

**Australian Prudential Regulation Authority (confidentiality) determination
No. 21 of 2013**

Information provided by banks under certain reporting standards

EXPLANATORY STATEMENT

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

Australian Prudential Regulation Authority Act 1998 (APRA Act), s 57

The purpose of the Australian Prudential Regulation Authority (confidentiality) determination No. 21 of 2013 (**Determination No. 21**) made on 11 November 2013 is to enable APRA to disclose certain information provided by banks to APRA under the reporting standards listed in the Appendix. Releasing this information will be of use to regulators, policymakers, industry, researchers, analysts and other interested parties.

Legislative background

Subsection 56(5C) of the APRA Act provides that it is not an offence against s 56(2) of that Act to disclose information in a reporting document given to APRA under s 13 of the *Financial Sector (Collection of Data) Act 2001 (Collection of Data Act)* where APRA has determined, under s 57, that the document does not contain confidential information.

S 57 of the APRA Act gives APRA power to determine whether a document given under s 13 of the Collection of Data Act contains confidential information. The section provides that before doing so APRA must give relevant entities or bodies, or their representative association, a reasonable opportunity to make representations as to whether information of the kind contained in the document is confidential, and take such representations into account (the consultation undertaken is discussed below).

Information covered by the determination

Determination No. 21 provides that information given to APRA under the reporting standards listed in the Appendix (made under s 13 of the Collection of Data Act), being information received on or after the date of APRA's last determination under s 57 in respect of information provided under the reporting standards listed in the Appendix and prior to the date of Determination No. 21, is non-confidential. Determination No. 21 applies to all banks that have submitted data under the reporting standards listed in Attachment A.

Consultation

In accordance with s 57, APRA issued a consultation letter to all banks on 4 July 2012, as well as providing a link to this consultation letter on its website. The consultation letter provided all affected entities an opportunity to make representations on the proposed determination of confidentiality. This consultation period ended on 31 July 2012.

There were eight responses received from entities during the consultation. Of these, four supported or had no objections to the proposed determination and four raised concerns with the proposed determination.

The support for the proposed determination noted the benefits of increased transparency of information. Also highlighted were the general benefits of more relevant and useful data collections.

The main opposition noted in the consultation submissions concerned the potential ability of a data user to assess a bank's performance outside Australia and transactions between a bank and its clients.

APRA considers, after taking affected entities' representations into account, that Determination No. 21 not only helps APRA fulfil its obligations to the Bank for International Settlements (BIS), the Reserve Bank of Australia (RBA) and the International Monetary Fund (IMF) but may also benefit regulated entities, other regulators, policymakers, the wider industry, researchers, analysts and other interested parties.

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 B to this Explanatory Statement.

Attachment A

Determination No. 21 covers the following reporting standards:

- *ARS 231.1a International Exposures: Locational (Assets) Part 1*
- *ARS 231.1b International Exposures: Locational (Liabilities) Part 1*
- *ARS 231.2 International Exposures: Locational Part 2*
- *ARS 231.3a International Exposures: Consolidated (Domestic Entity)*
- *ARS 231.3b International Exposures: Consolidated (Foreign Entity)*

ATTACHMENT B

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. 21 of 2013

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.

Overview of the Legislative Instrument

The purpose of making this legislative instrument is to enable APRA to release the BIS International Exposures report, which will contain data in respect of September 2013.

Human rights implications

APRA has assessed Determination No.21 against the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act) and determined that only Article 17 of the International Covenant on Civil and Political Rights (ICCPR) is conceivably of relevance to Determination No. 21.

Article 21 of the ICCPR prohibits the arbitrary or unlawful interference with a person's privacy, family, home and correspondence, and attacks on reputation. Article 21 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.

Determination No. 21 will facilitate the disclosure of specific information provided to APRA by banks 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, Determination No. 21 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.

Conclusion

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