

Financial Sector (Collection of Data) (reporting standard) determination No. 14 of 2024

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 issue an instrument 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 5 September 2024, APRA made:

- (1) Financial Sector (Collection of Data) (reporting standard) determination No. 14 of 2024 which:
 - (i) revokes *Reporting Standard ARS 114.0 Standardised Approach – Operational Risk* made under Financial Sector (Collection of Data) (reporting standard) determination No. 7 of 2021;
 - (ii) revokes *Reporting Standard ARS 115.0 Advanced Measurement Approaches (AMA) to Operational Risk* made under Financial Sector (Collection of Data) (reporting standard) determination No. 7 of 2018;
 - (iii) revokes *Reporting Standard ARS 115.0 Capital Adequacy: Standardised Measurement Approach to Operational Risk* made under Financial Sector (Collection of Data) (reporting standard) determination No. 2 of 2022 (ARS 115.0); and
 - (iv) determines a new version of ARS 115.0.

The instrument commences on the day after it is registered on the Federal Register of Legislation.

1. Background

APRA is the prudential regulator for banking, insurance and superannuation entities, and collects financial sector data for its own uses and on behalf of the Reserve Bank of Australia and the Australian Bureau of Statistics.

APS 115.0 sets out the requirements for authorised deposit-taking institutions (ADIs) to report information to APRA relating to their operational risk regulatory capital. It states the specific data items ADIs need to submit, provides definitions and instructions on how to measure and report these items, and states timelines and quality requirements for providing the data to APRA.

APRA implemented an updated capital framework for ADIs effective 1 January 2023. In December 2023, APRA released for consultation proposed minor updates to the ADI capital framework. The aim of these minor updates was to address specific implementation issues raised by industry in applying the new capital framework in practice. Following a three-month consultation period, APRA released a response to submissions on 26 June 2024.

2. Purpose and operation of the instrument

The purpose of the instrument is to revoke the existing ARS 115.0 and replace it with a new version, and to also revoke two older reporting standards that relate to the reporting of operational risk regulatory capital.

The new version of ARS 115.0 will ensure that APRA's reporting framework aligns with its updated prudential framework and provides ADIs with clarity for reporting. This will allow APRA to supervise ADIs' compliance against the updated capital requirements.

The new reporting standard applies to reporting periods ending on or after 30 September 2024.

Explanation of each provision in the instrument

Authority – paragraph 1

This paragraph outlines APRA's power to determine reporting standards that are required to be complied with by financial sector entities under paragraph 13(1)(a) of the Act.

Purpose – paragraph 2

This paragraph explains the purpose of APRA's collection of information under the reporting standard. Information collected under this reporting standard will be used by APRA for the purpose of prudential supervision including assessing compliance with capital standards. It may also be used by the Reserve Bank of Australia and the Australian Bureau of Statistics.

Application - paragraph 3

This provision states which financial sector entities must comply with the reporting standard under section 13 of the Act.

Commencement - paragraph 4

This provision states when the reporting standard begins to apply to the financial sector entities that must comply with the reporting standard as provided for in section 15 of the Act.

Information required – paragraphs 5 and 6

These provisions state what information financial sector entities must provide to APRA for each reporting period as permitted by paragraph 13(2)(b) of the Act.

Method of submission – paragraph 7

This provision specifies how information required by the reporting standard must be given to APRA as permitted by paragraph 13(2)(e) of the Act.

Reporting periods and due dates – paragraphs 8-11

Paragraphs 13(2)(d)-(f) of the Act permits reporting standards determined by APRA to include matters related to the times as at which, or the periods to which, the information in reporting documents is to relate, the giving of reporting documents to APRA, and when they should be provided, and the discretion of APRA, in particular cases, to vary reporting standards, including, but not limited to, the discretion to vary when entities are to provide documents. Paragraph (13)(2)(bb) of the Act permits reporting standards determined by APRA to include matters related to the auditing of reporting documents.

Paragraphs 8-11 rely on these provisions. Paragraph 8 states that ADIs are to provide the information required by this reporting standard in respect of each financial year (within the meaning of the *Corporations Act 2001*) of the ADI. Paragraph 9 provides for APRA to vary the reporting periods mentioned in paragraph 8 in writing, if, having regard to the particular circumstances of an ADI and other matters, APRA considers it necessary or desirable to obtain information at a different frequency than stated in paragraph 8. Paragraph 10 specifies the due dates for provision of information to APRA – within three calendar months and 35 calendar days after the end of the relevant reporting period. Paragraph 11 states that APRA may grant an extension of a due date in paragraph 10 in writing.

Quality control – paragraphs 12-13

Paragraphs 12-13 state that information provided under this reporting standard (except for the information required under paragraph 6) must be the product of and subject to systems, processes and controls developed by the entity for the internal review and authorisation of that information and subject to review and testing by the ADI's external auditor.

Authorisation – paragraph 14

Paragraph 14 states how information provided to APRA should be authenticated.

Minor alterations to forms and instructions – paragraphs 15-16

Paragraph 13(2)(f) of the Act permits reporting standards determined by APRA to include discretions for APRA, in particular cases, to vary the reporting standards.

Paragraph 15 relies on this provision and states that APRA may make minor variations to a form that is part of this Reporting Standard, and the instructions to such a form, to correct technical, programming or logical errors, inconsistencies or anomalies; or to the instructions to a form, to clarify their application to the form without changing any substantive requirement in the form or instructions in this reporting standard. Paragraph 16 states if APRA makes such a variation it must notify in writing each ADI that is required to report under this Reporting Standard.

Transition – paragraph 17

Paragraphs 13(2)(d)-(e) of the Act provide for APRA to include matters relating to times and periods to which information in reporting documents is to relate, the provision of documents to APRA, and the time periods for provision of these documents to APRA. Paragraph 17 clarifies that financial sector entities must continue to report data under the previous version of ARS 115.0 that is revoked in the determination making this new reporting standard, for reporting periods that ended before the new reporting standard begins to apply to reporting periods ending on or after 30 September 2024.

Interpretation – paragraphs 18-19

Paragraph 17 provides definitions of common terms used throughout this reporting standard. Paragraph 18 states that unless the contrary intention appears, a reference to an Act, Prudential Standard, Reporting Standard, Australian Accounting or Auditing Standard is a reference to the instrument as in force from time to time.

General directions and notes

The general directions and notes contain details on the data to be reported to APRA under this reporting standard. Information in the general directions and notes applies to all data items in this reporting standard.

Specific instructions

The specific instructions list the specific data items that must be reported to APRA and how financial sector entities should determine these items.

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;
- Prudential Standards determined by APRA under section 11AF of the *Banking Act 1959*;
- Reporting Standards determined by APRA under subsection 13(1) of the Act; and
- Australian Accounting Standards determined by the Australian Accounting Standards Board under section 334 of the *Corporations Act 2001* (Cth).

These documents may be freely obtained at www.legislation.gov.au (all documents listed above except for Australian Accounting Standards), and <https://www.aasb.gov.au/pronouncements/accounting-standards/> (Australian Accounting Standards).

Exercise of discretion by APRA

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 ADIs to which the reporting standards apply. These powers include changing a reporting period or due date for an ADI to provide information required by each of the instruments, and making minor variations to a form or its instructions to correct errors without changing any substantive requirements.

The need to apply discretion is driven by entity specific issues and circumstances which are not adequately addressed by the generally applicable provisions of the reporting standards.

A change to a reporting period or due date might be determined on APRA's initiative taking into account APRA's assessment of whether existing data will be sufficient for APRA's prudential supervision purposes, or whether the APRA will have the required data to assess an entity's capital adequacy by a particular date. Alternatively, a change to a reporting period or due date might be considered by APRA at the request of an ADI, where the ADI is able to

demonstrate that it would not be appropriate or feasible to provide data for a particular reporting period or by a particular date.

APRA will exercise the power to make minor variations to forms or instructions if it is satisfied that this will achieve a better reporting or prudential outcome than if it remained in its original form. APRA must notify all affected ADIs in writing about any such minor variations.

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 prudential judgement. The framework also requires decision makers to seek advice from internal technical experts.

The power is exercised following discussion with the relevant ADI about its appropriateness and the impact it may have on the entity and users of the data collected.

Review of decisions

Decisions made by APRA exercising those powers are not subject to merits review.

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.

APRA's reporting standards collect financial data from regulated entities. This data contains critical indicators of a regulated entity's financial wellbeing. APRA relies heavily on this financial data to inform its supervisory actions towards its regulated entities. Without timely and complete data, APRA may miss indicators that an entity is taking on imprudent risk or is in distress. APRA's supervisory decisions may be jeopardised if its receipt of data is unreliable due to entities seeking merits review under its reporting standards.

3. Consultation

APRA undertook public consultation on minor updates to the capital framework for ADIs, including a draft of ARS 115.0, from December 2023 to March 2024. The final round of consultation was completed on 26 June 2024, when APRA released finalised changes to the prudential and reporting framework for ADIs, including finalised reporting standards¹.

Submissions were received from reporting ADIs and industry bodies. APRA incorporated feedback received into the final versions of the reporting standards, including aligning with updates to the capital framework in response to industry feedback.

APRA is satisfied the consultation was appropriate and reasonably practicable.

4. Regulation Impact Statement

The Office of Impact Analysis confirmed that a Regulation Impact Statement was not required.

¹ Please see: <https://www.apra.gov.au/adi-capital-reforms-minor-updates>

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:

- *Reporting Standard ARS 114.0 Standardised Approach – Operational Risk* made under Financial Sector (Collection of Data) (reporting standard) determination No. 7 of 2021;
- *Reporting Standard ARS 115.0 Advanced Measurement Approaches (AMA) to Operational Risk* made under Financial Sector (Collection of Data) (reporting standard) determination No. 7 of 2018; and
- *Reporting Standard ARS 115.0 Capital Adequacy: Standardised Measurement Approach to Operational Risk (ARS 115.0)* made under Financial Sector (Collection of Data) (reporting standard) determination No. 2 of 2022,

and replace ARS 115.0 with a new version of ARS 115.0.

ARS 115.0 sets out requirements for authorised deposit-taking institutions (ADIs) to report information relating to operational risk regulatory capital. 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

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.