

Financial Sector (Collection of Data) (reporting standard) determination No. 27 and 28 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 16 March 2023, APRA determined:

1. the Financial Sector (Collection of Data) (reporting standard) determination No. 27 of 2023 which:
 - (i) revokes *Reporting Standard LRS 114.2 Derivatives Activity* (LRS 114.2) made under by Financial Sector (Collection of Data) (reporting standard) determination No. 47 of 2013; and
 - (ii) determines a version of LRS 114.2; and
2. the Financial Sector (Collection of Data) (reporting standard) determination No. 28 of 2023 which:
 - (i) revokes *Reporting Standard LRS 114.3 Off Balance Sheet Business* (LRS 114.3) made under Financial Sector (Collection of Data) (reporting standard) determination No. 48 of 2013; and
 - (ii) determines a new version of LRS 114.3.

These instruments commence on 1 April 2023.

1. Background

APRA's prudential framework includes a suite of prudential standards that impose capital requirements for life insurer (LIs), for the purpose of ensuring LIs hold sufficient capital to address the risks associated with their operations.

One of these standards is *Prudential Standard LPS 114 Capital Adequacy: Asset Risk Charge*

(LPS 114). LPS 114 sets out the requirements for a LI to maintain adequate capital against the asset risks associated with its activities.

LRS 114.2 sets out a LI's reporting requirements to APRA in relation to its derivatives activities. It includes *Form LRF 114.2 Derivatives Activity* (and the associated instructions)

LRS 114.3 sets out a LI's reporting requirements to APRA in relation to its off-balance sheet business. It includes *Form LRF 114.3 Off-balance Sheet Business* (and the associated instructions).

LRS 114.2 and LRS 114.3 permit APRA to collect data to support APRA's prudential supervision of LIs under LPS 114 and are used by APRA to assess compliance with the capital standards.

LRS 114.2 and LRS 114.3 were last determined by APRA in 2013 (the previous LRS 114.2 and LRS 114.3).

2. Purpose and operation of the instruments

The previous LRS 114.2 and LRS 114.3 were to be repealed by sunsetting on 1 April 2023 under subsection 50(1) of the *Legislation Act 2003*. APRA has reviewed the regulatory performance of the previous LRS 114.2 and LRS 114.3 and found that they continue to be fit for purpose. Consequently, APRA intends that they be remade without substantive changes.

The purpose of the instruments is to revoke the previous LRS 114.2 and LRS 114.3 and remake LRS 114.2 and LRS 114.3 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 LRS 114.2 and LRS 114.3 do not alter the existing reporting obligations or interests of LIs. The due dates, data required and the application of the reporting standards have not changed.

The instruments incorporate 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 a LI to provide information required by LRS 114.2 and LRS 114.3. 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. It is necessary that LRS 114.2 and LRS 114.3 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.

3. Consultation

The substance of LRS 114.2 and LRS 114.3 has already been consulted on with industry when originally determining the reporting standards (see the Explanatory Statements for the previous LRS 114.2 and LRS 114.3). APRA is satisfied that further consultation is not necessary and not reasonably practicable to undertake for these instruments. The instruments do not alter the existing reporting obligations that are required to be complied with by LIs and any changes to the instruments are minor and machinery in nature.

4. Regulation Impact Statement

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

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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These Legislative Instruments are 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 Instruments

Reporting Standard LRS 114.2 Derivatives Activity (LRS 114.2) outlines the overall requirements for the provision of information to APRA relating to derivatives activities of a life insurer (LI). *Reporting Standard LRS 114.3 Off Balance Sheet Business* (LRS 114.3) outlines the overall requirements for the provision of information to APRA relating to off-balance sheet business of a LI. LIs are bodies corporate authorised to conduct life insurance business in Australia.

The purpose of the Legislative Instrument is to revoke the existing versions of LRS 114.2 and LRS 114.3 determined by APRA in 2013 and replace them with new versions. New versions of LRS 114.2 and LRS 114.3 are being made as the existing LRS 114.2 and LRS 114.3 are due to sunset on 1 April 2023.

Human rights implications

APRA has assessed the Legislative Instruments and is of the view that they do 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 Instruments are compatible with human rights.

Conclusion

These Legislative Instruments are compatible with human rights as they do not raise any human rights issues.