

# Australian Prudential Regulation Authority (confidentiality) determination No. 11 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 subsection 57(2) of the *Australian Prudential Regulation Authority Act 1998* (the Act), APRA may determine, by legislative instrument, that all or a specified part of a relevant reporting document or all or a specified part of relevant reporting documents of a specified kind contains, or does not contain, confidential information.

On 12 June 2015, APRA made Australian Prudential Regulation Authority (confidentiality) determination No. 11 of 2015 (the instrument) which determines that all or specified parts of the general insurance reporting standards listed in the instrument do not contain confidential information.

The instrument 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”<sup>1</sup> or a “protected document”<sup>2</sup>, being information or documents provided to APRA under a “prudential supervision framework law”<sup>3</sup>. The *Financial Sector (Collection of Data) Act 2001* (FSCOD Act) is a prudential supervision framework law, and the general insurance reporting forms listed in the instrument, 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 subsections 57(2) and (4) 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
- (b) all or a specified part of relevant reporting documents of a specified kind does 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

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<sup>1</sup> Defined in s.56(1) of the Act.

<sup>2</sup> Defined in s.56(1) of the Act.

<sup>3</sup> Defined in s.3(1) of the Act.

document or documents, or information contained in the document or documents, outweighs any detriment to commercial interests that the disclosure may cause.

Under subsection 57(3) of the Act, APRA must not make a determination under subsection 57(2) unless APRA gives interested parties for the determination a reasonable opportunity to make representations as to whether or not the relevant reporting document contains, or relevant reporting documents of that kind contain, confidential information.

The consultation undertaken by APRA for the purposes of subsection 57(3) is discussed below.

## **2. Purpose and Operation of the Instrument**

The instrument provides that certain information given to APRA under the reporting standards listed in the instrument is non-confidential and consequently its release by APRA will be permitted under subsection 56(5C) of the Act. The information determined to be non-confidential is set out in the Schedule to the instrument. The Schedule is divided into three main parts. Parts 1 and 2 cover reporting documents submitted to APRA under current reporting standards. Part 1 covers reporting documents which are subject to the determination in their entirety and Part 2 covers reporting documents which are partly, but not entirely, subject to the determination. Part 3 covers reporting documents, in some cases partly and in other cases entirely, submitted to APRA under reporting standards which ceased to have effect prior to 1 January 2013.

The 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.

The information covered by the instrument includes and adds to the information determined to be non-confidential by Australian Prudential Regulation Authority (confidentiality) determination No. 25 of 2013 made on 9 December 2013 registered number F2013L02065 (the former instrument). The reporting standards and data covered by the former instrument were also described and listed in the Explanatory Statement which accompanied the former instrument.

The instrument revokes the former instrument which has been superseded by the instrument. The former instrument covered certain information reported by general insurers on an annual basis. The instrument covers both annual and quarterly data, plus additional information.

## **3. Consultation**

In accordance with the requirements for consultation under section 57 of the APRA Act, APRA released a discussion paper in February 2013 that proposed that all general insurance data<sup>4</sup> be determined non-confidential, as well as changes to 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 of institution-level publications.

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<sup>4</sup> Where data are provided under the *Financial Sector (Collection of Data) Act 2001*

APRA received submissions from seven entities and representative associations during the consultation. These submissions supported the proposed general insurance publications, and supported the principles behind the proposals to make general insurance data non-confidential. However, some submissions suggested that making all data non-confidential would be detrimental to the commercial interests of general insurers, particularly class of business level data and information relating to individual counterparties.

Some submissions suggested that a second round of consultation would be necessary to properly consider and gauge the effect of determining data to be non-confidential. Following its initial consideration of submissions, APRA invited the industry bodies and other entities that had made submissions to clarify their submissions in response to the discussion paper and to make additional representations to clarify their submissions. APRA also met with industry representatives and other stakeholders to discuss its proposals and obtain further feedback in September 2013 and October 2013 and January 2014. Following this additional consultation, further representations from industry were received in April 2014.

As outlined in APRA's December 2013 response to submissions, having considered all of the feedback on data confidentiality, APRA implemented a phased approach to the determination of data to be non-confidential. As the first stage, APRA included information in the former instrument that industry had to that date indicated would not be detrimental to their commercial interests.

At this second stage APRA considers, after taking into account the representations made by affected entities' and representative associates, that there is a strong benefit to the public from the disclosure of the information in the instrument, and this public benefit outweighs any detriment to commercial interests that the disclosure may cause.

Three reporting standards in the February 2013 discussion paper were revoked on 18 December 2014 and replaced. Of these, two are included in recommendations to determine data non-confidential in Attachment A:

- *GRS 440.0 Claims Development Table; and*
- *GRS 112.0 Determination of Capital Base.*

APRA consulted with industry for four weeks commencing 11 November 2014 on the proposals to revoke and replace the above reporting standards. Two submissions were received from industry and both submissions were of a positive nature agreeing with all of the suggested revisions to the reporting standards. As a result, APRA did not consider it necessary to release any public discussion or response papers.

The changes in the 18 December 2014 standards were:

- GRS 440.0 no longer includes the claim count data columns for reinsurance business; and
- GRS 112.0 now clearly indicate that this reporting standard does not apply to Category C insurers, as defined in *GPS 001 Definitions*.

The changes were minor or machinery in nature, do not substantially alter existing arrangements and relate only to a modest reduction in the reporting requirements currently imposed on industry. Hence, APRA has not conducted additional consultation on the confidentiality of information

provided under the three standards replaced in December 2014 as the information reported was of a kind covered by the consultation that did occur.

#### **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 prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided at 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

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instrument listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

#### **Overview of the Legislative Instrument**

The purpose of making this Legislative Instrument is to enable APRA to disclose, including by way of publication in industry bulletins, certain information provided to APRA by general insurance entities, 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 the Legislative 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 Legislative 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 Legislative Instrument will facilitate the disclosure of specific information provided to APRA by general insurance entities 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, the 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. Accordingly, in APRA's assessment, the Legislative Instrument is compatible with human rights.