Financial Sector (Collection of Data) (reporting standard) determination No. 3 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. 3 of 2020 (the instrument) which revokes *Reporting Standard ARS 221.0 Large Exposures* made under Financial Sector (Collection of Data) (reporting standard) determination No. 41 of 2018 and determines a new *Reporting Standard ARS 221.0 Large Exposures* (ARS 221.0).

The instrument commences on 1 January 2020.

1. Background

APRA’s mandate is to protect the Australian Community by establishing and enforcing prudential standards and practices designed to ensure that, under all reasonable circumstances, financial promises made by institutions we supervise are met within a stable, efficient and competitive financial system. A key component of this is requiring authorised deposit-taking institutions (ADIs) to have prudent systems for identifying, measuring, evaluating, monitoring, reporting and controlling or mitigating material risks that may affect their ability to meet obligations to depositors.

A risk concentration occurs when an ADI has a concentration of exposures to counterparties, industries, countries or particular asset classes. A large exposure is a type of risk concentration and is defined in *Prudential Standard APS 221 Large Exposures* (APS 221) as an ADI’s exposure to an individual counterparty or a group of connected counterparties that is greater than, or equal to, 10 per cent of the ADI’s Tier 1 Capital. Large exposures have the potential to cause significant losses to an ADI as a result of a sudden default of a counterparty or a group of connected counterparties to which an ADI has an exposure. ARS 221.0 collects information from ADIs on their 20 largest exposures, groups of connected counterparties, and certain excluded exposures.

The instrument makes minor amendments to update ARS 221.0 in line with minor changes in APS 221. There are no substantive changes to ARS 221.0.

1. Purpose and operation of the instruments

The purpose of this instrument is to revoke ARS 221.0 and replace it with a new version of ARS 221.0. The changes are minor in nature and include:

* changes to references to paragraphs in APS 221 in line with amendments to APS 221;
* removing transitional arrangements which are effective until 31 December 2019; and
* updating references and website links used in the definitions in ARS 221.0.

ARS 221.0 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 221.0 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/).

ARS 221.0 refers to International Standards ISO 3166 and ISO 17442, which are issued by the International Organization for Standardization (ISO). These ISO standards are not intended to be incorporated in ARS 221.0 as the contents of the ISO standards are not relevant to understanding the terms of ARS 221.0.

ARS 221.0 requires ADIs and, where applicable, non-operating holding companies of ADIs (financial sector entities) to report a counterparty country using the English name of the relevant country as assigned by the ISO 3166 Maintenance Agency to define country codes under International Standard ISO 3166. The ISO has stated that the Maintenance Agency assigns country names to member states of the United Nations and some dependencies of those member states based on information from United Nations sources.[[1]](#footnote-2) Up-to-date information about country names and associated country codes is available online for free at <http://www.iso.org/iso/country_codes> via the Online Browsing Platform or by purchasing the Country Codes Collection.

In addition, financial sector entities are to report the ISO 17442 Legal Entity Identifier (LEI) code for a counterparty where available. The LEI codes are issued by Local Operating Units (LOU) in accordance with International Standard ISO 17442. Each LEI comprises a 4-digit code for the issuing LOU, a 14-digit code for the specific legal entity, and a 2-digit verification code. LEIs are not contained in ISO 17442 and it would not be possible to determine an entity’s LEI by referring to ISO 17442. LEIs can be searched online for free at <https://www.gleif.org/en/lei/search>.

Financial sector entities are expected to report the country names and LEIs as matters of fact, analogous to a requirement to include Australian or foreign addresses and telephone numbers. Information about how the country names and LEI codes can be accessed for free is included in ARS 221.0 to assist financial sector entities to understand and comply with the requirements. Financial sector entities already report using country names and LEIs under other reporting standards made under the Act. The ISO standards, LEI database, country names and LEI codes are not intended to be incorporated into ARS 221.0.

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 221.0. 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

The amendments to ARS 221.0 made under this instrument are minor and machinery in nature, and do not substantially alter existing obligations under the previous version of ARS 221.0. For this reason, APRA has not consulted specifically on the proposed changes in ARS 221.0.

4. Regulation Impact Statement

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

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 the instrument is to revoke *Reporting Standard ARS 221.0 Large Exposures* determined by APRA in 2018 and replace it with a new *Reporting Standard ARS 221.0 Large Exposures* (ARS 221.0)*.*

ARS 221.0 sets out requirements for authorised deposit-taking institutions (ADIs) and, where applicable, non-operating holding companies of ADIs to report their large exposures (e.g. loans) to counterparties. 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 221.0 has minor changes to update references to paragraphs in the revised *Prudential Standard APS 221 Large Exposures*, remove transitional arrangements which do not apply after 31 December 2019, and update website links used in the definitions in ARS 221.0. The changes are minor and machinery in nature and assist ADIs by ensuring ARS 221.0 is up-to-date and fit for purpose.

**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.iso.org/iso-3166-country-codes.html>. [↑](#footnote-ref-2)