

EXPLANATORY STATEMENT

Australian Prudential Regulation Authority (Commonwealth Costs) Amendment Determination 2011 (No. 1)

The *Superannuation Legislation Amendment (Early Release of Superannuation) Act 2011* (the Early Release Amendment Act) amends the *Australian Prudential Regulation Authority Act 1998* (APRA Act) to enable the Minister to make a determination on the amount of levy revenue that is to be available to cover the costs to the Commonwealth of administering the early release of superannuation on compassionate grounds.

This determination commences on the day after it is registered and relates to the 2011-12 financial year.

This determination amends the *Australian Prudential Regulation Authority (Commonwealth Costs) Determination 2011* (original determination) to state that the amount of levy money payable to the Commonwealth in the 2011-12 financial year under the *Superannuation Supervisory Levy Imposition Act 1998* (Levy Imposition Act) is \$20,710,000; of which the amount for the purpose of administering the function of making determinations about the release on compassionate grounds of benefits that are in a superannuation entity is \$2,710,000. These funds are for Department of Human Services (DHS) activities in so far as the Chief Executive Medicare administers, on behalf of the Commonwealth, the function of making determinations about the release on compassionate grounds of benefits that are in a superannuation entity.

For drafting purposes, this determination also restates from the original determination the amount of levy money payable to the Commonwealth in the 2011-12 financial year under the Levy Imposition Act against prudential functions undertaken by the Australian Securities and Investments Commission (ASIC) and to the Australian Taxation Office (ATO). These amounts are \$10,800,000 and \$7,200,000 respectively, and have not changed from the original determination. These funds are for ASIC and ATO activities in so far as those agencies provide, on behalf of the Commonwealth, relevant market integrity and consumer protection functions for prudentially regulated institutions. They will contribute towards the costs of ASIC and the ATO undertaking those functions.

Prior to the Early Release Amendment Act, under the *Financial Institutions Supervisory Levies Collection Act 1998*, APRA was funded to administer the function of making determinations about the release of benefits from a superannuation entity on compassionate grounds through levies paid by APRA-regulated superannuation entities.

With the transfer of the administration of the early release of superannuation benefits on compassionate grounds from APRA and the Commissioner of Taxation to the Chief Executive Medicare, the costs of administering this function will be borne directly by the Commonwealth. It is appropriate that the costs to the Department of Human Services of undertaking this function in relation to APRA-regulated superannuation entities continue to be recovered from the industry. The Early Release Amendment Act, along with this determination, enables the funds raised for this function to go to the Commonwealth rather than to APRA.

As this determination is consequential to legislation which simply transfers an administrative function from one government agency to another, no consultation was required. This is consistent with paragraph 18(2)(a) of the *Legislative Instruments Act 2003* which states that consultation may be unnecessary where an instrument “is of a minor or machinery nature and that does not substantially alter existing arrangements”. The determination does not change the conditions of

early release on compassionate grounds of benefits that are in a superannuation entity or retirement savings account.

This determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.