

Banking (prudential standard) determination No. 3 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). Under subsection 11AF(3) of the Act, APRA may, in writing, vary or revoke a prudential standard.

On 11 May 2023, APRA made Banking (prudential standard) determination No. 3 of 2023 (the instrument), which revokes *Prudential Standard APS 610 Prudential Requirements for Providers of Purchased Payment Facilities* made under Banking (prudential standard) determination No. 6 of 2014 and determines a new *Prudential Standard APS 610 Prudential Requirements for Providers of Purchased Payment Facilities* (APS 610).

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 must comply.

APS 610 requires ADIs that have obtained an authority to provide purchased payment facilities (PPFs) to meet prudential requirements commensurate with their risk profile. These ADIs form a class of ADI known as purchased payment facility providers (PPF providers). They are not authorised to conduct general banking business.

On 14 November 2022, APRA initiated a public consultation on capital requirements for PPF providers, with the intention to align APS 610 with the broader capital framework for other APRA-regulated entities. APS 610 incorporates these changes and some minor amendments including those to update cross referencing, and to use the drafting style employed currently for APRA's prudential standards.

2. Purpose and operation of the instrument

The purpose of the instrument is to revoke the existing APS 610 and to replace it with a new version of APS 610 that updates capital requirements for providers of purchased payment facilities to align with the requirements for other APRA-regulated industries.

APS 610 requires an ADI that has an authority to provide purchased payment facilities to meet prudential requirements commensurate with its risk profile.

Where APS 610 refers to an Act, Regulation or prudential 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 610 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 section 11AG of the Act provides that ADIs must comply with applicable prudential standards. 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 cases¹ the decision is preceded by a full consultation with the ADI to raise any concerns it may have in relation to the decision.

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 (subsection 9A(8) of the Act).

3. Consultation

¹ 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) contrary to the national interest; or
- (b) contrary to the interests of depositors with the ADI.

APRA undertook a three-month consultation on the proposed consequential changes from November 2022 to February 2023.² Four submissions were received. APRA released a response to submissions on 19 May 2023.

4. Regulation Impact Statement

A Preliminary Assessment was submitted the Office of Impact Analysis who confirmed that a Regulation Impact Statement is not required.

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.

² Refer to: <https://www.apra.gov.au/consultation-on-minimum-capital-requirements-for-ppf-providers>.

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

The purpose of the instrument is to revoke existing *Prudential Standard APS 610 Prudential Requirements for Providers of Purchased Payment Facilities* determined by APRA in 2014 and replace it with a new *Prudential Standard APS 610 Prudential Requirements for Providers of Purchased Payment Facilities* (new APS 610).

The new APS 610 sets out new capital requirements for providers of purchased payment facilities, to align with the approach with other APRA-regulated industries.

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.