

**Australian Prudential Regulation Authority (confidentiality) determination
No. 17 of 2015**

**Information provided by locally-incorporated banks and foreign ADIs under
Reporting Standard ARS 320.0**

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Australian Prudential Regulation Authority Act 1998, section 57

Acts Interpretation Act 1901, subsection 33(3)

Under paragraph 57(2)(b) 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 28 September 2015, APRA made Australian Prudential Regulation Authority (confidentiality) determination No. 17 of 2015 (the instrument) which determines that a reporting document or part of a reporting document of a kind specified in Parts 1 and 2 of the Schedule to the instrument does not contain confidential information.

The instrument also revokes a series of earlier determinations made by APRA under section 57 of the APRA Act. The instrument replaces and supersedes the determinations which are being revoked.

The instrument commences on the date of registration on the Federal Register of Legislative Instruments.

Legislative background

Subsection 56(2) of the Act provides that it is an offence to disclose “protected information”¹ or a “protected document”², being 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 specified in the Schedule to the instrument, having been provided to APRA by Authorised Deposit-taking Institutions (**ADIs**) under the FSCOD 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

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.

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.

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.

Purpose and Operation of the Instrument

The instrument is made under section 57 of the APRA Act and subsection 33(3) of the *Acts Interpretation Act 1901* in relation to information provided under Reporting Standard *ARS 320.0 Statement of Financial Position (Domestic Books)* (**ARS 320.0**), taking into account both current and preceding versions of that reporting standard.

The instrument also revokes a series of earlier determinations made by APRA under section 57 of the APRA Act.

The purpose of the instrument is to:

- replace and supersede the earlier determinations made under section 57 of the APRA Act in respect of ARS 320.0; and
- make a new determination under paragraph 57(2)(b) of the Act which will enable APRA to disclose on an ongoing basis, including by way of publication in industry bulletins⁴, certain information provided to APRA by ADIs under ARS 320.0.

⁴ Such as *Monthly Banking Statistics*

Information covered by the instrument

The instrument provides that certain information given to APRA under the reporting documents listed in the instrument is non-confidential. Consequently, its release by APRA will be permitted 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.

Part 2 of the Schedule to the instrument excludes from the determination of non-confidentiality, information of a sensitive nature, including information relating to shareholder's equity, total income tax liability, reserves and total provisions. The latter two items were excluded as a result of consultations with industry under section 57 of the APRA Act (see below).

Consultation

APRA commenced consultations in relation to whether information of the kind covered by the instrument should be treated as non-confidential by writing to locally-incorporated banks, foreign ADIs, and their respective representative bodies, on 24 December 2003. Most agreed that information of the kind covered by the instrument could be treated as non-confidential. A small minority objected to the publication of any information from ARS 320.0, but in APRA's view there is a strong public interest in the publication of the information, and it is noted that similar information was regularly published under the former section 51 of the *Banking Act 1959*.

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 contained in 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 this Legislative Instrument is to:

- replace and supersede earlier determinations made by APRA under section 57 of the *Australian Prudential Regulation Authority Act 1998* (APRA Act) in respect of Reporting Standard *ARS 320.0 Statement of Financial Position (Domestic Books)* (ARS 320.0); and
- make a new determination under paragraph 57(2)(b) of the APRA Act which will enable APRA to disclose on an ongoing basis, including by way of publication in industry bulletins⁵, certain information provided to APRA by ADIs under ARS 320.0..

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.

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 by APRA of specific information provided by locally-incorporated banks and foreign ADIs in accordance with ARS 320.0. 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.

⁵ such as *Monthly Banking Statistics*

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.

Conclusion

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