

**Australian Prudential Regulation Authority (confidentiality) determination
No. 12 of 2015**

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Australian Prudential Regulation Authority Act 1998, section 57

Acts Interpretation Act 1901, section 33

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 relevant reporting documents of a specified kind contain, or do not contain, confidential information.

On 17 June 2015, APRA made Australian Prudential Regulation Authority (confidentiality) determination No.12 of 2015 (the determination) which revokes Australian Prudential Regulation Authority (confidentiality) determination No.26 of 2013, and determines that certain information provided to APRA under specified reporting standards by life insurers and friendly societies, is not confidential.

The determination commences on the date of registration on the Federal Register of Legislative Instruments.

1. Background

Subsection 56(2) of the Act provides that it is an offence to disclose “protected information”¹ or a “protected document”², being information or documents provided to APRA under a “prudential supervision framework law”³. The *Financial Sector (Collection of Data) Act 2001* (FSCOD Act) is a prudential supervision framework law, and the reporting forms listed in the determination, 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 subsection 57(2) 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

¹ Defined in s.56(1) of the Act.

² Defined in s.56(1) of the Act.

³ Defined in s.3(1) of the Act.

- (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 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.

2. Purpose and operation of the determination

The determination provides that certain information given to APRA under certain reporting standards specified in the determination is non-confidential. The reporting standards referred to in the determination were made under section 13 of the FSCOD Act. This determination applies to all life insurers, including foreign life insurers operating in Australia through branch operations, and friendly societies.

This information which is determined by the instrument to be non-confidential will form the basis of statistical publications which will be of use to regulators, policymakers, industry, researchers, analysts and other interested parties.

3. Consultation

In accordance with the requirements for consultation under section 57 of the Act, APRA released a discussion paper on 22 February 2013 that proposed that all life insurance and friendly society data provided under section 13 of the FSCOD Act be determined non-confidential, as well as proposals to change its statistical publications. The discussion paper provided all affected entities an opportunity to make representations on the proposed determination. The consultation period ended on 5 April 2013. APRA also invited some affected entities to make additional representations to clarify their submissions in response to the discussion paper, particularly in relation to proposed disclosures in institution-level publications.

APRA received submissions from four entities and representative associations during the consultation. These submissions supported the life insurance publications, and supported the principles behind the proposals to make life insurance data non-confidential. However, some submissions suggested that making all data non-confidential would cause detriment to commercial interests; particularly data at a product level, and information relating to individual counterparties.

Insurance industry participants and APRA agreed on a staged approach to the confidentiality process. In December 2013, APRA published its stage-one determination which only included information that entities and representative associations suggested would not be detrimental to their commercial interests.

In January 2014, APRA held further discussions with industry on their concerns relating to data not included in stage one. APRA then further assessed the trade-offs between the public benefit and commercial detriment of the remaining data proposed to be determined non-confidential in the February 2013 discussion paper.

APRA now considers, after taking affected entities' representations into account, that there is a strong public interest in the publication of the information in the latest determination, and this outweighs any potential detrimental effect to the commercial interests of life insurers and friendly societies.

4. Statement of compatibility with human rights prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

A Statement of Compatibility with Human Rights is Appendix A to this Explanatory Statement.

Appendix 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. 12 of 2015

This 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*.

Overview of the Legislative Instrument

This Legislative Instrument will enable APRA to disclose (including by way of publication in industry bulletins) certain information provided to it by life insurers and friendly societies under certain reporting standards. This information will be of use to inter alia, regulators, policymakers, industry, researchers and analysts.

Human rights implications

APRA has assessed this Legislative Instrument against the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act) and determined that only Article 17 of the International Covenant on Civil and Political Rights (ICCPR) is conceivably of relevance.

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.

This Legislative Instrument will facilitate the disclosure of specific information given to APRA by life insurers and friendly societies in accordance with certain reporting standards. It does not involve the 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.

Consequently this Legislative Instrument does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the HRPS Act.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.