

Financial Sector (Collection of Data) class of corporations determination No. 1 of 2020

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Financial Sector (Collection of Data) Act 2001, section 7

Under paragraph 7(1A)(b) of the *Financial Sector (Collection of Data) Act 2001* (the Act), APRA has the power to determine in writing a class of corporations as registrable corporations for the purpose of paragraph 7(1)(b) of the Act.

On 16 April 2020, APRA made Financial Sector (Collection of Data) class of corporations determination No. 1 of 2020 (the Determination).

The instrument commences on 16 April 2020.

1. Background

The Government, Reserve Bank of Australia and APRA have taken coordinated action to support the flow of credit in the Australian economy, in particular for small and medium enterprises (SMEs). The Government introduced the Coronavirus SME Guarantee Scheme (the Scheme) to provide support for these businesses. Central to the Scheme is section 5 of the *Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020* (the Guarantee of Lending Act), under which the Minister may, on behalf of the Commonwealth, grant a guarantee to a financial institution in connection with loans made, or to be made, by the financial institution to SMEs.

Under the Scheme, the Government will guarantee 50 per cent of new loans issued by eligible authorised-deposit taking institutions (ADIs) and corporations that are non-bank lenders to SMEs. This will enhance lenders' willingness and ability to provide credit, and support SMEs being able to access vital additional funding to support them through the economic impacts of the Coronavirus¹.

Lenders that are granted a guarantee under the Scheme are required to report to APRA for the loans under the guarantee. A number of corporations approved to participate in the Scheme are already financial sector entities for the purposes of the Act and report financial information to APRA on an ongoing basis under applicable reporting standards.

As the activities of the remaining corporations that are granted a guarantee under the Scheme encompass the provision of finance, APRA considers it appropriate to determine these corporations, as a class, as registrable corporations.

Following the Determination, each corporation granted a guarantee under the Scheme (that is not an existing registrable corporation or an ADI under the *Banking Act 1959*) is obliged, under section 9 of the Act, to give APRA documents to enable it to enter

¹ <https://treasury.gov.au/coronavirus/sme-guarantee-scheme>

specific details of that corporation on the Register of Entities kept by APRA. A corporation covered by this Determination will have already provided most of the documents that it is obliged to provide APRA for the Register of Entities as part of the information it was required to provide to the Government and APRA when expressing interest to participate as a lender under the Scheme.

Determining these corporations as a class of corporations that are registrable corporations aims to ensure that all corporations granted a guarantee under the Scheme report on a consistent basis to the Government and to APRA. Consistent reporting will provide the Government and APRA timely access to data surrounding the working capital to help small and medium sized business get through the impact of the Coronavirus.

Corporations covered by this Determination will be required under the Act to report information to APRA under applicable reporting standards. Specifically to support the administration of the Scheme, APRA has made *Reporting Standard ARS 920.0 Australian Government Small and Medium Enterprise (SME) Guarantee Scheme*² (ARS 920.0). ARS 920.0 collects information related to a lender's portfolio of loans guaranteed under the Scheme, and individual loans written at origination.

2. Purpose and operation of the instrument

The purpose of this Determination is to specify corporations granted a guarantee under section 5 of the Guarantee of Lending Act as a class of corporations that are registrable corporations for the purpose of paragraph 7(1)(b) of the Act. This Determination does not cover existing registrable corporations or ADIs that are granted a guarantee under the Guarantee of Lending Act.

The list of corporations granted a guarantee under the Guarantee of Lending Act is available at <https://treasury.gov.au/coronavirus/sme-guarantee-scheme>.

3. Consultation

APRA did not consult in relation to the Determination as it considered consultation would not be appropriate or reasonably practicable to undertake.

The Determination requires urgent implementation to support the operation of the Scheme. Delays caused by consultation will jeopardise the success of the Scheme as APRA and the Government will not be able to monitor lending under the Scheme by corporations that are not registrable corporations. APRA and the Government require consistent information from all corporations that are granted a guarantee under the Scheme immediately to assess the success of the Government's economic stimulus measures in response to the Coronavirus.

Corporations covered by this Determination are made aware, before expressing an interest to participate as a lender under the Scheme, of the reporting requirements for the loans under the guarantee. Corporations covered by this Determination are

² Made by *Financial Sector (Collection of Data) (reporting standard) determination No. 4 of 2020*.

encouraged to engage with APRA on an ongoing basis in relation to reporting information to APRA under applicable reporting standards such as ARS 920.0.

4. Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for the legislative instrument.

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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The 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 this instrument is to determine corporations that are granted a guarantee under section 5 of the *Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020*, as a specified class of corporations that are registrable corporations for the purpose of paragraph 7(1)(b) of the *Financial Sector (Collection of Data) Act 2001* (the FSCOD Act). The instrument does not cover existing registrable corporations or authorised deposit-taking institutions.

As corporations in a class of corporations determined as registrable corporations, these corporations have obligations to provide certain documents to APRA for the purposes of APRA listing the corporation on the Register of Entities. In addition, these corporations will be required to provide specific financial information to APRA under applicable reporting standards.

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 legislative instrument is compatible with human rights as it does not raise any human rights issues.