

Insurance exemption determination No. 1 of 2023

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Insurance Act 1973, section 7

Acts Interpretation Act 1901, section 33

Under subsection 7(1) of the *Insurance Act 1973* (the Act), APRA has the power to determine that any or all of certain provisions of the Act do not apply to a person while the determination is in force. Paragraph 7(2)(a) provides that a determination may be expressed to apply to a particular person or a class of persons.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to issue an instrument the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to revoke any such instrument.

On 3 July 2023, APRA made Insurance Exemption Determination No. 1 of 2023 (the instrument) which: exempts a class of persons from certain provisions in sections 49J and 49L of the Act.

The instrument commences on upon registration on the Federal Register of Legislation.

1. Background

Section 13 of the *Financial Sector (Collection of Data) Act 2001* (FSCOD Act) gives APRA the power to determine reporting standards that must be complied with by financial sector entities, including general insurers. Reporting standards may require information of a financial nature or of a more general business nature.

In May and June 2023, APRA determined a suite of reporting standards applying to general insurers for reporting periods commencing on or after 1 July 2023. These reporting standards implemented revised reporting requirements for general insurers due to the introduction of the new *AASB 17 Insurance Contracts* (AASB 17) and updates to the capital framework for general insurers. The reporting requirements under these reporting standards include both quarterly and annual reporting requirements.

The FSCOD Act does not specifically address the auditing requirements in relation to reporting documents given under reporting standards. For general insurers, these are provided for in the Act.

In this regard, section 3 of the Act contains a definition of yearly statutory accounts, which is defined to mean, in relation to a body corporate (e.g., a general insurer), the reporting documents that the body corporate is required under section 13 of the FSCOD Act to lodge with APRA in respect of a financial year.

Paragraph 49J(1)(a) of the Act provides that an auditor of a general insurer (that is, an auditor appointed under section 39 of the Act) must audit the yearly statutory accounts. Subsection 49J(3) provides that the auditor must give the general insurer a certificate relating to the yearly statutory accounts, which must contain statements of the auditor's opinion on the

matters required by the prudential standards to be dealt with in the certificate. Paragraph 49L(1)(a) provides that a general insurer must lodge such a certificate with APRA.

2. Purpose and operation of the instrument

The reporting standards determined by APRA in May and June 2023 include a number of annual reporting requirements to which APRA does not intend that auditing requirements under the Act would apply. These are the annual information required under *Reporting Standard GRS 400.0 Statement of Risk by Country* (GRS 400.0), *Reporting Standard GRS 420.0 Insurance Revenue and Incurred Claims by State and Territory of Australia* (GRS 420.0), *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 the instrument is to:

- exempt the Appointed Auditor from auditing the information required by GRS 400.0, GRS 420.0, GRS 460.0 and GRS 460.1;
- exempt the general insurer from making arrangements for the auditing of the information required by GRS 400.0, GRS 420.0, GRS 460.0 and GRS 460.1;
- exempt the Appointed Auditor from giving a certificate in relation to the information required by GRS 400.0, GRS 420.0, GRS 460.0 and GRS 460.1; and
- exempt the general insurer from lodging a certificate in relation to the information required by GRS 400.0, GRS 420.0, GRS 460.0 and GRS 460.1.

The instrument will operate such that the information required by GRS 400.0, GRS 420.0, GRS 460.0 and GRS 460.1 will not be subject to audit review by the Appointed Auditor. The information collected under these reporting standards is statistical in nature and APRA is of the view that it does not require review by audit. Having this information outside of scope of the audit review is likely to reduce, although by an immaterial amount, relative to total audit fees, for general insurers. The instrument continues existing audit arrangements for these reporting standards and their current equivalents.

Explanation of each provision in the instrument

The instrument is comprised of:

- a determination made under subsection 7(1) of the *Insurance Act 1973* that exempts each class of person mentioned in the first column of the Schedule from the provision mentioned in the corresponding row of the second column of the Schedule;
- an interpretation section that defines key terms, including which reporting standards to which the determination applies; and
- the Schedule outlining the persons exempted by the instrument, and the provision/s in the *Insurance Act 1973* from which each person is exempt.

Documents incorporated by reference

Under paragraph 14(1)(a) of the *Legislation Act 2003*, the reporting standard may incorporate by reference as in force from time to time:

- Acts of Parliament and associated delegated legislation;
- Prudential Standards determined by APRA under:
 - subsection 11AF(1) of the *Banking Act 1959*;
 - subsection 32(1) of the *Insurance Act 1973*;
 - subsection 230A(1) of the *Life Insurance Act 1995*; and
 - subsection 92(1) of the *Private Health Insurance (Prudential Supervision) Act 2015*; and
- Reporting Standards determined by APRA under subsection 13(1) of the Act;
- the Australian Accounting Standards determined by the Australian Accounting Standards Board under section 334 of the *Corporations Act 2001* (Cth); and
- the Australian Auditing Standards determined by the Auditing and Assurance Standards Board under section 336 of the *Corporations Act 2001* (Cth).

These documents may be freely obtained at www.legislation.gov.au (all documents listed above except for Australian Accounting and Auditing Standards), <https://www.aasb.gov.au/pronouncements/accounting-standards/> (Australian Accounting Standards) and <https://auasb.gov.au/standards-guidance/auasb-standards/auditing-standards/> (Australian Auditing Standards).

Review of decisions

There are several powers that may be exercised by APRA in reporting standards that involve an element of discretion, and which may impact the interests of insurers to which the reporting standards apply.

Decisions made by APRA exercising those powers are not subject to merits review. APRA considers decisions made by APRA exercising discretions under its reporting standards should not be subject to merits review as they are financial decisions with a significant public interest element.

3. Consultation

APRA undertook public consultation on proposed updates to general insurance reporting standards from November 2020 to September 2022¹.

¹ [New accounting standard – AASB 17 Insurance contracts | APRA](#)

In November 2020, APRA released a discussion paper outlining APRA's proposals to align the prudential and reporting frameworks with AASB 17². Submissions made to the discussion paper were broadly supportive of APRA's direction of aligning the prudential and reporting framework with AASB 17.

On 13 December 2021, APRA released draft reporting standards for consultation that integrated the transition to AASB 17 and updates to the insurance capital framework³. APRA signalled that it would broadly follow existing audit and assurance requirements for submitting data to APRA⁴. On 6 April 2022, APRA released additional draft life and general insurance reporting standards impacted by the introduction of AASB 17. As part of the April 2022 consultation, APRA also released a number of updates and clarifications to reporting standards that were released in December 2021 in response to industry feedback.

The final round of consultation for this instrument was completed on 27 September 2022, when APRA released finalised changes to the capital and reporting frameworks for insurance in response to the introduction of AASB 17⁵.

Submissions were received from reporting insurers, industry bodies, and regulatory technology providers. APRA incorporated feedback received into the final versions of the reporting standards, including aligning with updates to the capital framework in response to industry feedback, adding clarification to reporting instructions and forms as requested by industry, and simplifying some reporting requirements in response to industry feedback.

The instrument is minor in nature and does not substantially alter existing audit arrangements.

APRA is satisfied the consultation was appropriate and reasonably practicable.

4. Regulation Impact Statement

The Office of Impact Analysis confirmed that a Regulation Impact Statement was not required.

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.

² [Round two – Discussion Paper – Integrating AASB 17 into the capital and reporting frameworks for insurers and updates to the LAGIC framework | APRA](#)

³ [New accounting standard – AASB 17 Insurance contracts | APRA](#)

⁴ See page 35 of [Response paper - AASB 17 \(apra.gov.au\)](#).

⁵ [New accounting standard – AASB 17 Insurance contracts | APRA](#)

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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This Legislative Instrument 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* (HRPS Act).

Overview of the Legislative Instrument

This Legislative Instrument excludes four 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 this Legislative 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

This Legislative Instrument is compatible with human rights because it does not raise any human rights issues.