

Financial Sector (Collection of Data) (reporting standard) determination No. 43 of 2021

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Financial Sector (Collection of Data) Act 2001, sections 13 and 15

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.

On 5 August 2021, APRA made Financial Sector (Collection of Data) (reporting standard) determination No. 43 of 2021 (the instrument) which determines *Reporting Standard ARS 920.8 Australian Government Small and Medium Enterprise (SME) Recovery Loan Scheme - Flood* (ARS 920.8).

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

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 SME Recovery Loan Scheme – Flood (the Scheme) to provide support for businesses that are located or operating in eligible Local Government Areas (LGAs) impacted by the floods in March 2021.¹

APRA will assist the Government assessing authorised deposit taking institutions' (ADIs') and registered financial corporations' (RFCs') expressions of interest in participating in the Scheme. Under ARS 920.8, lenders who have been granted a guarantee under the Scheme (loans written from 1 April 2021 to 31 December 2021) will be required to regularly report to APRA information related to their portfolio of loans guaranteed under the Scheme, and individual loans written at origination.

2. Purpose and operation of the instrument

The purpose of the instrument is to determine ARS 920.8. ARS 920.8 collects information on ADIs' and RFCs' portfolio of loans guaranteed under the Scheme, and individual loans written at origination.

At the portfolio level, ARS 920.8 collects information on the weighted average interest rate, the number and the dollar value of loans approved by an ADI and RFC under Phase 2 of the Scheme, and thereafter refinanced, as well as the number of claims the ADI and RFC has made towards the Scheme. ADIs and RFCs that have been granted a guarantee are also required to report information on the credit quality of their portfolio, including loans written off, recoveries made, loans 30 days past due

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

and impaired facilities. Information is also being collected on loans approved for the purpose of refinancing loans taken out in the Phase 1 or Phase 2 of the Coronavirus SME Guarantee Scheme.

At the loan level, the information includes the data on the borrower, interest rate, guarantors, approval date, final repayment date, refinancing, loan type and length of repayment holiday for each loan. Where the borrower or guarantor is a natural person, ARS 920.8 will be collecting personal information.

This information will be used by the Government, including The Treasury, to assess the effectiveness of the Scheme in supporting SMEs.

ARS 920.8 requires reporting for reporting periods that occurred prior to the commencement of the reporting standard. ARS 920.8 is not retrospective in operation as the obligation to report on these reporting periods commences from, and not prior to, the commencement of the reporting standard.

Where ARS 920.8 refers to an Act, Regulation, Prudential Standard, Reporting Standard, Australian Accounting or Auditing 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 that 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 920.8. 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 920.8 supports the Government's urgent economic stimulus measures in response to Coronavirus. ARS 920.8 collects data that contains critical indicators of a participating ADI's or RFC's lending under the Scheme, including data on the credit quality of the portfolio and guarantee claims made. APRA will share data collected by ARS 920.8 with the Government, including The Treasury. ARS 920.8 data will be used by the Government to monitor lending activity under the Scheme and assess the effectiveness of its response to the economic impacts of the Coronavirus.

Without timely and complete data, the Government's assessment of its support of SMEs may be jeopardised if its receipt of data is unreliable due to entities seeking merits review under its reporting standards. If delays in reporting data hinder the administration of the Scheme, participating ADIs and RFCs may experience delays in their ability to quickly extend credit to provide vital funding to SMEs.

3. Consultation

APRA consulted in relation to ARS 920.8. APRA consulted with the affected ADIs and RFCs at the same time the Treasury directly engaged with eligible lenders under

the Scheme. APRA and Treasury also engaged with industry associations representing eligible lenders under the Scheme. APRA is satisfied that the consultation was appropriate, and reasonably practicable, as the ADIs and RFCs eligible under the Scheme had an opportunity to provide comments on the reporting standard requirements.

Information was presented to the ADIs and RFCs that they will be required to regularly report to APRA on information related to their portfolio of loans guaranteed under the Scheme, and individual loans written.² The Treasury also circulated that financial information was required to be reported to APRA from participating lenders under the Scheme.

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.

² See footnote 1.

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 a new *Reporting Standard ARS 920.8 Australian Government Small and Medium Enterprise (SME) Recovery Loan Scheme - Flood* (ARS 920.8).

The Government introduced the SME Recovery Loan Scheme – Flood (the Scheme) to provide support for these businesses. The Scheme will enhance a 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 Coronavirus³. ARS 920.8 sets out requirements for authorised deposit-taking institutions (ADI's) and for registered financial corporations (RFC's) to report their lending facilities for SMEs under the Scheme to businesses that received that are located or operating in eligible Local Government Areas (LGAs) impacted by the floods in March 2021.

The new ARS 920.8 enables APRA and the Commonwealth Government to monitor lending activity under Scheme.

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 potentially of relevance to the instrument.

Article 17 of the ICCPR prohibits the arbitrary or unlawful interference with a person's privacy, family, home or correspondence, and attacks on reputation.

The majority of information collected relates to an ADI's or RFC's portfolio of loans under Phase 2 of the Scheme. However, ARS 920.8 also collects some information which relates to individual persons.

The personal information sought within ARS 920.8 is in relation to the identity of individuals who have obtained a loan, or have provided a guarantee for a loan, under the Scheme. Understanding the identity of the borrowers is essential for APRA and the Government to monitor and assess the success of the Scheme.

³ <https://treasury.gov.au/coronavirus/sme-guarantee-scheme>

APRA considers this information is reasonably necessary for APRA's activities to support the Scheme. The information ultimately supports the objects of the *Financial Sector (Collection of Data) Act 2001* and APRA's objective to promote financial system stability in Australia.

APRA does not publish the personal information which it collects. Information provided to APRA under reporting standards is protected information for the purposes of section 56 of the *Australian Prudential Regulation Authority Act 1998* (APRA Act) and cannot be disclosed except under a limited range of circumstances provided for under that section. While APRA does publish some protected information gathered under reporting standards, 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. Personal information collected by APRA is also subject to the safeguards of the *Privacy Act 1988*.

Conclusion

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