



Medical Indemnity (Prudential Supervision and Product Standards) Act 2003

INSTRUMENT ISSUING GUIDELINES No 3 of 2003

MADE UNDER SUBSECTION 13(9)

I, Charles Watts Littrell, a delegate of the Australian Prudential Regulation Authority, under subsection 13(9) of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* ISSUE the following guidelines, which are set out in the Schedule:

Guidelines: Qualifications and Independence of Auditors and Actuaries.

Dated 6 August 2003

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GUIDELINES

QUALIFICATIONS AND INDEPENDENCE OF AUDITORS AND ACTUARIES

Background

1. A body corporate, being either:
 - (a) a Medical Defence Organisation (MDO) within the meaning of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* (the Act); or
 - (b) a body corporate prescribed in the *Medical Indemnity (Prudential Supervision and Product Standards) Regulations 2003* (the Regulations); or
 - (c) a body corporate related to a body corporate mentioned in (a) or (b);may apply to APRA, under subsection 13(1) of the Act, for a determination under subsection 13(3) of the Act that the minimum capital requirements¹ do not apply to the body corporate during 1 July 2003 to 30 June 2008 (the transition period).
2. APRA can only make a determination under subsection 13(3) of the Act where, at the time of application by the body corporate, the body corporate:
 - (a) is not a general insurer under the *Insurance Act 1973* (Insurance Act), or is a general insurer and is prescribed by the Regulations; and
 - (b) does not, or would not during the transition period, comply with the minimum capital requirements; and
 - (c) lodges a funding plan that:
 - (i) is in the form prescribed by the Regulations;
 - (ii) is certified by an independent auditor and independent actuary; and
 - (iii) complies with guidelines issued by APRA.
3. APRA can not make any determinations on or after 1 July 2005.

Purpose

4. These guidelines set out:
 - (a) the qualifications an auditor or actuary must have; and

¹ Minimum capital requirements are those prescribed by *Prudential Standard GPS 110 Capital Adequacy for General Insurers* made under section 32 of the *Insurance Act 1973*.

- (b) the necessary degree of independence from a body corporate that an auditor or actuary must have;

to certify a funding plan in accordance with subparagraph 13(3)(d)(ii) of the Act.

Authority

- 5. These guidelines are made under paragraphs 13(9)(c) and (d) of the Act.

Guidelines on the qualifications and independence of the auditor and the actuary

Basic requirements

- 6. Where the body corporate is not a general insurer, the auditor and the actuary must meet:
 - (a) the fitness and propriety criteria in paragraph 6 of *Prudential Standard GPS 220 Risk Management for General Insurers* (GPS 220); and
 - (b) the eligibility criteria in paragraphs 8(b) and (c) of GPS 220; and
 - (c) the additional eligibility criteria in paragraph 10 or 11 of this guideline.
- 7. Where the body corporate is a general insurer:
 - (a) the auditor must be the body corporate's approved auditor;² and
 - (b) the actuary must be the body corporate's approved actuary³ (except where paragraph 8 applies).
- 8. Where the body corporate is a general insurer and has been exempted under section 47 of the Insurance Act from the requirement to have an actuary, the actuary must meet:
 - (a) the fitness and propriety criteria in paragraph 6 of GPS 220; and
 - (b) the eligibility criteria in paragraphs 8(b) and (c) of GPS 220; and
 - (c) the additional eligibility criteria in paragraph 11 of this guideline.⁴
- 9. For the purposes of paragraphs 6 and 8:
 - (a) a reference to an 'approved auditor' or 'approved actuary' in GPS 220, is taken to be a reference to the auditor or actuary; and
 - (b) a reference to the 'insurer' in GPS 220 is taken to be a reference to the body corporate.

² An 'approved auditor' is a person appointed by a general insurer in accordance with section 39 of the Insurance Act and approved by APRA in accordance with section 40 of the Insurance Act.

³ An 'approved actuary' is a person appointed by a general insurer in accordance with section 39 of the Insurance Act and approved by APRA in accordance with section 40 of the Insurance Act.

⁴ Section 39 of the Insurance Act requires a general insurer to appoint an auditor and an actuary, both of whom must be approved by APRA under section 40. However, under section 47, APRA may exempt a general insurer from the requirement to appoint an actuary.

Additional eligibility criteria

10. The additional eligibility criteria that relate to the auditor are that the auditor is:

- (a) under Division 2 of Part 9.2 of the *Corporations Act 2001*, registered, or taken to be registered, as an auditor; and
- (b) a member or fellow with at least one of the following professional organisations:
 - (i) CPA Australia; or
 - (ii) Institute of Chartered Accountants in Australia; or
 - (iii) such other professional organisation as APRA considers appropriate and approves in writing.

11. The additional eligibility criteria that relate to the actuary are that the actuary is:

- (a) a Fellow or Accredited Member of the Institute of Actuaries of Australia; or
- (b) a member of such other professional organisation as APRA considers appropriate and approves in writing.

Additional requirements where the auditor and actuary belong to the same firm or related companies

12. Where:

- (a) the auditor is a partner, director or employee of the actuary's firm or of a body corporate related to the actuary's firm; or
- (b) the actuary is a partner, director or employee of the auditor's firm or of a body corporate related to the auditor's firm;

then:

- (c) only one of them (that is, either the auditor or the actuary) may certify the funding plan; and
- (d) the funding plan must also be certified:
 - (i) if the person certifying it in accordance with paragraph (c) is the auditor – by a different actuary who does not belong to the auditor's firm or a related body corporate (as specified in paragraph (b)) and who complies with the requirements in paragraphs 6 to 8;
 - (ii) if the person certifying it in accordance with paragraph (c) is the actuary – by a different auditor who does not belong to the actuary's firm or a related body corporate (as specified in paragraph (a)) and who complies with the requirements in paragraphs 6 or 8.

13. For the purpose of paragraph 12:

- (a) the 'actuary's firm' means:
 - (i) the partnership in which the actuary is a partner or by which the actuary is employed; or
 - (ii) the body corporate of which the actuary is a director or by which the actuary is employed; or
 - (iii) where the actuary is a sole practitioner – the actuary.
- (b) the 'auditor's firm' means:
 - (i) the partnership in which the auditor is a partner or by which the auditor is employed; or
 - (ii) the body corporate of which the auditor is a director or by which the auditor is employed; or
 - (iii) where the auditor is a sole practitioner – the auditor.
- (c) 'related body corporate' has the same meaning as under section 50 of the *Corporations Act 2001*.

Statement by the auditor and actuary that they comply with these guidelines

14. The auditor and actuary must provide to the body corporate a written statement that he or she complies with the requirements in these guidelines.