Insurance (prudential standard) determinations Nos. 1 to 2 of 2013

Insurance (exemption) determination No. 2 of 2013

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

*Insurance Act 1973*, section 32

*Insurance Act 1973*, section 7

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 and authorised non-operating holding companies. Under subsection 32(4) of the Act, APRA may, in writing, vary or revoke a prudential standard.

Under subsection 7(1) of the Act, APRA has the power to determine that certain provisions of the Act do not apply to a person while the determination is in force. Paragraph 7(2)(a) of the Act provides that a determination may be expressed to apply to a particular person or a class of persons.

On 13 December 2013, APRA made the following determinations (the instruments):

1. Insurance (prudential standard) determination No. 1 of 2013 (the instrument) which revokes *Prudential Standard GPS 230 Reinsurance Management* made under Insurance (prudential standard) determination No. 11 of 2012 and determines a new *Prudential Standard* *GPS 230 Reinsurance Management* (GPS 230);
2. Insurance (prudential standard) determination No. 2 of 2013 (the instrument) which revokes *Prudential Standard GPS 310 Audit and Related Matters* made under Insurance (prudential standard) determination No. 12 of 2012 and determines a new *Prudential Standard GPS 310 Audit and Related Matters* (GPS 310); and
3. Insurance (exemption) determination No. 2 of 2013 (the instrument) which exempts a class of persons from certain provisions under sections 49J and 49L of the Act.

Instrument (1) commences on 1 January 2014 and Instruments (2) and (3) commence on 31 December 2013.

1. Background

The exposure of the general insurance industry to reinsurers is a material source of counterparty risk and that risk may be heightened after domestic or global catastrophes. APRA undertook a voluntary data collection in 2010/11 to assess the degree of exposure to particular reinsurers. This data collection provided APRA with valuable information on the industry position and concentrations of exposures. APRA considered that a permanent data collection would be beneficial.

In June 2012, as part of the life and general insurance capital review, APRA consulted with the general insurance industry on proposals to collect reinsurance counterparty data on a permanent basis. The data collection would apply equally to general insurers and Level 2 insurance groups (collectively referred to as ‘insurers’).

The primary aim of the data collection is to enhance APRA’s ability to assess the impact of a reinsurer downgrade or failure on the prescribed capital amount, capital base and hence capital coverage, for individual insurers and the general insurance industry.

In June 2013, APRA issued revised proposals for consultation which took into account feedback received on the consultation in June 2012, including proposals to:

1. collect reinsurance counterparty information in the Reinsurance Arrangements Statements (RAS) submitted to APRA by insurers; and
2. exempt information contained in the reporting standards introduced with this data collection from the usual annual audit requirements of the Appointed Auditor of a general insurer or the Group Auditor of a Level 2 insurance group.

Amendments are required to prudential requirements through instruments which are outlined in Section 2 below.

1. Purpose and operation of the instruments

The purpose of making these instruments is to:

* introduce amended prudential standards and revoke existing prudential standards to give effect to changes in prudential requirements; and
* introduce an exemption for a class of persons from complying with specific provisions of the Act.

*Insurance (prudential standard) determination No. 1 of 2013*

The purpose of this instrument is to revoke GPS 230 and determine a new GPS 230 that contains an amendment to the required content of the RAS.

GPS 230 requires an insurer to maintain a reinsurance management framework to manage the risks arising from its reinsurance arrangements. This includes the requirement for an insurer to submit a RAS to APRA, at least annually.

GPS 230 has been amended such that the RAS must include the reinsurance counterparties that contribute to the insurer’s reinsurance arrangements, including any group to which the reinsurance counterparties belong. Collecting reinsurance counterparty information in the RAS enables APRA to further understand the exposure of insurers to material reinsurance counterparties.

*Insurance (prudential standard) determination No. 2 of 2013*

The purpose of this instrument is to revoke GPS 310 and determine a new GPS 310 that contains additional information about the annual accounts of a Level 2 insurance group.

GPS 310 sets out the roles and responsibilities of the Appointed Auditor and Group Auditor (Auditor), and the obligations of a general insurer or the parent entity of a Level 2 insurance group to ensure that the Auditor can undertake those roles and responsibilities. Specific adjustments to the prudential standard for Level 2 insurance groups are set out in Attachment B of GPS 310.

GPS 310 has been amended to exclude the information contained in *Reporting Standard GRS 460.0\_G Reinsurance Assets by Counterparty (Level 2 insurance group)* (GRS 460.0\_G) and *Reporting Standard GRS 460.1\_G Exposure Analysis by Reinsurance Counterparty (Level 2 insurance group)* (GRS 460.1\_G) from the Group Auditor’s limited assurance review of the annual accounts of a Level 2 insurance group. This amendment is because APRA is of the view that the information collected under the abovementioned reporting standards does not require regular review by audit.

*Insurance (exemption) determination No. 2 of 2013*

The reporting standards determined by APRA on 13 December 2013 include reporting requirements to which APRA does not intend that auditing requirements under the Act would apply. These include: *Reporting Standard GRS 460.0 Reinsurance Assets by Counterparty* (GRS 460.0) and *Reporting Standard GRS 460.1 Exposure Analysis by Reinsurance Counterparty* (GRS 460.1).

The purpose of this instrument is to:

* exempt the Appointed Auditor from auditing the information required by GRS 460.0 and GRS 460.1;
* exempt the general insurer from making arrangements for the auditing of the information required by GRS 460.0 and GRS 460.1;
* exempt the Appointed Auditor from giving a certificate in relation to the information required by GRS 460.0 and GRS 460.1; and
* exempt the general insurer from lodging a certificate with APRA in relation to the information required by GRS 460.0 and GRS 460.1.

The instrument will operate such that the information required by GRS 460.0 and GRS 460.1 will not be subject to audit review by the Appointed Auditor. This amendment is being made because APRA is of the view that the information collected under the abovementioned reporting standards does not require regular review by audit.

1. Consultation

A summary of the public discussion and response papers released during the consultation period is as follows:

* June 2012: Discussion Paper ‘Review of capital standards for general insurers and life insurers – proposed revisions to reporting requirements’, which included proposals to collect reinsurance counterparty data;
* October 2012: Response Paper ‘Review of capital standards for general insurers and life insurers – reporting requirements’, which included APRA’s decision to defer further consultation on the collection of reinsurance counterparty data until 2013;
* June 2013: Discussion Paper ‘Reinsurance counterparty data collection for general insurers including draft reporting forms’, including draft reporting forms and instructions; and
* December 2013: Response letter ‘Reinsurance counterparty data collection for general insurers and Level 2 insurance groups’including:
	+ final versions of amended prudential standards; and
	+ final versions of reporting standards with forms and instructions.

APRA has considered both formal and informal feedback from industry throughout the consultation process. Submissions made by industry were broadly supportive of the changes. Issues raised during consultation have been addressed and taken account of in the prudential and reporting frameworks, where applicable.

4. Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for these legislative instruments.

5. 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.

The instruments do not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. Accordingly, in APRA’s assessment, the instruments are compatible with human rights.

**Attachment A**

**Statement of Compatibility with Human Rights**

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

Insurance (prudential standard) determinations Nos. 1 and 2 of 2013 and Insurance (exemption) determination No. 2 of 2013

These Legislative Instruments are 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**

These Legislative Instruments:

* amend the information required to be submitted to APRA by insurers in the Reinsurance Arrangements Statement;
* exclude two reporting standards for Level 2 insurance groups that were made under the *Financial Sector (Collection of Data) Act 2001* from the scope of the limited assurance review of the annual accounts that is required to be completed by the Group Auditor of a Level 2 insurance group; and
* exclude two reporting standards for general insurers that were made under the *Financial Sector (Collection of Data) Act 2001* from the scope of the review of the yearly statutory accounts that is required to be completed by the Appointed Auditor of a general insurer.

**Human rights implications**

APRA has assessed these Legislative Instruments and is of the view that they do 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 instruments are compatible with human rights.

**Conclusion**

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