

Insurance (prudential standard) determination No. 1 of 2024

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Insurance Act 1973, section 32

Under the *Insurance Act 1973* (the Act), APRA has power to determine standards in relation to prudential matters (prudential standards) to be complied with by all general insurers and authorised non-operating holding companies (authorised NOHCs). Under subsection 32(4) of the Act, APRA may vary or revoke a prudential standard.

On 9 July 2024, APRA made Insurance (prudential standard) determination No. 1 of 2024 (the instrument), which revokes *Prudential Standard GPS 310 Audit and Related Matters* made under *Insurance (prudential standard) determination No. 9 of 2019* and determines a new *Prudential Standard GPS 310 Audit and Related Matters* (GPS 310).

The instrument commences on 1 October 2024.

1. Background

APRA's role is to protect the financial interests of Australians by maintaining the safety and soundness of financial institutions. To do this, APRA sets legal requirements and guidance for the entities it regulates (the prudential framework).

The prudential framework comprises:

- legally binding prudential standards;
- legally binding reporting standards; and
- supporting guidance (such as prudential practice guides).

GPS 310 is a legally binding prudential standard. It outlines the responsibilities of an Appointed Auditor (Auditor) and the obligations of insurers to enable the Auditor to fulfil their functions.

In response to queries from insurers, APRA published Frequently Asked Questions (Q 23.9) on 7 February 2024 which includes a table clarifying the level of assurance required from the Auditor for each General Insurance reporting standard. This table has been incorporated into the new version of the prudential standard (GPS 310) to provide clarity to the general insurance industry.

2. Purpose and Operation

The purpose of the instrument is to revoke the previous GPS 310 and replace it with a new version. The new GPS 310 includes a minor update by incorporating the level of assurance to be provided by the Auditor on the annual data reported to APRA for each General Insurance reporting standard.

GPS 310 aims to ensure that insurers have access to independent advice from an Auditor relating to its operations, financial condition and internal controls to carry out the insurer's responsibilities prudently. The standard sets out the roles and responsibilities of the Auditor and obligations of insurers.

The key requirements of GPS 310 are set out in Attachment A to this Explanatory Statement.

3. Consultation

On 4 April 2024, APRA consulted¹ on a set of minor updates to the prudential framework, including changes to GPS 310. APRA has previously consulted on the provisions in GPS 310 that were unchanged.

APRA did not receive any submissions regarding GPS 310 from insurers during the consultation.

4. Scope of administrative powers

Exercise of discretion by APRA

GPS 310 provides for APRA to exercise various discretions. Decisions made by APRA in exercising those discretions are not subject to merits review. This is because these decisions are preliminary decisions that may facilitate or lead to substantive decisions which are subject to merits review.

Under the Act, a breach of a prudential standard is a breach of the Act, as the Act provides that regulated entities must comply with the standard. However, there are no penalties prescribed for such breaches. Instead, an insurer's breach of a provision in the Act is grounds for APRA to make further, substantive decisions under the Act in relation to the insurer. Those decisions may include the decision:

- (a) to issue a direction to the insurer, including a direction to comply with the whole or part of a prudential standard (section 104 of the Act); and
- (b) to revoke an authority to carry on insurance business (section 15 of the Act) or an insurance NOHC authorisation (section 21 of the Act).

It is only at this stage that an insurer is exposed to a penalty, loss of licence or imposition of a penalty if it breaches the direction (50 penalty units each day under section 108 of the Act). In nearly all cases,² the decision is preceded by a full consultation with the insurer to raise any concerns it may have in relation to the decision.

A decision of APRA to impose a direction is subject to merits review under section 104 of the Act, which is appropriately available at the point where an insurer could be exposed to a penalty.

¹ See: <https://www.apra.gov.au/prudential-framework-minor-updates-0>

² Subsection 15(4) of the Act specifically provides that APRA does not need to consult where APRA is satisfied that doing so could result in a delay in revocation that would be contrary to the national interest.

Revocation of an authorisation to carry on insurance business or an insurance NOHC authorisation is subject to merits review under section 15 and 21 of the Act, unless specifically excluded by enabling legislation.

Adjust and exclude powers

GPS 310 gives APRA the discretion to adjust or exclude a provision of the prudential standard (paragraph 37). The power to create such a discretion is provided for under subsection 32(3D) of the Act.

APRA may exercise this power when it is satisfied that the adjustment or exclusion of a specific requirement for one or more specified regulated entities will better support APRA in meeting its objectives. For example, the adjustment or exclusion may be necessary to obtain a better prudential outcome than would be the case if the prudential requirement were applied unaltered to a particular regulated entity. A tailored approach would give APRA comfort that the prudential requirements apply appropriately to protect the interests of policyholders. APRA will also take into account other considerations, such as efficiency, competition, contestability, competitive neutrality and regulatory burden, including comparisons with the entity's peer group.

The exercise of APRA's powers is governed by a robust decision-making framework which is documented in APRA's internal policies. This framework supports APRA in fulfilling its mandate by limiting decision making to those senior APRA officers with the appropriate experience and skill to exercise prudent judgement. The framework also requires decision makers to seek advice from internal technical experts.

5. Incorporation by reference

Under section 14(1)(a) of the *Legislation Act 2003*, the standard incorporates by reference as in force from time to time:

- Acts of Parliament and associated delegated laws;
- Prudential Standards determined by APRA under subsection 32(1) of the Act;
- Reporting Standards determined by APRA under subsection 13(1) of the *Financial Sector (Collection of Data) Act 2001*;
- 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 on the Federal Register of Legislation 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).

6. Impact Analysis (IA)

The Office of Impact Analysis has confirmed that an IA is not required as the remaking of GPS 310 is unlikely to have more than a minor regulatory impact.

7. 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 B to this Explanatory Statement.

ATTACHMENT A

Key requirements of GPS 310

1. Obligations of the Insurer

Paragraphs 10-11 require insurers to make arrangements necessary to enable the Auditor to undertake their functions. This includes ensuring the Auditor has access to all the relevant data, information, reports, staff, Board members and Board committees, and is fully informed of all prudential requirements applicable to the insurer.

Paragraph 12 requires an insurer to submit to APRA all certificates and reports required to be prepared by the Auditor.

2. Responsibilities of the Auditor

The Auditor's role is to provide an independent and objective view of the insurer's financial statements, and an assessment of the insurer's systems, procedures and controls used to comply with prudential requirements.

Paragraphs 15-17 set out the responsibilities of the Auditor. This includes auditing yearly statutory accounts; providing a certificate relating to yearly statutory accounts; annually reviewing and testing systems, processes and controls; and providing a report relating to findings of their review.

3. Special purpose review

Paragraphs 19-21 require the Auditor to undertake a special purpose review and prepare a report with the cost borne by the entity, if requested by APRA. This review must be conducted in line with any relevant professional standards and guidance, unless advised by APRA.

4. Non-routine reporting by the Auditor

Paragraphs 22-26 set out the requirements for non-routine reporting by the Auditor. The Auditor must report to APRA on a non-routine basis where: (i) APRA requests specific information; or (ii) the Auditor has information that is specified in the Act or considers beneficial for APRA in performing its functions. An example of this may include an Auditor providing information, or producing books, accounts or documents, about an insurer if it will assist APRA in performing its functions under the Act.

5. Meetings with the Auditor

Paragraphs 27-28 state that APRA liaison meetings will involve APRA, the insurer and the Auditor. Any party may initiate a meeting and if required, APRA and the Auditor can meet independently of the insurer.

6. Audit certificate and report

Paragraphs 29-32 require the Auditor to annually prepare a certificate relating to the insurer's yearly statutory accounts and provide it to the insurer. The certificate must provide the

Auditor's opinion of the insurer's yearly statutory accounts and present a true and fair view of the results of the insurer's operations.

Paragraphs 34-36 require that the Auditor must annually prepare a report to the insurer, providing the Auditor's opinion and results of their investigation.

ATTACHMENT B

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

The purpose of the Legislative Instrument is to revoke *Prudential Standard GPS 310 Audit and Related Matters* made under *Insurance (prudential standard) determination No. 9 of 2019* and replace it with another version.

GPS 310 aims to ensure that the Board and senior management of an insurer are provided with impartial advice in relation to its operations, financial condition and insurance liabilities to carry out their responsibilities prudently. The standard outlines responsibilities of an Auditor and the obligations of insurers to enable the Auditor to fulfil their functions.

Human rights implications

APRA has assessed the 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 as it does not raise any human rights issues.