

Banking (prudential standard) determination No. 4 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 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 6 September 2023, APRA made Banking (prudential standard) determination No. 4 of 2023 (the instrument), which revokes *Prudential Standard APS 910 Financial Claims Scheme* made under Banking (prudential standard) determination No. 2 of 2013 and determines a new *Prudential Standard APS 910 Financial Claims Scheme* (APS 910).

The instrument commences on 1 October 2023.

1. Background

One of APRA's core functions is resolution. This function involves planning and implementing prompt and effective responses to the failure of a regulated institution, or a crisis in the financial system. As a resolution authority, APRA is responsible for the administration of the Financial Claims Scheme (FCS).

The FCS is an Australian Government scheme that was established during the 2008 global financial crisis to provide financial protection for depositors and insurance policy holders in the unlikely event of a failure of a bank, credit union, building society or general insurer. With regards to depositors, the FCS is designed to protect account-holders of an insolvent locally-incorporated ADI from loss on their deposits, and to provide them timely access to those deposits, up to the maximum amount payable under the FCS (currently \$250,000 per account-holder, per ADI).

Division 2AA of the Act sets out how the FCS operates, including the circumstances under which the Minister makes declarations activating the FCS. Once the FCS is activated, APRA is responsible for administering the FCS, including payments to eligible depositors of 'protected accounts'.

On 6 September 2023, APRA determined APS 910, which would have otherwise been automatically repealed ('sunsetting') on 1 October 2023 under the *Legislation Act 2003*. APS 910 sets out the operational requirements that ADIs must meet to facilitate effective operation of the FCS.

APS 910 remakes the previous version of the prudential standard which came into effect on 1 July 2013, with minor administrative updates such as the removal of redundant transitional arrangements for certain requirements in the first few years after the previous APS 910 came into effect.

2. Purpose and operation of the instrument

The purpose of this instrument is to revoke the previous APS 910 and to replace it with a new version.

APS 910 sets out the minimum requirements that an ADI must meet to ensure that it is pre-positioned for supporting APRA in administering timely FCS payments to depositors. Effective operation of the FCS is fundamental to maintaining confidence in the financial system.

The key requirements of APS 910 are set out below.

1. *Account-holder and protected account information*

Paragraphs 6-10 require an ADI to identify for each deposit-holder the deposit accounts that are protected under the FCS (protected accounts) and generate the aggregate balance of all protected accounts held by an account-holder in a Single Customer View (SCV).

The purpose of the SCV is to ensure that FCS entitlements can be calculated, and to reduce the risk of duplicate or erroneous payments being made to account-holders in the event of the failure of an ADI. Attachment A to APS 910 sets out the details that an ADI must capture in each account-holder's SCV.

2. *Payment information*

Paragraphs 11-14 and 18 require an ADI to identify how payments are to be made to each account-holder (electronically or by cheque) and be able to generate and transmit these instructions to a person (paying agent) nominated by APRA. Attachment C to APS 910 sets out principles for ADIs in meeting their payment and reporting information requirements.

Paragraphs 15-17 require an ADI to be able to capture an account-holder's alternative ADI account data, where deposits are to be transferred electronically for FCS purposes. APRA may approve an alternative data capture arrangement, subject to the requirements specified in paragraph 16.

3. *Reporting*

Paragraphs 19-22 require an ADI to be pre-positioned to generate and transmit reports in relation to FCS payments to certain parties. Paragraph 19 provides APRA with the discretion to specify the form of reporting information. To ensure that the information reported is consistent and appropriate, APRA has specified the form of these reports (refer to [Approved forms for payments and reports](#)).

4. *Communications*

Paragraphs 23-24 set requirements of ADIs in facilitating communications in the event that the FCS is activated. These requirements aim to ensure that an ADI can respond effectively, and in a timely manner, to expected enquiries.

5. *Testing and audit*

Paragraphs 25-26 require an ADI to regularly review and test various components of their FCS pre-positioning to demonstrate compliance with APS 910. Paragraph 25 provides APRA with the discretion to specify a testing schedule. To ensure consistency in how ADIs approach this obligation, APRA has specified a testing schedule (refer to

FAQ 13.2 at [Financial Claims Scheme – frequently asked technical questions for authorised deposit-taking institutions](#)).

Paragraphs 27-29 set minimum requirements of ADIs regarding independent assurances of the effectiveness of an ADI's controls relating to SCV data, FCS payment and reporting information.

6. *Attestation*

Paragraphs 30-34 require the Chief Executive Officer of an ADI to provide APRA an annual attestation regarding the ADI's compliance with APS 910. These attestations are important for ensuring senior management accountability for an ADI's compliance with APS 910.

Exercise of discretion by APRA

APS 910 provides for APRA to exercise various discretions. Decisions made by APRA in 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.

Under the Act, a breach of a prudential standard is 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 may include the decision:

- (a) 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); and
- (b) to revoke an authority to carry on banking business (section 9A 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 imposition of a penalty if it breaches the direction (50 penalty units each day under section 11CG of the Act). In nearly all cases,¹ 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.

Revocation of an authorisation to carry on banking business or a banking NOHC authorisation 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

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.

- (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).

Adjust and exclude discretion

APS 910 gives APRA the discretion to adjust or exclude a provision of the prudential standard (paragraph 35). The power to create such a discretion is provided for under subsection 11AF(2) of the Act.

APRA may exercise this power when it is satisfied that the adjustment or exclusion of a specific requirement for one or more specified regulated entities will better support APRA in meeting its objectives. For example, the adjustment or exclusion may be necessary to obtain a better prudential outcome than would be the case if the prudential requirement were applied unaltered to a particular regulated entity. A tailored approach would give APRA comfort that the prudential requirements apply appropriately to protect the interests of depositors. APRA will also take into account other considerations, such as efficiency, competition, contestability, competitive neutrality and regulatory burden, including comparisons with the entity's peer group.

The exercise of APRA's powers is governed by a robust decision-making framework which is documented in APRA's internal policies. This framework supports APRA in fulfilling its mandate by limiting decision making to those senior APRA officers with the appropriate experience and skill to exercise prudent judgement. The framework also requires decision makers to seek advice from internal technical experts.

Incorporation by reference

Under section 14(1)(a) of the *Legislation Act 2003*, the standard incorporates by reference as in force from time to time:

- Acts of Parliament and associated delegated laws; and
 - Prudential Standards determined by APRA under subsection 11AF(1) of the Act,
- which are available on the Federal Register of Legislation at www.legislation.gov.au.

Under section 11AF(7BA) of the Act, the standard incorporates by reference, as it exists from time to time, the Framework for Assurance Engagements issued by the Auditing and Assurance Standards Board (the Framework). The Framework can be found on the AUASB website at www.auasb.gov.au.

3. Consultation

On 26 July 2023, APRA undertook a public consultation on its proposal to remake APS 910 with minor updates.² Four submissions were received during the consultation, with respondents supportive of APRA's approach to remaking APS 910.

4. Impact Analysis (IA)

² [APRA proposes to remake sunseting standard APS 910 Financial Claims Scheme | APRA](#)

The Office of Impact Analysis has confirmed that IA is not required as the remaking of APS 910 is 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.

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 Legislative Instrument is to revoke *Prudential Standard APS 910 Financial Claims Scheme* made under Banking (prudential standard) determination No. 2 of 2013 and replace it with another version.

APS 910 forms a key pillar of APRA's crisis management framework. The standard requires locally-incorporated ADIs to be pre-positioned for the activation of the Financial Claims Scheme, Australia's deposit insurance scheme.

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 Instrument is compatible with human rights.

Conclusion

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