regulated entities will better support APRA in meeting its objectives. For example, the adjustment or exclusion may be necessary to obtain a better prudential outcome than would be the case if the prudential requirement were applied unaltered to a particular regulated entity. A tailored approach would give APRA comfort that the prudential requirements apply appropriately to protect the interests of depositors. APRA will also take into account other considerations, such as efficiency, competition, contestability, competitive neutrality and regulatory burden, including comparisons with the entity's peer group.

The exercise of APRA's powers is governed by a robust decision-making framework which is documented in APRA's internal policies. This framework supports APRA in fulfilling its mandate by limiting decision making to those senior APRA officers with the appropriate experience and skill to exercise prudent judgement. The framework also requires decision makers to seek advice from internal technical experts.

### ***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 laws;
- Prudential Standards determined by APRA under:

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<sup>1</sup> The Act specifically provides 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 public interest (subsection 26(5) of the Act).

- 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 *Financial Sector (Collection of Data) Act 2001*;
- 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](http://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).

### 3. Consultation

This instrument revokes the previous LPS 310 which came into effect on 1 July 2023 (previous LPS 310) and replaces it with a new version. The new version is largely the same as the previous LPS 310 but incorporates two corrections relating to the level of assurance required for specific reporting standards. The purpose of remaking LPS 310 is to correct two issues in the previous LPS 310 to ensure alignment with the version settled through consultation between 2017 and 2022.

The previous LPS 310 was consulted on as part of APRA's project to update general insurance and life insurance prudential standards with amendments that relate to the new accounting standard Australian Accounting Standards Board 17 Insurance Contracts (AASB 17).

APRA began its engagement with industry on AASB 17 driven changes to the prudential framework 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'.

APRA is satisfied the consultation was appropriate and reasonably practicable.

#### **4. Impact Analysis (IA)**

The Office of Impact Analysis advised that IA was not required as the remaking of CPS 310 is unlikely to have more than a minor regulatory impact.

#### **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*

#### **Life Insurance (prudential standard) determination 14 of 2023**

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 *Life Insurance (prudential standard) determination 14 of 2023* is to revoke *Prudential Standard LPS 310 Audit and Related Matters* and replace it with a new version of the corresponding prudential standard with minor amendments.

LPS 310 sets out the roles and responsibilities of a life company's Auditor, and the obligations of a life company to make arrangements to enable its Auditor to fulfil his or her responsibilities.

#### **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 legislative instrument is compatible with human rights.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.