

**Australian Prudential Regulation Authority (confidentiality) determination  
No. 2 of 2023**

**Information provided by authorised deposit-taking institutions under Reporting  
Standards ARS 110.0 and ARS 210.0**

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

On 29 May 2023, APRA made Australian Prudential Regulation Authority (confidentiality) determination No. 2 of 2023 (the instrument) which determines that certain information in reporting documents provided to APRA under two specified reporting standards and any information that can be derived from that information, is not confidential.

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

## **1. Background**

Section 56 of the APRA Act contains a secrecy provision that prohibits APRA staff members (among others) from disclosing “protected information”<sup>1</sup> or a “protected document”<sup>2</sup>, being information or documents provided to APRA by a financial sector entity in relation to their affairs under a “prudential regulation framework law”.<sup>3</sup> The *Financial Sector (Collection of Data) Act 2001* (FSCOD Act) is a prudential supervision framework law. APRA is regularly provided with information from financial sector entities through the submission of reporting forms which are required to be submitted in accordance with reporting standards made under section 13 of the FSCOD Act. As these reporting forms contain information about the affairs of the relevant financial sector entity, they are protected documents and contain protected information.

If APRA wishes to publish protected documents and/or protected information obtained from financial sector entities under the FSCOD Act, it is required to establish an exception to the secrecy provision under section 56 of the APRA Act. Section 56(5C) of the Act provides an exemption to the secrecy provision to allow APRA to disclose information obtained under section 13 of the FSCOD Act if a non-confidentiality determination is made by APRA in relation to that information in accordance with section 57 of the Act.

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

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

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

## 2. Purpose and operation of the instrument

The effect of this instrument is to determine certain information that has been reported to APRA, and would otherwise be protected information, to be non-confidential so that APRA can disclose this information on behalf of supervised entities in a new entity-level publication.

The information determined non-confidential relates to information on capital, risk weighted assets and liquidity ratios for selected individual authorised deposit-taking institutions (ADIs) that APRA supervises.

The instrument provides that certain information given to APRA in reporting forms under the following reporting standards (the Reporting Standards), and information that can be derived from that information, is non-confidential:

- (a) Reporting Standard ARS 110.0 Capital Adequacy (ARS 110); and
- (b) Reporting Standard ARS 210.0 Liquidity (ARS 210).

The information will be disclosed by APRA under subsection 56(5C) of the Act to form the basis of APRA's new statistical publication ADI Centralised Publication (ADICP). The statistical publication will be of use to regulators, policymakers, industry, researchers, analysts and other interested parties. The development of this centralised publication is a key milestone in implementing Basel's Pillar 3 requirements, aligning the information published with ADIs' Pillar 3 disclosures and reducing burden on smaller ADIs who are exempted from disclosures under APRA's *Prudential Standard APS 330 Disclosure*.<sup>4</sup>

APRA considers that determining this information non-confidential improves the transparency of the ADI industry and is consistent with government open data policies and disclosure requirements. APRA considers that the benefit from the disclosure would outweigh any potential detriment to the commercial interests that disclosure might cause. On that basis, APRA has determined that the specified information collected under the Reporting Standards to be non-confidential.

## 3. Documents incorporated by reference

The *Banking Act 1959* (Banking Act) and FSCOD Act are both incorporated by reference in the definitions in the instrument.<sup>5</sup> These Acts are permitted to be incorporated from time to time under section 14(1)(a) of the Legislation Act.

Reporting standards ARS 110 and ARS 210 are referred to for purposes of identifying the material to be determined non-confidential, but are not incorporating material by reference into this instrument.

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<sup>4</sup> Basel Committee on Banking Supervision's Pillar 3 disclosure requirements: [DIS - Disclosure requirements \(bis.org\)](https://www.bis.org/disclosure/disclosure.htm).

*Prudential Standard APS 330 Disclosure*: Banking (prudential standard) determination No.1 of 2023 (<https://www.legislation.gov.au/Details/F2023L00160>).

<sup>5</sup> See Banking Act <https://www.legislation.gov.au/Series/C1959A00006> and FSCOD Act <https://www.legislation.gov.au/Series/C2004A00871>.

#### **4. Consultation**

APRA has consulted the ADI industry over a number of years in relation to this instrument.<sup>6</sup> APRA commenced consultations for this instrument in relation to whether specified information in the Reporting Standards should be determined non-confidential for the purpose of publishing an entity-level publication of this information in December 2019 and, in response to industry feedback and concerns over the scope of the initial consultation, a follow-up consultation in September 2020 containing fewer ADI metrics.

APRA responded to industry in September 2021 confirming that the specified information will be determined non-confidential. In finalising the details for the initial publication, and to accommodate new data sources as a result on implementing a new capital framework and data collection system, APRA has undertaken further targeted consultation with industry in early 2023. No objections were raised to the proposals in these consultations.

#### **5. 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 Attachment A to this Explanatory Statement.

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<sup>6</sup> Details of the consultations can be found on APRA's website at <https://www.apra.gov.au/confidentiality-of-data-used-adi-quarterly-publications-and-additional-historical-data> and <https://www.apra.gov.au/adi-centralised-publication-update-and-consultation-0>.

## ATTACHMENT 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. 2 of 2023**

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**

The purpose of this Legislative Instrument is to determine non-confidential certain information, and any information that can be derived from these items, provided to APRA by ADIs under the following reporting standards:

- (a) Reporting Standard ARS 110.0 Capital Adequacy; and
- (b) Reporting Standard ARS 210.0 Liquidity.

This Legislative Instrument enables APRA to disclose the information for publication. The information will be of use to regulators, policymakers, industry, researchers, analysts and other interested parties.

#### **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 Determination.

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 to APRA by ADIs in accordance with certain reporting standards. This 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 determination is compatible with human rights.

## **Conclusion**

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