

**Australian Prudential Regulation Authority (confidentiality) determination  
No. 3 of 2022**

**EXPLANATORY STATEMENT**

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

*Australian Prudential Regulation Authority Act 1998, section 57*

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 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 September 2022, APRA made Australian Prudential Regulation Authority (confidentiality) determination No. 3 of 2022 (the instrument), which determines that certain information provided to APRA under specified reporting standards by financial sector entities, is not confidential.

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>, which includes 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 documents listed in the instrument, having been provided to APRA by regulated entities 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

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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.

- (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 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 three main parts and covers reporting documents submitted to APRA under current reporting standards.

Part 1 covers reporting documents which are subject to the instrument in their entirety. Part 2 covers reporting documents which are partly, and not entirely, subject to the instrument. Part 3 covers reporting documents which are partly, and not entirely, subject to the instrument where the information relates to a MySuper product.

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 and will ultimately promote greater transparency, best-practice and accountability across the superannation industry.

## **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 2022 and held two industry roundtable discussions on 4 April 2022 and 7 April 2022. The discussion paper, at Attachment F, sets out the specified parts of reporting forms<sup>4</sup> that APRA proposed to determine does not contain confidential information.<sup>5</sup> The discussion paper and roundtables provided all interested parties a reasonable opportunity to make representations on the proposed determinations. The consultation period ended on 15 April 2022.

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<sup>4</sup> Which are required to be provided to APRA under the *Financial Sector (Collection of Data) Act 2001*.

<sup>5</sup> [https://www.apra.gov.au/sites/default/files/2022-02/Discussion%20paper%20-%20Superannuation%20Data%20Transformation%20Publications%20and%20Confidentiality\\_0.pdf](https://www.apra.gov.au/sites/default/files/2022-02/Discussion%20paper%20-%20Superannuation%20Data%20Transformation%20Publications%20and%20Confidentiality_0.pdf)

APRA received twelve submissions from industry stakeholders.<sup>6</sup> Submissions were generally supportive of APRA's proposal to determine much of the data reported as non-confidential. However, a number of respondents raised concerns about APRA determining certain items of data as non-confidential and publishing this data at the fund or product-level. The items of data that were the object of concern were mainly those relating to detailed expenses, derivatives and custom fee arrangements.

APRA's general proposal, outlined in the discussion paper, was that most of the data collected under certain reporting standards would be determined non-confidential and publically accessible. However, APRA has modified that general proposal after having taken into account all pieces of feedback received from industry stakeholders and after having considered the benefit to the public from the disclosure of the data in the reporting document and whether the public benefit of such disclosure outweighs any detriment to commercial interests that such a disclosure may cause.

APRA's final determinations are set out in the Schedule to the instrument.<sup>7</sup>

#### **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.

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<sup>6</sup> <https://www.apra.gov.au/phase-1-breadth>

<sup>7</sup> Attachment D of APRA's Response Paper on the SDT Publications and Confidentiality (July 2022) also sets out the finalised confidentiality positions: <https://www.apra.gov.au/phase-1-breadth>

## **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. 3 of 2022**

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**

This Legislative Instrument will enable APRA to disclose certain information provided to APRA by financial sector entities under certain reporting standards. This information will be of use by, 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 provided to APRA by financial sector entities 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.