Financial Sector (Collection of Data) (reporting standard) determination No. 2 of 2020

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

*Financial Sector (Collection of Data) Act 2001*, sections 13 and 15

*Acts Interpretation Act 1901*, section 33

Under subsection 13(1) of the *Financial Sector (Collection of Data) Act 2001* (the Act), APRA has the power to determine reporting standards, in writing, with which financial sector entities must comply. Such standards relate to reporting financial or accounting data and other information regarding the business or activities of the entities. 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 26 March 2020, APRA made Financial Sector (Collection of Data) (reporting standard) determination No. 2 of 2020 (the instrument) which revokes *Reporting Standard ARS 110.0 Capital Adequacy* made under Financial Sector (Collection of Data) (reporting standard) determination No. 15 of 2017 and determines *Reporting Standard ARS 110.0 Capital Adequacy* (ARS 110.0).

The instrument commences on 1 January 2020.

1. Background

APRA’s mandate is to ensure the safety and soundness of prudentially regulated financial institutions so that they can meet their financial promises to depositors, policyholders and fund members within a stable, efficient and competitive financial system. APRA carries out this mandate through a multi-layered prudential framework and is empowered under the *Banking Act 1959* to issue legally binding prudential standards that set out specific prudential requirements with which authorised deposit taking institutions (ADIs) must comply.

A key component of APRA’s prudential framework is the suite of prudential standards that impose regulatory capital requirements on ADIs for the purpose of ensuring ADIs hold sufficient capital to address the risks associated with their operations.

*Prudential Standard APS 111 Capital Adequacy: Measurement of Capital* (APS 111)[[1]](#footnote-1) sets out, among other things, the characteristics that capital instruments must have to qualify as regulatory capital. This framework is largely based on the internationally agreed prudential capital framework developed by the Basel Committee on Banking Supervision, known as Basel III. APRA implemented the Basel III framework in 2013.

One characteristic is that, to qualify as regulatory capital, Additional Tier 1 (AT1) and Tier 2 (T2) capital instruments must be able to be written off or convert into ordinary shares in particular circumstances. However, because mutually owned ADIs are unable to issue ordinary shares because of their corporate structure, their AT1 and T2 capital instruments could only be written off. APRA addressed this issue by introducing a new type of instrument, a mutual equity interest that shared most of the characteristics of ordinary shares and into which AT1 and T2 capital instruments could convert. This framework was implemented in 2014.

Subsequently, APRA expanded the mutual equity interest framework to facilitate direct issuance by mutually owned ADIs. In January 2018, APS 111 was amended to allow mutually owned ADIs to issue mutual equity interests by establishing criteria that must be met for these instruments to be eligible for inclusion in Common Equity Tier 1 Capital (CET1 Capital). As a consequence, ARS 110.0 has been amended to capture information about mutually owned ADIs’ CET1 Capital instruments in line with the amended APS 111.

1. Purpose and operation of the instrument

The purpose of the instrument is to revoke the existing ARS 110.0 and replace it with a revised version of ARS 110.0. ARS 110.0 collects information from ADIs and the non-operating holding company of an ADI in certain circumstances. This information is used by APRA for the purpose of prudential supervision, including assessing compliance with APS 110. This information may also be used by the Reserve Bank of Australia and the Australian Bureau of Statistics.

The changes to ARS 110.0 are:

* the insertion of two mutual equity interest reporting items into each reporting form which now captures all mutual equity interests on issue that are eligible and not eligible for inclusion in CET1 Capital; and
* amendments to the reporting instructions to include reference to the new mutual equity interest items to be reported.

Other amendments to ARS 110.0 are to make minor wording changes and update cross-references that are now out of date.

ARS 110.0 commences on 1 January 2020, however as it requires data be provided on a quarterly basis, the obligations imposed under the reporting standard do not arise until after 31 March 2020.

Where ARS 110.0 refers to an Act, Regulation, Prudential Standard, Reporting Standard, Australian Accounting or Auditing Standard, this is a reference to the document as it exists from time to time**,** and which is available on the Federal Register of Legislation at [www.legislation.gov.au](http://www.legislation.gov.au/).

There are a number of powers that may be exercised by APRA in reporting standards that involve an element of discretion and which may impact the interests of the financial sector entity to which the reporting standard applies.  These decisions include APRA refusing to change a reporting period or due date for an ADI to provide information required by ARS 110.0. 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.

APRA’s reporting standards collect financial data from regulated entities. This data contains critical indicators of a regulated entity’s financial wellbeing, including data on an entity’s assets, capital, liquidity, expenses and risk exposures. APRA relies heavily on this financial data to inform its supervisory actions towards its regulated entities. Without timely and complete data, APRA may miss indicators that an ADI is taking on imprudent risk or is in distress. APRA’s supervisory decisions may be jeopardised if its receipt of data is unreliable due to entities seeking merits review under its reporting standards.

The data collected by APRA’s reporting standards is also often used to compile key macroeconomic indicators for Australia. The Reserve Bank of Australia uses the data to compile and publish its monetary and credit aggregates. The Australian Bureau of Statistics uses the data to compile the national accounts. The data is also used to meet Australia’s international reporting obligations.

Delays caused by an entity seeking merits review of APRA’s decisions under one or more reporting standards could significantly compromise these publications. As the publications are done at an aggregate level, any lack of data from one entity caused by a merits review claim prevents the release of the entire publication.

1. Consultation

APRA consulted on the proposed amendments to ARS 110.0 in relation to the changes for reporting mutual equity interest. APRA consulted on the amendments from March 2018 to April 2018. APRA received no submissions.

4. Regulation Impact Statement

An OBPR Preliminary Assessment is not needed for the changes proposed, as they are included in the Preliminary Assessment made under OBPR ID: 22516.

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.

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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The 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 this instrument is to revoke *Reporting Standard ARS 110.0 Capital Adequacy* made under Financial Sector (Collection of Data) (reporting standard) determination No. 15 of 2017 and determine a new *Reporting Standard ARS 110.0 Capital Adequacy* (ARS 110.0).

ARS 110.0 sets out requirements for authorised deposit-taking institutions (ADIs) to report their capital adequacy. ADIs are bodies corporate that have been granted the authority, under the *Banking Act 1959*, to carry on banking business in Australia.

The new ARS 110.0 aims to align the reporting requirements of ADIs with the revised prudential framework for mutual equity instruments and allow APRA to assess compliance with *Prudential Standard APS 111 Capital Adequacy: Measurement of Capital*.

**Human rights implications**

APRA has assessed the 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**

The instrument is compatible with human rights as it does not raise any human rights issues.

1. <https://www.legislation.gov.au/Details/F2017L01591> [↑](#footnote-ref-1)