

EXPLANATORY STATEMENT

Issued by the Australian Prudential Regulation Authority

Life Insurance Act 1995

Prudential Rules Number 43

Subsection 252(1) of the *Life Insurance Act 1995* (the “Act”) provides that the Australian Prudential Regulation Authority (“APRA”) may, in writing, make rules prescribing all matters required or permitted by the Act to be prescribed by Prudential Rules. Subsection 252(2) of the Act provides that such Prudential Rules are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Consistent with the processes established to approve the benefit fund rules, section 16U of the Act enables APRA to approve amendments to a company’s constitution that are consequential upon the approval or amendment of its benefit fund rules. This enables a friendly society to undertake a single process to amend its benefit fund rules and related parts of its constitution – rather than having to also pursue the Corporations Law requirements to amend its constitution in relation to minor consequential matters.

Section 16U of the Act provides for a friendly society to seek APRA’s approval of consequential amendments as part of the same application for approval of benefit fund rules (under section 16L) or amendments to the approved benefit fund rules (under section 16Q). The application for consequential amendments must be in accordance with this Prudential Rule. APRA may approve the consequential amendments if satisfied that the amendments are consequential on the proposed benefit fund rules or the amendment of approved benefit fund rules and do not also deal with other matters, as prescribed by section 16U(3). APRA may consult the Australian Securities and Investments Commission (ASIC) in considering these matters.

Section 16U of the Act will only be used by APRA to approve minor changes to a company’s constitution that flow from new or amended benefit fund rules. For example, the approval process may be appropriate where the addition of a new benefit fund to the company’s constitution requires additional cross-references to other parts of the constitution.

The company will be guilty of an offence if APRA has approved consequential amendments to the company’s constitution and it fails to comply with this Prudential Rule which requires the company to notify its members of the consequential amendments. Failure to notify members attracts a maximum penalty of 50 penalty units.

If APRA approves consequential amendments of a company’s constitution under section 16U of the Act, the company will need to lodge a copy of the consequential amendment with ASIC (in accordance with section 16W of the Act). Section 16X of the Act provides that consequential amendments approved by APRA under section 16U come into force on the day lodged with ASIC or a later day if specified in the amendments. Section 16X of the Act ensures that a consequential amendment of a company’s constitution which has been approved by APRA under subsection 16U(3) will take effect as an amendment of the constitution of the company.