

Banking (prudential standard) determination No. 1 of 2023

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Banking Act 1959, section 11AF

Under subsection 11AF(1) of the *Banking Act 1959* (the Act), APRA has the power to determine standards (prudential standards), in writing, in relation to prudential matters to be complied with by authorised deposit-taking institutions (ADIs) and authorised non-operating holding companies (authorised NOHCs). Under subsection 11AF(3) of the Act, APRA may, in writing, vary or revoke a prudential standard.

On 27 February 2023, APRA made Banking (prudential standard) determination No. 1 of 2023 (the instrument), which revokes *Prudential Standard APS 330 Public Disclosure* made under Banking (prudential standard) determination No. 3 of 2022 and determines a new *Prudential Standard APS 330 Public Disclosure* (APS 330).

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

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 that encompasses licensing and supervision of institutions. In the case of the banking industry, APRA is empowered under the Act to issue legally binding prudential standards that set out specific prudential requirements with which ADIs and authorised NOHCs must comply.

APRA regularly reviews its regulatory regime and amends its prudential requirements as a result of a number of factors including:

- international developments;
- changes in financial market conditions or changes in risk management practices, in response to identified weaknesses in the prudential framework; and
- to reduce potential negative impacts of emerging industry issues.

APRA's prudential framework for ADIs is based on the framework agreed by the Basel Committee on Banking Supervision (Basel Committee).¹

¹ The Basel Committee, of which Australia is a member, is the primary global standard-setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Its mandate is to strengthen the regulation, supervision and practices of banks worldwide with the purpose of enhancing financial stability.

The Basel Committee's disclosure requirements, known as Pillar 3, were introduced in Australia from January 2008 through APS 330. The Pillar 3 framework facilitates market discipline by providing a set of common disclosure requirements to allow market participants to assess banks' capital adequacy, remuneration and other indicators of financial health. The Basel Committee finalised its Pillar 3 framework in December 2018.²

On 5 December 2022, APRA determined an updated version of APS 330 under Banking (prudential standard) determination No. 3 of 2022 (the existing APS 330) to ensure that ADI public disclosure requirements are consistent with APRA's broader prudential framework within a new suite of prudential standards that impose regulatory capital requirements on ADIs for the purposes of ensuring ADIs hold sufficient capital to address risks associated with their operations. The key changes included:

- ensuring APRA's ADI public disclosure requirements reflect changes to definitions and terminology made in the new capital standards. For example, updating asset classes to align with the new capital standards; and
- updating cross references to the new capital standards.

In addition, the consequential changes to APS 330 reflected APRA's recent incorporation of greater proportionality within the prudential framework by reducing regulatory requirements for smaller and less complex entities. The existing APS 330 applies to ADIs determined to be significant financial institutions (SFIs). As defined in *Prudential Standard APS 001 Definitions*, ADI SFIs are entities with assets above a certain size or entities determined as such by APRA, taking into account matters such as complexity and group membership.

APRA is now making minor changes to APS 330 to correct cross-referencing issues that were included in the existing APS 330.

2. Purpose and operation of the instrument

The purpose of the instrument is to revoke the existing APS 330 and to replace it with a new version of APS 330 that incorporates updated cross-referencing to ensure accuracy of ADI public disclosure requirements.

Where APS 330 refers to an Act, Regulation, prudential standard or Australian Accounting Standard, this is a reference to the instrument as in force from time to time, and which is available on the Federal Register of Legislation at www.legislation.gov.au.

APS 330 also incorporates by reference the following documents:

- *International Convergence of Capital measurement and Capital Standards: A revised Framework*, Comprehensive Version, as it exists at June 2006, published by the Basel Committee and available at <https://www.bis.org/publ/bcbs128.htm>;

² *Basel Committee Standards Pillar 3 disclosure requirements – updated framework, December 2018*, available at: <https://www.bis.org/bcbs/publ/d455.htm>.

- *Basel III: A global regulatory framework for more resilient banks and banking systems*, revised version, as it exists at June 2011, published by the Basel Committee and available at <https://www.bis.org/publ/bcbs189.htm>;
- *Supervisory guidance for assessing banks' financial instrument fair value practice*, as it exists at April 2009, published by the Basel Committee and available at: <https://www.bis.org/publ/bcbs153.htm>;
- *DIS75 Disclosure requirements: Macroprudential supervisory measures*, as it exists on 15 December 2019, published by the Basel Committee and available at: https://www.bis.org/basel_framework/chapter/DIS/75.htm;
- *Instructions for the end-2019 G-SIB assessment exercise*, as it exists on 15 January 2020, published by the Basel Committee and available at: https://www.bis.org/bcbs/gsib/instr_end19_gsib.pdf;
- *Liquidity Policy – Annex: Liquid Assets – Prudential Supervision Department Document BS13A*, as it exists from time to time, published by the Reserve Bank of New Zealand (RBNZ) and available at <https://www.rbnz.govt.nz/regulation-and-supervision/banks/prudential-requirements/liquidity-policy>; and
- *Prudential Practice Guide APG 210 Liquidity*, as it exists from time to time, published by APRA and available at <https://www.apra.gov.au/industries/1/standards>.

APS 330 provides for APRA to exercise various discretions. Decisions made by APRA 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.

A breach of a prudential standard is also 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 ADI's breach of a provision in the Act is grounds for APRA to make further, substantive decisions under the Act in relation to the ADI. Those decisions are:

- (a) to revoke an authority to carry on banking business (section 9A of the Act); and
- (b) to issue a direction to the ADI, including a direction to comply with the whole or part of a prudential standard (section 11CA of the Act).

It is only at this stage that an ADI is exposed to a penalty: loss of its authority under section 9A or 50 penalty units if it breaches the direction (section 11CG of the Act). In nearly all cases³ the decision is preceded by a full consultation with the ADI to raise any concerns it may have in relation to the decision.

³ Subsection 9A(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:

A decision of APRA to impose a direction is subject to merits review under section 11CA of the Act, which is appropriately available at the point where an ADI could be exposed to a penalty.

A decision of APRA to revoke an authority under the Act is subject to merits review, unless either:

- (a) APRA has determined that access to natural justice and merits review is contrary to the national interest or contrary to the interests of depositors with the ADI; or
- (b) the authority is an authority that is to cease to have effect on a day specified in the authority (section 9A(8) of the Act).

3. Consultation

The new version of APS 330 corrects minor cross-referencing errors and there is no change to the policy intent of the prudential requirements. As a result, no further consultation was required for determining this version of APS 330.

APRA previously consulted on the underlying policy within the existing APS 330 from July 2022 to October 2022.⁴ APRA released a response to submissions on 9 December 2022.⁵

4. Regulation Impact Statement

The Office of Impact Analysis has confirmed that a Regulation Impact Statement is not required as the changes to APS 330 are unlikely to have more than a minor regulatory impact.

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.

(a) contrary to the national interest; or

(b) contrary to the interests of depositors with the ADI.

⁴ <https://www.apra.gov.au/public-disclosure-requirements-for-authorised-deposit-taking-institutions>.

⁵ See footnote 4.

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 instrument 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 *Prudential Standard APS 330 Public Disclosure* (existing APS 330) determined by APRA in 2022 and replace it with a new *Prudential Standard APS 330 Public Disclosure* (new APS 330). New APS 330 corrects inaccuracies in the previous version of APS 330, to ensure authorised deposit-taking institutions (ADIs) can meet the disclosure requirements set by APRA. ADIs are bodies corporate that have been granted the authority, under the *Banking Act 1959*, to carry on banking business in Australia.

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

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