

**Australian Prudential Regulation Authority (confidentiality) determination
No. 2 of 2022**

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 18 January 2022, APRA made Australian Prudential Regulation Authority (confidentiality) determination No. 2 of 2022 (the instrument) which revokes Australian Prudential Regulation Authority (confidentiality) determination No.12 of 2015, 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 Legislation.

1. Background

Subsection 56(2) of the Act provides that it is an offence to disclose “protected information”¹ or a “protected document”², which includes 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 documents 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

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 instrument

The instrument provides that certain information given to APRA under the reporting standards listed in the instrument is non-confidential. The information determined to be non-confidential is set out in the Schedule to the instrument. The Schedule is divided into two main parts. Part 1 covers reporting documents, submitted to APRA under current reporting standards and reporting standards which have ceased to have effect, which are subject to the instrument in their entirety. Part 2 covers reporting documents submitted to APRA under current reporting standards, which are partly, but not entirely, subject to the instrument.

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

APRA consulted with interested parties in relation to this instrument. In accordance with the requirements for consultation under section 57 of the APRA Act, APRA released a discussion paper in February 2020 that proposed that all life insurance product group data⁴ be determined non-confidential⁵. The discussion paper provided all affected entities an opportunity to make representations on the proposed determination. The consultation period ended on 3 December 2020 following suspension due to the impact of COVID-19.

APRA received submissions from nine entities and representative associations during the consultation. Submissions were generally supportive of the intent of APRA's initiative, albeit there were some concerns raised.

A number of respondents raised concerns about APRA publishing or otherwise disclosing product group data for individual insurers. APRA will not be publishing insurer level data from reporting forms beyond that already published. Should APRA

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

⁵ <https://www.apra.gov.au/apra-commences-consultation-on-increased-transparency-of-general-insurance-and-life-insurance-data>.

plan in the future to expand the publication of insurer level data to include product group data for specific entities, APRA will formally need to consult on any such proposals at that time with industry.

APRA's determination will only impact APRA's current publications of aggregate industry data. In practice it will result in APRA publishing a very limited number of data items which were previously masked in these publications.

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 provided at Appendix A of 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 instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

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 APRA 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 HRPS Act and determined that only Article 17 of the International Covenant on Civil and Political Rights (ICCPR) is conceivably of relevance to this 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.

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. This Legislative Instrument 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. Accordingly, in APRA's assessment, this 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.