

**Australian Prudential Regulation Authority (confidentiality) determination  
No. 2 of 2020**

**Information provided by authorised deposit-taking institutions under Reporting  
Standard ARS 923.2 Reporting Deferrals**

**EXPLANATORY STATEMENT**

**Prepared by the Australian Prudential Regulation Authority (APRA)**

*Australian Prudential Regulation Authority Act 1998, section 57*

Under section 57 of the *Australian Prudential Regulation Authority Act 1998* (the Act), APRA may determine, by legislative instrument, that all or a specified part of a relevant reporting document contains, or does not contain, confidential information.

On 7 September 2020, APRA made Australian Prudential Regulation Authority (confidentiality) determination No. 2 of 2020 (the instrument) which determines that the reporting standard listed in the instrument (namely *Reporting Standard ARS 923.2 Reporting Deferrals* (ARS 923.2)) does not contain confidential information.

The instrument commences on the date of registration on the Federal Register of Legislation.

**1. Background**

Subsection 56(2) of the Act provides that it is an offence to disclose “protected information”<sup>1</sup> or a “protected document”<sup>2</sup>, which includes information or documents provided to APRA under a “prudential supervision framework law”<sup>3</sup>. The *Financial Sector (Collection of Data) Act 2001* (FSCOD Act) is a prudential supervision framework law, and the reporting standards listed in the instrument, having been provided to APRA under that Act, are protected documents.

Subsection 56(5C) of the Act provides that it is not an offence to disclose information in a reporting document given to APRA under section 13 of the FSCOD Act where APRA has made a determination under section 57 of the Act in relation to the information.

Under subsections 57(2) and (4) of the Act APRA may, by legislative instrument, determine that:

- (a) all or a specified part of a relevant reporting document does not contain confidential information; or
- (b) all or a specified part of relevant reporting documents of a specified kind do not contain confidential information,

if, taking into account any representations made under subsection 57(3) in relation to the document or documents of that kind, APRA considers that the benefit to the

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<sup>1</sup> Defined in s 56(1) of the Act.

<sup>2</sup> Defined in s 56(1) of the Act.

<sup>3</sup> Defined in s 3(1) of the Act.

public from the disclosure of the document or documents, or information contained in the document or documents, outweighs any detriment to commercial interests that the disclosure may cause.

Under subsection 57(3) of the Act, APRA must not make a determination under subsection 57(2) unless APRA gives interested parties for the determination a reasonable opportunity to make representations as to whether or not the relevant reporting document contains, or relevant reporting documents of that kind contain, confidential information.

The consultation undertaken by APRA for the purposes of subsection 57(3) is discussed below.

## **2. Purpose of the instrument**

The instrument provides that information given to APRA under ARS 923.2 is non-confidential. As a result, the information will be disclosed by APRA under subsection 56(5C) of the Act. The information will provide the public with a better understanding of exposures by authorised deposit-taking institutions (ADIs) to loans subject to repayment deferrals, or otherwise restructured, due to COVID-19 and the resulting impact on an ADI's risk profile. Public transparency regarding the extent and nature of loans granted repayment deferrals, or that have otherwise been restructured, is important to investor and community confidence in the banking system. The importance of public transparency was highlighted in APRA's letters, of 9 July 2020 and 13 August 2020, to ADIs on APRA's temporary capital treatment of loans impacted by COVID-19.

## **3. Consultation**

APRA conducted consultation for the instrument. APRA commenced consultation in relation to whether information required to be provided under ARS 923.2 should be determined non-confidential by letter to ADIs on 13 August 2020.<sup>4</sup> APRA's 13 August 2020 letter indicated APRA expects the data collected under ARS 923.2 will be non-confidential, and APRA intends to collect and publish entity-level data collected under ARS 923.2 on COVID-19 impacted loans. The letter sought feedback on APRA's approach to publishing entity-level data.

Submissions in response to APRA's 13 August 2020 letter were generally supportive of APRA's objective to provide the public with greater transparency on loans impacted by COVID-19, and no objections were made to APRA's proposal to make the data collected under ARS 923.2 non-confidential.

APRA considers that greater transparency is beneficial for the industry and broader public. In APRA's view, the benefit to the public from the disclosure would outweigh any potential detriment to the commercial interests that the disclosure might cause. On that basis, APRA has determined all data collected under ARS 923.2 to be non-confidential.

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<sup>4</sup> The consultation letter is available on APRA's website at <<https://www.apra.gov.au/treatment-of-loans-impacted-by-covid-19>>.

**4. 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*

#### **Australian Prudential Regulation Authority (confidentiality) determination No. 2 of 2020**

#### **Information provided by authorised deposit-taking institutions under Reporting Standard ARS 923.2 Repayment Deferrals**

The 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 making the instrument is to enable APRA to disclose certain information provided to APRA by ADIs under ARS 923.2. This information will be of use to inter alia, regulators, policymakers, industry, researchers, analysts and consumers.

#### **Human rights implications**

APRA has assessed the instrument against the international instruments listed in section 3 of the HRPS Act and determined that only Article 17 of the International Covenant on Civil and Political Rights (ICCPR) is conceivably of relevance to the instrument.

Article 17 of the ICCPR prohibits the arbitrary or unlawful interference with a person's privacy, family, home and correspondence, and attacks on reputation. Article 17 is exclusively concerned with prohibiting interference with the privacy and/or reputation of individual persons. It does not extend to the privacy and/or reputation of corporate entities.

The instrument will facilitate the disclosure of specific information provided to APRA by ADIs in accordance with ARS 923.2. The information that ADIs are required to report to APRA under ARS 923.2 includes information about the exposures that an ADI has to individual borrowers. This information ultimately supports APRA achieving its mission of ensuring that, under all reasonable circumstances, financial promises made by the institutions that APRA supervises are met within a stable, efficient and competitive financial system. The instrument does not facilitate the public disclosure of information directly relating to individual persons. Further, APRA reviews all releases of data received under reporting standards to ensure that no information pertaining to an individual person can be deduced from the data.

#### **Conclusion**

The instrument is compatible with human rights because to the extent that ARS 923.2 limits human rights, those limitations are reasonably necessary and proportionate.