

**Banking, Insurance, Life Insurance and Health Insurance (prudential standard)
determination No. 1 of 2024**

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

Under the above provisions, APRA may, in writing, determine, vary or revoke a prudential standard that applies to an APRA-regulated entity.

On 13 August 2024, APRA made *Banking, Insurance, Life Insurance and Health Insurance (prudential standard) determination No. 1 of 2024* (the instrument) which determines *Prudential Standard CPS 001 Defined terms* (CPS 001) and revokes:

- *Prudential Standard APS 001 Definitions* (APS 001) made under Banking (prudential standard) determination No. 2 of 2022;
- *Prudential Standard GPS 001 Definitions* (GPS 001) made under Insurance (prudential standard) determination No. 1 of 2023;
- *Prudential Standard LPS 001 Definitions* (LPS 001) made under Life Insurance (prudential standard) determination No. 5 of 2023;
- *Prudential Standard HPS 001 Definitions* (HPS 001) made under Health Insurance (prudential standard) determination No. 1 of 2023; and
- *Prudential Standard 3PS 001 Definitions* (3PS 001) made under Banking, Insurance and Life Insurance (prudential standard) determination No. 1 of 2016.

The instrument commences on 1 October 2024.

1. Background

APRA's role is to protect the financial interests of Australians by maintaining the safety and soundness of financial institutions. To do this, APRA sets legal requirements and guidance for the entities it regulates (the prudential framework).

The prudential framework comprises:

- legally binding prudential standards;
- legally binding reporting standards; and
- supporting guidance (such as prudential practice guides).

CPS 001 is a legally binding prudential standard that will come into effect on 1 October 2024. It supports interpretation of APRA's prudential framework.

2. Purpose and operation of the instrument

The purpose of the instrument is to revoke APS 001, GPS 001, LPS 001, HPS 001 and 3PS 001 and replace them with a new prudential standard. The new prudential standard is CPS 001.

CPS 001 centralises defined terms used in the ADI and insurance prudential frameworks within one prudential standard. The standard also explicitly links each defined term to the industries it applies to, making it easier to understand and apply the prudential framework. These defined terms are read with other prudential standards which impose prudential requirements.

The description of provisions of CPS 001 is set out in Attachment A to this Explanatory Statement.

3. Consultation

APRA undertook public consultation on the draft version of CPS 001 from 27 November 2023 to 8 March 2024.¹

APRA received three submissions in response to the consultation. Respondents supported consolidation and suggested further ways the defined terms could be streamlined across APRA's prudential framework. APRA will consider these improvements when reviewing the prudential standards in which these terms apply.

4. Scope of administrative powers

Exercise of discretion by APRA

CPS 001 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 *Banking Act 1959*, *Insurance Act 1973*, *Life Insurance Act 1995* and *Private Health Insurance (Prudential Supervision) Act 2015*, 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); or

¹ <https://www.apra.gov.au/new-cross-industry-prudential-standard-on-definitions-for-adis-and-insurers>

- (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; and 30 penalty units each day under section 104 of the PHIPS Act). In nearly all cases,² 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 and 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, 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:

- (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 (subsection 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 (sections 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.

² 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.

5. Documents incorporated by reference

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

- Acts of Parliament and associated delegated laws;
- Prudential Standards determined by APRA under:
 - subsection 11AF(1) of the Banking Act;
 - subsection 32(1) of the Insurance Act;
 - subsection 230A(1) of the Life Insurance Act; and
 - subsection 92(1) of the PHIPS Act.
- 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 on the Federal Register of Legislation 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).

6. Impact Analysis

The Office of Impact Analysis has confirmed that an impact analysis is not required as the making of CPS 001 is unlikely to have more than a minor regulatory impact.

7. 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 B to this Explanatory Statement.

ATTACHMENT A

Description of provisions of CPS 001

CPS 001 defines key terms that are used in APRA's prudential framework. It applies to authorised deposit-taking institutions (ADIs), general insurers, life companies and private health insurers (collectively, APRA-regulated institutions).

Paragraphs 1 to 5 state APRA's authority to make the prudential standard, the application of the prudential standards to the APRA-regulated institutions and the date at which the standard commences.

Paragraphs 6 and 7 set out how references to an Act, Regulations, or Prudential Standard, Australian Accounting Standard or Australian Auditing and Assurance Standard and the indicators in square brackets appearing before a defined term should be interpreted.

Paragraph 8 states the definitions of key terms that are used in APRA's prudential framework.

Paragraph 9 states what an APRA-regulated institution must do if it seeks to place reliance on a previous exercise of discretion by APRA under specified prudential standards.

Attachment A of CPS 001 sets out definitions relevant to ADI conglomerate groups, consolidation and non-consolidation of ADI subsidiaries and Level 2 insurance groups for general insurers.

Attachment B of CPS 001 set outs the different classes of business for a general insurer.

Attachment C of CPS 001 sets out the requirements for general insurers and Level 2 insurance groups, life companies and private health insurers in applying counterparty grades to assets subject to credit risk.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Banking, Insurance, Life Insurance, Health Insurance and Superannuation (prudential standard) determination No. 1 of 2024

This 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* (HRPS Act).

Overview of the Legislative Instrument

The purpose of this instrument is to determine a new *Prudential Standard CPS 001 Defined terms* and revoke *Prudential Standard APS 001 Definitions*, *Prudential Standard GPS 001 Definitions*, *Prudential Standard LPS 001 Definitions*, *Prudential Standard HPS 001 Definitions* and *Prudential Standard 3PS 001 Definitions*.

CPS 001 centralises defined terms used in the banking and insurance prudential frameworks within one prudential standard to improve consistency. The standard also explicitly links each defined term to the industries it applies to, making it easier to understand and apply the prudential framework.

Human rights implications

APRA has assessed this 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, this instrument is compatible with human rights.

Conclusion

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