

**Australian Prudential Regulation Authority (confidentiality) determination No. 1 of 2017**

**Information provided by ADIs under Reporting Standard ARS 731.1, ARS 731.3A, ARS 731.3B and ARS 731.4**

**EXPLANATORY STATEMENT**

**Prepared by the Australian Prudential Regulation Authority (APRA)**

*Financial Sector (Collection of Data) Act 2001* (the Act), subsections 13(1) and 15(1)

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 08 August 2017, APRA made Australian Prudential Regulation Authority (confidentiality) determination No. 1 of 2017 (the instrument) which determines that the reporting standards listed in the instrument (namely ARS 731.1, ARS 731.3A, ARS 731.3B and ARS 731.4) do not contain confidential information.

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

## **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 reporting standards 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 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.

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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.

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 of the instrument**

The determination provides that information given to APRA under the reporting standards listed in the instrument (namely ARS 731.1, ARS 731.3A, ARS 731.3B and ARS 731.4) is non-confidential. As a result, the information will be disclosed by APRA under subsection 56(5C) of the Act. The information 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 APRA Act, APRA released a discussion paper, *Banks' International Exposures Reporting Requirements* (the Discussion Paper), on 28 July 2016.

In the Discussion Paper, APRA sought feedback from authorised deposit-taking institutions (ADIs) on the proposed new reporting requirements, and the proposal to determine data reported under the new reporting standards to be non-confidential under section 57 of the Act.

The submissions received by APRA from industry indicated general support for the proposed determination, and did not identify any detriment to commercial interests. APRA issued a response to the submissions on 16 December 2016.

APRA considers that, after taking affected entities' and representative associations' representations into account, there is a strong public interest in the release of the information in the determination, and this outweighs any potential detrimental effect to the commercial interests of ADIs.

## **3. 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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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 certain information provided to APRA by ADIs 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 ADIs 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.

#### **Conclusion**

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