Financial Sector (Collection of Data) (reporting standard) determination No. 7 of 2020

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 4 December 2020, APRA made Financial Sector (Collection of Data) (reporting standard) determination No. 7 of 2020 (the instrument) which determines *Reporting Standard ARS 920.4 Australian Government Arts Sector Show Starter Loan (SSL) Guarantee Scheme* (ARS 920.4).

The instrument commences on 14 December 2020.

1. Background

The Government has taken action to support the flow of credit in the Australian economy, in particular targeting the Arts sector. The Government introduced the Coronavirus ‘Show Starter’ loans (SSL) Guarantee Scheme (the Scheme) to provide support for these Arts sector businesses. Under the Scheme, the Government will guarantee of 100 per cent of new loans issued by eligible authorised deposit-taking institution (ADI) lenders for eligible arts and entertainment businesses. This will enhance lenders’ willingness and ability to provide credit and vital additional funding to support the arts sector through the economic impacts of the Coronavirus[[1]](#footnote-2).

APRA will assist the Government assessing ADIs participating in the Scheme. Under ARS 920.4, lenders who have been granted a guarantee under section 5 of the *Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020* in relation to the Scheme 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.

1. Purpose and operation of the instrument

The purpose of the instrument is to determine ARS 920.4. ARS 920.4 collects information on ADIs’ portfolio of loans guaranteed under the Scheme, and individual loans written at origination.

At the portfolio level, ARS 920.4 collects information on the weighted average interest rate, the number and the dollar value of loans approved by an ADI under the Scheme, and thereafter cancelled or refinanced, as well as the number of claims the ADI has made towards the Scheme. ADIs 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 and impaired facilities.

At the loan level, the information includes the data on the borrower, guarantors, approval date, interest rate and the final repayment date of each loan. Where the borrower or guarantor is a natural person, ARS 920.4 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 the arts sector.

Where ARS 920.4 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](http://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 920.4. 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 920.4 supports the Government’s urgent economic stimulus measures in response to Coronavirus. ARS 920.4 collects data that contains critical indicators of a participating ADI’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 920.4 with the Government, including the Treasury. ARS 920.4 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 arts and entertainment organisations 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 may experience delays in their ability to quickly extend credit to provide vital funding for arts and entertainment organisations.

1. Consultation

APRA consulted in relation to ARS 920.4. APRA consulted with the affected ADIs at the same time the Treasury directly engaged with the eligible ADI lenders under the Scheme. APRA is satisfied that the consultation was appropriate, and reasonably practicable, as the ADI lenders eligible under the Scheme had an opportunity to provide comments on the reporting standard requirements.

Information was presented to eligible lenders 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]](#footnote-3) 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.

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 920.4 Australian Government Arts Sector Show Starter Loan (SSL) Guarantee Scheme* (ARS 920.4).

The Government introduced the Coronavirus SSL Guarantee Scheme (the Scheme) to provide support for eligible arts and entertainment businesses. Under the Scheme, the Government will guarantee of 100 per cent of new loans issued by eligible authorised deposit-taking institution (ADI) lenders for arts and entertainment businesses. This will enhance lenders’ willingness and ability to provide credit, and enable the arts sector to access vital additional funding to support them through the economic impacts of the Coronavirus[[3]](#footnote-4). ARS 920.4 sets out requirements for ADIs to report their lending facilities under the Scheme.

The new ARS 920.4 enables APRA and the Commonwealth Government to monitor lending activity under the 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 portfolio of loans under the Scheme. However, ARS 920.4 also collects some information which relates to individual persons.

The personal information sought within ARS 920.4 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.

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*.

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.

1. <https://treasury.gov.au/coronavirus/sme-guarantee-scheme>; <https://www.arts.gov.au/covid-19-update> [↑](#footnote-ref-2)
2. See footnote 1. [↑](#footnote-ref-3)
3. https://www.arts.gov.au/covid-19-update [↑](#footnote-ref-4)