

EXPOSURE DRAFT

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Australian Prudential Regulation Authority Act 1998

Australian Prudential Regulation Authority Regulations 2018

The *Australian Prudential Regulation Authority Act 1998* (the Act) establishes the Australian Prudential Regulation Authority (APRA), outlines the main purposes for which APRA exists, and grants functions and powers to APRA.

Section 60 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Australian Prudential Regulation Authority Regulations 2018* (the Regulations) is to remake the *Australian Prudential Regulation Authority Regulations 1998* (the 1998 Regulations) prior to ‘sunsetting’. The *Legislation Act 2003* provides that all legislative instruments, other than exempt instruments, are automatically repealed on or after the tenth anniversary of registration. The 1998 Regulations will be automatically repealed on 1 April 2019. Legislative instruments generally cease to have effect after a specific date unless further legislative action is taken to extend their operation, such as remaking the instrument.

The Regulations remake the 1998 Regulations by restructuring provisions to align with current drafting practices. These changes do not change the substantive meaning or operation of the provisions. The Regulations also update the list of agencies prescribed for the purposes of disclosing protected information or producing protected documents.

Details of the Regulations are set out in the [Attachment](#).

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after it is registered on the Federal Register of Legislation.

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ATTACHMENT

Details of the *Australian Prudential Regulation Authority Regulations 2018*

This Attachment sets out further details of the *Australian Prudential Authority Regulations 2018* (the Regulations). All references are to the Regulations unless otherwise stated. References to a ‘corresponding provision’ are to the corresponding provision in the *Australian Prudential Regulation Authority Regulations 1998* (the 1998 Regulations).

Changes of a minor or machinery nature, such as references to section rather than regulation in accordance with modern drafting practices, are generally not specifically identified in this Attachment. Where the Regulations make changes that require further explanation, these are identified and explained in this Attachment.

Section 1- Name of Regulations

This section provides that the title of the Regulations is the *Australian Prudential Regulation Authority Regulations 2018*.

Section 2 - Commencement

This section provides that the Regulations commence the day after registration.

Section 3 - Authority

This section provides that the Regulations are made under the *Australian Prudential Regulation Authority Act 1998* (the Act).

Section 4 - Schedules

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other items in a Schedule to this instrument has effect according to its terms.

Section 5 - Definitions

This section defines terms used in the instrument.

Section 6 - Cooperation with other agencies

Under section 10A of the Act, APRA should have regard to the desirability of cooperating with other financial sector supervisory agencies, and with other agencies specified in regulations, in performing and exercising its functions and powers.

Section 6 of the Regulations specifies the agencies with which APRA should cooperate for the purposes of subsection 10A(1) of the Act.

To align with current drafting practices, section 6 expands the list of agencies to give effect to subitem 7(2) of Schedule 3 to the *Australian Prudential Regulation Authority Amendment Act 2003*. That item provided that agencies specified for the purposes of

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paragraph 56(5)(a) of the Act at the time of the amendment were to be taken to be specified for the purposes of subsection 10A(1) of the Act as well. The effect is that the list of agencies is the same as those previously listed but are now displayed for clarity.

The reference to the Council of Financial Regulators has also been expanded to list the individual members (excluding APRA), being: the Reserve Bank of Australia; the Australian Securities and Investments Commission; and the Treasury.

This section operates in the same way as the corresponding provision in the 1998 Regulations.

Section 7 - Liability to fringe benefits taxation

Subsections 55(1) and (2) of the Act respectively provide that APRA is not subject to taxation under the laws of the Commonwealth or of a State or Territory, and that the regulations may limit the application of subsection (1).

Section 7 of the Regulations provides that APRA may be subject to taxation in relation to the *Fringe Benefits Tax Assessment Act 1986*.

This section operates in the same way as the corresponding provision in the 1998 Regulations.

Section 8 - Prescription of prudential regulation framework laws

Paragraph 3(1)(o) of the Act provides that the definition of *prudential regulation framework law* includes another Act that is prescribed for the purposes of the section in which the expression appears.

Section 8 of the Regulations provides that the *prudential regulation framework law* means the *Royal Commissions Act 1902* for the purposes of section 56 of the Act.

This section operates in the same way as the corresponding provision in the 1998 Regulations.

Section 9 - Secrecy—disclosure of protected information or production of protected documents to specified agencies

APRA works with both domestic and international entities in order to fulfil its purposes as outlined in the APRA Act, including the maintenance of financial stability in Australia. For the purposes of conducting its mandate, APRA regularly engages with a number of Australian and international agencies and institutions in such a way that requires them to be able to share protected information in specific circumstances. Protected information is information which APRA has obtained in relation to a prudential regulation framework law, relating to a financial sector entity, a related body corporate or a customer of certain classes of financial institution.

Paragraph 56(5)(a) of the Act allows APRA to disclose protected information or produce a protected document to a financial sector supervisory agency or an agency (including foreign agencies) specified in the regulations.

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Section 9 of the Regulations specifies the agencies for the purposes of paragraph 56(5)(a) of the Act. The list replicates that contained in section 5 of the 1998 Regulations with the following changes:

- the list of agencies is ordered alphabetically;
- the reference to the Commissioner of Taxation is amended to remove the conditionality for consistency with the broader position on information sharing;
- the reference to the *Superannuation (Excluded Funds) Taxation Act 1987* is updated to the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*; and
- the Commission of Inquiry relating the HIH Insurance Group is removed as it is no longer relevant.

Schedule 1 - Repeals

This schedule provides for the repeal of the 1998 Regulations as the instrument is due to sunset on 1 April 2019 and is being remade by the Regulations.

Under section 7 of the *Acts Interpretation Act 1901*, as applied to legislative instruments by subsection 13(1) of the *Legislation Act 2003*, the repeal of the 1998 Regulations does not affect its previous operation.

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Finding table

As a result of some of the changes described above, it became necessary to renumber provisions of the Regulations. Below is a finding table to assist in identifying which provision in the Regulations corresponds to a provision in the 1998 Regulations that has been rewritten.

References to the old law in the below table are to the 1998 Regulations. References to the new law are to the 2018 Regulations. Also, in the finding table, 'no equivalent' means that this is a new provision that has no equivalent in the old law, and vice versa.

<i>Old law</i>	<i>New Law</i>
<i>Australian Prudential Regulation Authority Regulations 1998</i>	<i>Australian Prudential Regulation Authority Regulations 2018</i>
1 – Name of Regulations	1 – Name
No equivalent	2 – Commencement
No equivalent	3 – Authority
No equivalent	4 – Schedules
3 – Definitions	5 – Definitions
3A – Cooperation with other agencies	6 – Cooperation with other agencies
4 – Liability to fringe benefits taxation (Act, s55 (2))	7 – Liability to fringe benefits taxation
4A – Prescription of prudential regulation framework laws	8 – Prescription of prudential regulation framework laws
5 – Secrecy – disclosure of protected information or production of protected document to specified agencies (Act s 56 (5))	9 – Secrecy – disclosure of protected information or production of protected document to specified agencies
No equivalent	Schedule 1 – Repeal