

2001

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**FINANCIAL SECTOR (COLLECTION OF DATA — CONSEQUENTIAL AND
TRANSITIONAL PROVISIONS) BILL 2001**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Financial Services & Regulation,
the Honourable Joe Hockey, MP)

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Table of Contents

Contents	Page
Outline.....	1
Financial Impact Statement.....	1
Abbreviations.....	2
Regulation Impact Statement.....	3
Proposed Legislation.....	4

1

Outline

1.1 This Bill gives effect to the Financial Sector (Collection of Data) Bill 2001. The provisions contain no new policy and simply ensure that the Government's policy as outlined in the Financial Sector (Collection of Data) Bill 2001 currently before the Parliament is implemented in Commonwealth legislation.

Financial Impact Statement

1.2 The proposed amendments have no financial impact.

2**Abbreviations**

The following abbreviations are used in this explanatory memorandum.

ABS	—	Australian Bureau of Statistics
ADI	—	Authorised Deposit-taking Institution
APRA	—	Australian Prudential Regulation Authority
APRA Act	—	<i>Australian Prudential Regulation Authority Act 1998</i>
Banking Act	—	<i>Banking Act 1959</i>
NOHC	—	Non-operating holding company
RBA	—	Reserve Bank of Australia
SIS Act	—	<i>Superannuation Industry (Supervision) Act 1993</i>

3

Regulation Impact Statement

3.1 The amendments in this Bill are consequential to the proposed amendments contained in the Financial Sector (Collection of Data) Bill 2001. The impact of these proposed legislative changes on business and the community is assessed in the regulation impact statement contained in the Explanatory Memorandum attached to that Bill.

4**Proposed legislation*****Preliminary******Clause 1 — Short title***

4.1 Upon enactment, the Bill will be known as the *Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001*.

Clause 2 — Commencement

4.2 Sections 1, 2 and 3 commence on the day on which this Act receives the Royal Assent.

4.3 Parts 1 to 6 of Schedule 2 commence on 1 July 2001.

4.4 Schedule 1, Part 7 of Schedule 2 and Schedule 3 commence on the same day as Part 2 of the Financial Sector (Collection of Data) Act 2001. These provisions apply only to registered entities and will come into effect by proclamation. It is the intention that registered entities will continue to comply with their requirements under the *Financial Corporations Act 1974* until APRA has the systems in place to transfer the data collection and associated responsibilities from the Reserve Bank of Australia. When the systems are in place, Part 2 of the Financial Sector (Collection of Data) Act 2001 and the Schedules then commence on a date to be fixed by proclamation.

Clause 3 — Schedules

4.5 Subject to Section 2, each Act specified in a Schedule to this Bill is amended or repealed as set out in the items in the relevant Schedule.

Schedule 1 — Repeal

4.6 This Schedule repeals the *Financial Corporations Act 1974*.

Schedule 2 — Amendments**Part 1 — Australian Prudential Regulation Authority Act 1998**

4.7 This Schedule largely updates the APRA Act to reference the *Financial Sector (Collection of Data) Act 2001* or provisions within it. Section 56 of the APRA Act which relates to the secrecy provisions is also updated to ensure the secrecy provisions and their exclusions apply.

4.8 Section 56 is amended so that information received under the Act can be passed on to the ABS and the RBA. In addition, information collected under the Act is protected from public release, unless a determination by APRA has been made to the contrary. APRA is required to consult with industry prior to making a determination to enable the public release of information

collected under the Act. It is envisaged that APRA will generally only publish aggregate data. Where APRA seeks to publish unit record data of a particular institution, this can be done providing the item has not been flagged as confidential (following industry consultation). Further, the determination by APRA is to be a disallowable instrument.

4.9 These amendments are essentially a matter of internal mechanics, and should not be a cause for concern among the regulated industries about APRA's protection of data nominated as commercial-in-confidence by them. APRA has no intention of removing the protected status of information currently classed as confidential, either now or in the near future. If APRA ever were to propose removing confidentiality of a protected data item in the longer-term future, this would require extensive consultation, industry agreement and a lengthy lead time.

4.10 To assist in minimising the significant overlap in reporting duties imposed on entities to provide similar data to different government agencies, Item 9 inserts new subsections after subsection 56(5) to explicitly identify the ABS, RBA or another prescribed authority with whom APRA can share data. The proposed subsection (5A) makes it clear that data shared with the ABS is to the Australian Statistician for the purposes of the *Census and Statistics Act 1905*. Data provided to the ABS will be subject to the provisions of the *Census and Statistics Act 1905*. The subsections (5A) & (5B) also insert a note drawing attention to the legal burden on a defendant in relation to the matters in the subsection.

Part 2 — Banking Act 1959

4.11 The proposed amendments to the Banking Act repeal APRA's collection and publication of information about ADIs, authorised NOHCs and the supply of information as they are mirrored in the Financial Sector (Collection of Data) Bill 2001.

4.12 Provisions of the Banking Act are being technically amended so that a breach of the Financial Sector (Collection of Data) Act will trigger the penalty and enforcement provisions of the Act. These amendments do not increase APRA's enforcement powers under the Banking Act, but rather update references in the Act to the Financial Sector (Collection of Data) Act in order to retain existing powers.

4.13 The remaining amendments outline the application of this Part within the meaning of the Financial Sector (Collection of Data) Bill 2001

Part 3 — Insurance Act 1973

4.14 The proposed amendments to this Act give effect to the Financial Sector (Collection of Data) Bill 2001.

4.15 Provisions of the Insurance Act are being technically amended so that a breach of the Financial Sector (Collection of Data) Act will trigger the penalty and enforcement provisions of the Act. These amendments do not increase APRA's enforcement powers under the Insurance Act, but rather update references in the Act to the Financial Sector (Collection of Data) Act in order to retain existing powers.

Part 4 — Life Insurance Act 1995

4.16 The proposed amendments to this Act give effect to the Financial Sector (Collection of Data) Bill 2001.

4.17 Provisions of the Life Insurance Act are being technically amended so that a breach of the Financial Sector (Collection of Data) Act will trigger the penalty and enforcement provisions of the

Act. These amendments do not increase APRA's enforcement powers under the Life Insurance Act, but rather update references in the Act to the Financial Sector (Collection of Data) Act in order to retain existing powers.

Part 5 — Retirement Savings Accounts Act 1997

4.18 The proposed amendments to this Act give effect to the Financial Sector (Collection of Data) Bill 2001.

4.19 Provisions of the Retirement Savings Accounts Act are being technically amended so that a breach of the Financial Sector (Collection of Data) Act will trigger the penalty and enforcement provisions of the Act. These amendments do not increase APRA's enforcement powers under the Retirement Savings Accounts Act, but rather update references in the Act to the Financial Sector (Collection of Data) Act in order to retain existing powers.

Part 6 — Superannuation Industry (Supervision) Act 1993

4.20 The proposed amendments to this Act give effect to the Financial Sector (Collection of Data) Bill 2001.

4.21 Provisions of the Superannuation Industry (Supervision) Act are being technically amended so that a breach of the Financial Sector (Collection of Data) Act will trigger the penalty and enforcement provisions of the Act. These amendments do not increase APRA's enforcement powers under the Superannuation Industry (Supervision) Act, but rather update references in the Act to the Financial Sector (Collection of Data) Act in order to retain existing powers.

Part 7 — Other Acts

4.22 In repealing the *Financial Corporations Act 1974*, the proposed amendments to the following Acts give effect to the Financial Sector (Collection of Data) Bill 2001:

- *Broadcasting Services Act 1992*
- *Cheques Act 1986*
- *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*
- *Financial Institutions Supervisory Levies Collection Act 1998*
- *Income Tax Assessment Act 1936*
- *Insurance Acquisitions and Takeovers Act 1991*
- *National Crime Authority Act 1984*
- *Reserve Bank Act 1959*
- *Taxation Administration Act 1953*
- *Telecommunications (Consumer Protection and Service Standards) Act 1999*

Schedule 3 — Transitional provisions

4.23 This Schedule ensures that there is a smooth transition from the RBA to APRA in the transfer of the administration for the collection of data in relation to the following areas:

- Treatment of certain exemptions and determinations in connection with obligations of corporations to register;
- The transfer of the Register of Corporations as maintained by the RBA to be the Register of Entities maintained by APRA; and
- The transfer of the list of registered corporations as prepared by the RBA to continue as the list of entities as prepared by APRA.