

Financial Sector (Collection of Data) (reporting standard) determination No. 8 of 2020

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.

On 7 September 2020, APRA made Financial Sector (Collection of Data) (reporting standard) determination No. 8 of 2020 (the instrument) which determines *Reporting Standard ARS 923.2 Repayment Deferrals* (ARS 923.2).

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

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 gives effect to its mandate by establishing minimum expectations for prudentially regulated financial institutions.

A key component of APRA's prudential framework for authorised deposit-taking institutions (ADIs) is the prudential standard for credit risk management. Credit risk means the risk that a borrower will fail to meet its obligations in accordance with agreed terms. ADIs need to manage the credit risk of exposures to individual borrowers, as well as their loan portfolios as a whole. The effective management of credit risk is critical to the long-term financial safety of an ADI. Data collected through reporting standards allows APRA to monitor ADI compliance with credit risk management requirements, as well as assess individual ADI risks.

In response to the unprecedented economic challenges presented by the COVID-19 pandemic, ADIs have offered large numbers of borrowers repayment deferrals or otherwise modified the terms of loans. APRA has also responded by temporarily modifying the application of *Prudential Standard APS 220 Credit Quality* (APS 220) as it applies to loans impacted by COVID-19. Sufficient visibility of ADIs' exposures to these loans impacted by COVID-19, and their impact on an ADI's risk profile, is not currently provided through APRA's existing data collections on credit risk.

2. Purpose and operation of the instrument

The purpose of the instrument is to determine ARS 923.2 which collects data from ADIs on their exposure to loans with repayment deferrals due to COVID-19, and is aligned with the temporary amendments to APS 220.

Where the reporting standards refer to an Act or Prudential Standard, this is a reference to the document as it exists from time to time, and which is available on the Federal Register of Legislation at www.legislation.gov.au.

There are a number of powers that may be exercised by APRA in reporting standards which involve an element of discretion and which may impact the interests of the financial sector entity to which the reporting standard applies. These decisions include APRA refusing to change a reporting period, or due date, for an ADI to provide information required by ARS 923.2. 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.

ARS 923.2 supports APRA's response to the unprecedented economic challenges presented by the COVID-19 pandemic. ARS 923.2 collects data that contains critical indicators of ADIs' exposures to loans subject to repayment deferrals, or otherwise restructured, due to COVID-19 and the resulting impact on an ADI's risk profile.

Without timely and complete data, which may be impacted due to ADIs seeking merits review of APRA's decisions under ARS 923.2, APRA's assessment of its urgent prudential response to the COVID-19 pandemic may be jeopardised. If APRA is not able to expediently and accurately assess its prudential response, this may result in hindering the ability of ADIs to continue to offer modifications of the terms of loans impacted by COVID-19 and reduce the flexibility ADIs have in supporting borrowers through the COVID-19 pandemic.

3. Consultation

APRA engaged in a short one-week public consultation on ARS 923.2.¹ APRA received seven submissions on its proposals from industry associations and ADIs.

Respondents noted that the new reporting standard increased reporting burden, and requested that APRA consider extending the submission date for the data from 10 business days to 20 business days. APRA considers that the request for data under ARS 923.2 is reasonable and appropriate in the current environment. APRA is maintaining the requirement that ADIs report data to APRA within 10 business days after the end of the reporting period to which the information relates. This is necessary to provide timely information to the community on loans that have been

¹ The consultation letter is available on APRA's website at <<https://www.apra.gov.au/treatment-of-loans-impacted-by-covid-19>>.

impacted by COVID 19.² However, acknowledging industry's concerns, APRA has, outside the requirements of ARS 923.2, increased the threshold at which ADIs are required to make public disclosure on loans subject to repayment deferrals from \$10 million in total deferrals to \$20 million. Further, where ADIs fall below the \$20 million threshold, they will be required to report the relevant data to APRA on a quarterly rather than a monthly basis. The increased threshold is expected to reduce burden on smaller ADIs.

4. Regulation Impact Statement

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required as ARS 923.2 is unlikely to have more than a minor regulatory impact (Reference ID 42999).

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.

² APRA's full response and non-confidential submissions are available on APRA's website at <<https://www.apra.gov.au/treatment-of-loans-impacted-by-covid-19>>.

ATTACHMENT A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Financial Sector (Collection of Data) (reporting standard) determinations No. 8 of 2020

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 the instrument is to determine ARS 923.2. ARS 923.2 collects data from ADIs on their exposure to loans with repayment deferrals due to COVID-19.

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 facilitates the collection 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. While APRA does publish some information collected under reporting standards, in accordance with the limited range of circumstances provided for under section 56 of the *Australian Prudential Regulation Authority Act 1998*, 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.