

Insurance (prudential standard) determination No. 1 of 2018

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Insurance Act 1973, section 32

Under subsection 32(1) of the *Insurance Act 1973* (the Act), APRA has the power to determine standards (prudential standards), in writing, in relation to prudential matters to be complied with by general insurers.

On 13 April 2018, APRA made Insurance (prudential standard) determination No. 1 of 2018 (the instrument) which makes *Prudential Standard GPS 410 Transfer and Amalgamation of Insurance Business for General Insurers* (GPS 410).

The instrument commences on the date it is registered on the Federal Register of Legislation (FRL).

1. Background

GPS 410 sets out for procedural matters to be met by general insurers when transferring insurance business under Division 3A of Part III of the Act. Division 3A of Part III of the Act provides that insurance business of a general insurer authorised under the Act may be transferred to a similarly authorised general insurer or amalgamated with the business of another general insurer. The Division provides that the business is transferred or amalgamated by a scheme that is to be confirmed by the Federal Court.

2. Purpose and operation of the instruments

The purpose of the instrument is to remake without change *Prudential Standard GPS 410 Transfer and Amalgamation of Insurance for General Insurers* (original GPS 410) made on 7 February 2002 by *Insurance Act 1973 - Determination of Prudential Standards - GPS 110 - Capital Adequacy for General Insurers; GPS 120 - Assets in Australia for General Insurers; GPS 210 - Liability Valuation for General Insurers; GPS 220 - Risk Management for General Insurers; GPS 230 - Reinsurance Arrangements for General Insurers; GPS 410 - Transfer and Amalgamation of Insurance Business for General Insurers and Transitional Prudential Standard GPS 900- Early Approvals of Auditors and Actuaries* (FRL registration number F2006B01543).

The original GPS 410 was mistakenly labelled on the Federal Register of Legislation as having been repealed on 1 January 2007 by *Insurance (prudential standard) determination No. 7 of 2006 – Prudential Standard GPS 110 – Capital Adequacy*. GPS 410 was consequently not included in the lists of sunseting legislative instruments prepared by the Attorney- General under section 52 of the *Legislation Act 2003* (Legislation Act). It was not therefore identified for remaking and was repealed on 1 October 2016 by operation of subsection 50(1) of the Legislation Act. It was not APRA's intention that the original GPS 410 be allowed to sunset. The Office of

Parliamentary Counsel have acknowledged the error but advised there is no way in which the operation of GPS 410 can be continued other than by remaking it.

Division 3A of Part III of the Act provides that certain procedural matters are to be carried out in accordance with Prudential Standards that are to be made by APRA under section 32 of the Insurance Act. GPS 410 was the prudential standard that set out those procedural requirements, which were:

- (i) when a copy of the scheme and any actuarial reports should be given to APRA;
- (ii) how a notice of intention to transfer the insurance business was to be published, and what was required to be in the notice;
- (iii) the minimum content to be included in a summary of the scheme that is provided to affected policyholders;
- (iv) when an application for confirmation can be made to the court; and
- (v) the documents that are to be provided to APRA after the transfer is completed.

Consultation

As GPS 410 is being remade unchanged, APRA did not consult externally in relation to the instruments. This was also in part due to the urgency of reintroducing a procedural framework for the transfers of insurance business.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for the instrument. OBPR also advised that it was not necessary to provide a certification letter as outlined in the guidance note for Sunsetting Legislative Instruments

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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The Legislative Instruments 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 Instruments

The purpose of the instrument is to remake without change *Prudential Standard GPS 410 Transfer and Amalgamation of Insurance for General Insurers* (GPS 410) made on 7 February 2002.

Division 3A of Part III of the *Insurance Act 1973* (Insurance Act) provides that insurance business of a general insurer authorised under the Insurance Act may be transferred to a similarly authorised general insurer or amalgamated with the business of another general insurer. The Division provides that the business is transferred or amalgamated by a scheme that is to be confirmed by the Federal Court.

The Division provides that certain procedural matters are to be carried out in accordance with Prudential Standards that are to be made by APRA under section 32 of the Insurance Act. GPS 410 was the prudential standard that set out those procedural requirements, which were:

- (i) when a copy of the scheme and any actuarial reports should be given to APRA;
- (ii) how a notice of intention to transfer the insurance business was to be published, and what was required to be in the notice;
- (iii) the minimum content to be included in a summary of the scheme that is provided to affected policyholders;
- (iv) when an application for confirmation can be made to the court; and
- (v) the documents that are to be provided to APRA after the transfer is completed.

Human rights implications

APRA has assessed the 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

These Legislative Instruments are compatible with human rights as they do not raise any human rights issues.