

Financial Sector (Collection of Data) (reporting standard) determination No. 1 of 2023

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 make, grant or issue an instrument of a legislative or administrative character 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.

Subsection 15(1) of the Act provides that APRA may declare a day on and after which the reporting standards are to apply.

On 21 March 2023, APRA determined the Financial Sector (Collection of Data) (reporting standard) determination No. 1 of 2023 which:

- (1) revokes *Reporting Standard ARS 111.0 Fair Values* (ARS 111.0) made under Financial Sector (Collection of Data) (reporting standard) determination No. 6 of 2012; and
- (2) determines a new version of ARS 111.0.

The instrument commences on 1 April 2023.

1. Background

APRA's prudential framework includes a suite of prudential standards that impose capital requirements for authorised deposit-taking institutions (ADIs), for the purpose of ensuring ADIs hold sufficient capital to address the risks associated with their operations.

Two of these standards are *Prudential Standard APS 110 Capital Adequacy* (APS 110) and *Prudential Standard APS 111 Capital Adequacy: Measurement of Capital* (APS 111). APS 110 sets out the requirements that must be met by an ADI to maintain adequate capital, on both a Level 1 and Level 2 basis, to act as a buffer against the risk associated with its activities. APS 111 sets out the characteristics that an instrument must have to qualify as Regulatory Capital for an ADI and the various regulatory adjustments to be made to determine total Regulatory Capital on both a Level 1 and Level 2 basis.

ARS 111.0 sets out an ADI's reporting requirements to APRA in relation to an ADI's fair value measurement. It includes *Form ARF 111.0 Fair Values* (and the associated instructions) and should be read in conjunction with APS 110 and APS 111. ARS 111.0 permits APRA to collect data to support APRA's prudential supervision of ADIs under APS 110 and APS 111. The data collected under ARS 111.0 is also used by the Reserve Bank of Australia (RBA)

and the Australian Bureau of Statistics (ABS) to assist them with their functions.

ARS 111.0 was last determined by APRA in 2012 (the previous ARS 111.0).

2. Purpose and operation of the instrument

The previous ARS 111.0 was to be repealed by sunseting on 1 April 2023 under subsection 50(1) of the *Legislation Act 2003*. APRA has reviewed the regulatory performance of the previous ARS 111.0 and found that it continues to be fit for purpose. Consequently, APRA intends that it be remade without substantive changes.

The purpose of the instrument is to revoke the previous ARS 111.0 and remake ARS 111.0 with minor changes to use the drafting style employed currently for APRA's reporting standards, such as formatting to improve readability and accessibility, make minor definitional changes and update the commencement date. The changes to ARS 111.0 do not alter the existing reporting obligations or interests of ADIs. The due dates, data required and the application of the reporting standard have not changed.

The instrument incorporates by reference certain provisions of Acts, Prudential Standards, and Australian Accounting Standards issued by the Australian Accounting Standards Board. All of these references are references to the instruments as they exist from time to time. These instruments are disallowable instruments and are available on the Federal Register of Legislation at 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 111.0. Decisions made by APRA exercising those powers are not subject to merits review. Delays caused by an entity seeking merits review of APRA's decisions under one or more reporting standards could significantly compromise use of the data at an entity and aggregate level by APRA, the RBA and ABS. It is necessary that ARS 111.0 be allowed to continue in force from 1 April 2023 onwards.

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.

Consultation

The substance of ARS 111.0 has already been consulted on with industry when originally determining the reporting standard (see the Explanatory Statement for the previous ARS 111.0). APRA is satisfied that further consultation is not necessary and not reasonably practicable to undertake for this instrument. The instrument does not alter the existing reporting obligations that are required to be complied with by ADIs and any changes to the instrument are minor and machinery in nature.

3. Regulation Impact Statement

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

4. 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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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

Reporting Standard ARS 111.0 Fair Values (ARS 111.0) outlines the overall requirements for the provision of information to APRA relating to fair value measurement of an authorised deposit taking institution (ADI). ADIs are bodies corporate authorised to carry on banking business in Australia.

The purpose of the Legislative Instrument is to revoke the existing ARS 111.0 determined by APRA in 2012 and replace it with a new version. A new version of ARS 111.0 is being made as the existing ARS 111.0 is due to sunset on 1 April 2023.

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 Legislative Instrument is compatible with human rights.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.