

Banking (prudential standard) determination No. 3 of 2024

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 August 2024, APRA made Banking (prudential standard) determination No. 3 of 2024 (the instrument), which revokes *Prudential Standard APS 330 Public Disclosure* made under Banking (prudential standard) determination No. 1 of 2023 and determines a new *Prudential Standard APS 330 Public Disclosure* (APS 330).

The instrument commences on 1 January 2025.

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.

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 (BCBS).¹ APS 330 follows closely the principles underpinning the BCBS's disclosure requirements, known as Pillar 3, with appropriate Australian adjustments. The Pillar 3 framework facilitates market discipline by

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.

providing a set of common disclosure requirements to allow market participants to assess banks' capital adequacy, and other indicators of financial health.

2. Purpose and operation of the instrument

The purpose of the instrument is to revoke the existing APS 330 and replace it with a new version of APS 330.

APS 330 requires ADIs to publicly disclose key prudential information. The new APS 330 reflects APRA's incorporation of greater proportionality within its prudential framework by reducing regulatory requirements for smaller and less complex entities. The new APS 330 applies to locally-incorporated ADIs determined to be significant financial institutions (SFIs). 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.²

Details of the new prudential standard

See Attachment A.

Documents incorporated by reference

Under paragraph 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;
- Prudential Standards determined by APRA under subsection 11AF(1) of the Act; and
- Reporting Standards determined by APRA under subsection 13(1) of the *Financial Sector (Collection of Data) Act 2001*.

These documents may be freely obtained on the Federal Register of Legislation at www.legislation.gov.au.

Subsection 11AF(7BA) of the Act provides that a prudential standard may provide for a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time, despite section 46AA of the *Acts Interpretation Act 1901* and section 14 of the *Legislation Act 2003*. APS 330 relies on subsection 11AF(7BA) and incorporates by reference the following document as existing from time to time:

- *DIS – Disclosure requirements*, published by the BCBS and available at: https://www.bis.org/basel_framework/standard/DIS.htm.

² As defined in *Prudential Standard APS 001 Definitions* and *Prudential Standard CPS 001 Defined terms*, both available on www.legislation.gov.au.

Exercise of discretion by APRA

Under subsection 11AF(2) of the Act, a prudential standard may provide for APRA to exercise powers and discretions under the standard, including (but not limited to) discretions to approve, impose, adjust or exclude specific prudential requirements in relation to one or more specified ADIs or authorised NOHCs.

APRA's prudential standards include powers that may be exercised by APRA that involve an element of discretion and that may affect the interests of the entities to which the standards apply. These powers include a power to adjust or exclude a provision of the standard.

The need to apply discretion is driven by entity-specific issues and circumstances that are not adequately addressed by the generally applicable provisions of the prudential standards. For example, adjustment or exclusion of a provision 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.

When exercising its discretion, APRA considers a wide range of factors, including the considerations set out in the Act and the *Australian Prudential Regulation Authority Act 1998*.

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.

The power is also exercised following discussion with the relevant entity about its appropriateness and the impact it may have on the entity.

Review of decisions

Decisions made by APRA exercising powers in prudential standards 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 and authorised NOHCs 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 cases 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 (section 9A(8) of the Act).

3. Consultation

In 2022, APRA consulted on the new APS 330, with an effective date of 1 January 2024 (to provide industry 12 months for implementation). The new APS 330 incorporates the BCBS's Pillar 3 disclosure framework by reference, with appropriate adjustments for the Australian context.

APRA received five submissions to this consultation and engaged with market participants through industry workshops and bilaterally. Submissions to the consultation were generally supportive of APRA's objectives in the review and provided suggestions to amend the timing and format of the standard to ease implementation pressures and to clarify APRA's requirements. This feedback resulted in APRA making technical adjustments to the new standard, changing transitional arrangements to update disclosures for APRA's new ADI capital framework that came into effect on 1 January 2023, and delaying the proposed effective date for the new APS 330 by 12 months to 1 January 2025 to relieve pressure on resourcing as ADIs implement the new capital framework.

As part of industry preparation over 2023 and 2024 to implement APS 330, ADIs raised some technical queries relating to the operation and interpretation of the new standard. In response to these queries, APRA undertook a short consultation in 2024 on further minor changes to APS 330 to support industry implementation of the new public disclosure requirements by 1 January 2025. APRA finalised the proposed changes to APS 330 on 17 July 2024 following a one-month public consultation period.

APRA received six submissions in response to its consultation on the minor amendments, with non-confidential submissions available on APRA's website. Respondents were generally industry participants that welcomed the proposals, given the objective of the amendments was to better support industry implementation of the new APS 330. Only minor amendments were made to APRA's original proposals to provide further clarity for industry.

These minor amendments include:

- *Macprudential supervisory measures (paragraph 36 of Attachment A)* – Amendment to provide additional flexibility for banks that are required to disclose global systemically important bank indicators;

- *Format of disclosures (paragraph 35)* – Clarification that banks can publish disclosures in Microsoft Excel file, or other machine-readable formats approved by APRA;
- *Credit risk asset classes (paragraph 13 of Attachment A)* – Clarification of which asset classes should be disclosed under the Standardised and Advanced approaches and inclusion of further flexibility for ADIs in meeting this requirement;
- *Liquidity (paragraphs 42 and 44 of Attachment A)* – Clarification that ADIs should use the definition of ‘small business customer’ as under *Prudential Standard APS 210 Liquidity* rather than under the BCBS Standard; and
- *Leverage ratio (paragraphs 38 and 40 of Attachment A)* – Clarification that references to the ‘Basel III leverage ratio’ is a reference to the leverage ratio as defined under *Prudential Standard APS 110 Capital Adequacy*. Removal of the requirements for banks to disclose the amount of adjusted gross securities financing transaction assets based on quarter-end values, with banks now only having to disclose based on an average of daily values over the quarter.

4. Impact Analysis

The Office of Impact Analysis confirmed that a Regulation Impact Statement was 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 B to this Explanatory Statement.

ATTACHMENT A

Details of the new prudential standard

Authority, application, commencement and interpretation

Under subsection 11AF(1) of the Act, APRA may determine prudential standards to be complied with by (among others) all, or specified classes of, ADIs and authorised NOHCs.

Paragraphs 1 to 8 are the machinery provisions relating to the legal authority under which the instrument is made, the ADIs and authorised NOHCs that are required to comply with the standard, the commencement date, and interpretation.

Adjustments and exclusions

Paragraph 9 relies on subsection 11AF(2) of the Act and provides for APRA to adjust or exclude a specific prudential requirement in the standard in relation to one or more specified ADIs or authorised NOHCs.

Previous exercise of discretion

Paragraph 10 requires an ADI to contact APRA if it seeks to rely on an exercise of APRA's discretion under a previous version of the standard.

Key principles

Paragraphs 11 to 18 set out the key principles that ADIs must meet when making public disclosures required under APS 330. These key principles broadly align with the key principles under the BCBS's Pillar 3 framework, including that ADIs must make clear, comprehensive, meaningful, consistent, and comparable public disclosures.

General requirements

Paragraphs 19 to 41 set out the general requirements that ADIs must meet when making the public disclosures required under APS 330.

Paragraph 19 requires ADIs to make the prudential disclosures set out in the BCBS's disclosure standard (BCBS Standard) as it exists from time to time, subject to the modifications specified in Attachment A to APS 330. The BCBS Standard is available on the Bank of International Settlements website.

Paragraph 20 provides ADIs the flexibility to modify the content of its disclosures from that set out in the BCBS Standard, where necessary, to correct any inconsistencies between the APRA and BCBS regulatory frameworks. Where an ADI modifies its disclosures, it must include commentary to explain the modification as part of its disclosures and notify APRA.

Paragraph 21 notes that the BCBS Standard covers disclosure of key prudential metrics and other information relating to an ADI's risk profile and financial resilience.

Paragraph 22 requires that, if an ADI chooses (on a voluntary basis) to include any additional information in its disclosures, the information must meet the key principles outlined in APS 330.

Under paragraphs 23 and 24, APRA may require an ADI to rectify or make further disclosures, or commission an independent audit of its prudential disclosures, if there are concerns about the quality of the disclosures.

Disclosure policy

Paragraphs 25 to 27 require an ADI to have a formal policy relating to its prudential disclosures approved by the ADI's Board of Directors. This policy must include how an ADI maintains effective internal controls and procedures for public disclosures.

Under paragraph 27, an ADI may elect not to make a particular disclosure if it would prejudice the position of the ADI or any other person by disclosing proprietary or confidential information, or personal information as defined in the *Privacy Act 1988*.

Verification of disclosures

Paragraphs 28 to 30 require an ADI to ensure that its prudential disclosures are verified and are reliable, and are consistent with information provided to external auditors and reported to APRA. The Accountable Person of the ADI must attest that disclosures have been made in accordance with the ADI's disclosure policy required in paragraph 25 of APS 330.

Frequency and timing of disclosures

Paragraphs 31 to 33 require an ADI to publish disclosures with the frequency and timing as required by the BCBS Standard. Prudential disclosures should also be published concurrently with the lodgement of the ADI's financial reports under the Corporations Act. If disclosures are due during a period where an ADI is not required to produce a financial report, the disclosures must be published as soon as practicable.

Presentation of disclosures

Paragraphs 34 to 41 set out the requirements for an ADI presenting its disclosures. This includes requiring an ADI to have a 'Regulatory Disclosures' section on its website that is easily identifiable to users. Additionally, ADIs must publish quantitative disclosures in machine-readable formats (for example, Comma-separated values file or Microsoft Excel file), to facilitate the use of these disclosures.

Paragraph 39 requires that ADIs must make disclosures that are meaningful to users. Where a particular disclosure is not meaningful, for example because the information disclosed is immaterial, an ADI may choose not to disclose part or all of the information required in the BCBS Standard.

Modifications to disclosure requirements

Attachment A to APS 330 sets out detailed and technical modifications to disclosure requirements in the BCBS Standard, as outlined in paragraph 19 of APS 330. The

purpose of this attachment is to reconcile any differences between the APRA and BCBS regulatory frameworks.

ATTACHMENT B

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 legislative instrument is to revoke *Prudential Standard APS 330 Public Disclosure* (APS 330) and replace it with a new APS 330.

The new APS 330 requires certain authorised deposit-taking institutions (ADIs) to publicly disclose key prudential metrics and information relating to their risk profiles and financial resilience, to contribute to the transparency of financial markets and to enhance market discipline. An ADI is not required to disclose information that may prejudice the position of the ADI or any other person by disclosing proprietary or confidential information, or personal information as defined in the *Privacy Act 1988*.

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

The publication of personal information would engage the right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR), an international instrument listed in section 3 of the HRPS Act. APS 330 expressly provides that an ADI may elect not to disclose personal information and may instead disclose more general information about the subject matter together with commentary about why the specific information is not disclosed.

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.