

Financial Sector (Collection of Data) (reporting standard) determination No. 3 of 2023

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 31 July 2023, APRA made Australian Prudential Regulation Authority (confidentiality) determination No. 3 of 2023 (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”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 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 that that the document, or specified part of the document does not contain confidential 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 does not contain confidential information,

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.

if, taking into account any representations made by interested parties under subsection 57(3) of the Act 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 superannuation industry.

Explanation of each provision in the instrument

Schedule – Part 1

Part 1 of the Schedule of the determination outlines the information in reporting forms given to APRA by a financial sector entity where the reporting documents are covered by the determination in their entirety.

Schedule – Part 2

Part 2 of the Schedule of the determination outlines the information in reporting forms given to APRA by a financial sector entity where the reporting documents are covered by the determination in part.

Schedule – Part 3

Part 3 of the Schedule of the determination outlines the information relating to a MySuper product in reporting form SRF 705.1 given to APRA by a financial sector entity where the reporting documents are covered by the determination.

Documents incorporated by reference

Under section 14(1)(a) of the *Legislation Act 2003*, the determination incorporates the *Supervision Industry (Supervision) Act 1993* and the *FSCOD Act* by reference as in force from time to time. These Acts may be freely obtained at www.legislation.gov.au

3. Consultation

APRA consulted with interested parties in relation to the declaration of the SDT phase 1 reporting as non-confidential under section 57 of the ARA Act. In accordance with the requirements for consultation under section 57 of the APRA Act, APRA released a discussion paper and held two industry roundtable discussions. The discussion paper sets out the specified parts of reporting forms⁴ that APRA proposed to determine does not contain confidential information.⁵ The discussion paper and roundtables provided all interested parties a reasonable opportunity to make representations on the proposed determinations. The consultation period ended in September 2022.

Submissions were received from RSE licensees and industry bodies in response to the consultation package. These were valuable in assessing whether the data would meet the objectives of the SDT project, highlighting the practical issues that RSE licensees may experience in reporting and where additional guidance or improvements to definitions were required. The 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 publicly accessible. However, APRA has modified that general proposal after having taken into account all 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 interests of such disclosure outweighs any detriment to commercial interests that such a disclosure may cause.

On 12 September 2022, APRA determined Australian Prudential Regulation Authority (confidentiality) determination No. 3 of 2022 (previous determination), which declared specified data as part of SDT phase 1 reporting to be non-confidential.

In November 2022, APRA publicly released the consultation package on reporting requirements for the minor amendments to SDT Phase 1 reporting.⁶

In March 2023, APRA released a response to consultation, incorporating the feedback received from industry into the released versions of the reporting standards, adding

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

⁵ https://www.apra.gov.au/sites/default/files/2022-02/Discussion%20paper%20-%20Superannuation%20Data%20Transformation%20Publications%20and%20Confidentiality_0.pdf

⁶ The discussion paper, topic papers and response to consultation together with proposed reporting standards are available on APRA's website at [Consultation on APRA's Superannuation Data Transformation](#).

clarification to reporting instructions and forms, and simplifying some reporting requirements. In May 2023, the final versions of the reporting standards were re-determined.

This determination does not determine non-confidential data that was not covered by the previous determination and is designed to reflect the structural change to the reporting forms that have been made as part of the SDT minor amendments. APRA does not consider it necessary to consult further on confidentiality for data which formed part of the consultation in relation to the previous determination and has already determined non-confidential and where the changes to the relevant reporting standards are minor and machinery changes only.

APRA intends to consult later in 2023 on the confidentiality and publication of expenses under Reporting Standard 332.0 SRS Expenses (SRS 332.0); asset class characteristics 1, 2 and 3 under Reporting Standard SRS 550.0 Asset Allocation (SRS 550.0); new reporting columns introduced under Reporting Standard SRS 605.0 RSE Structure (SRS 605.0) and the fees and costs arrangements tables under Reporting Standard SRS 606.0 RSE Profile (SRS 606.0). This data is not declared non-confidential under this instrument.

APRA is satisfied the consultation was appropriate and reasonably practicable with the final determinations set out in the Schedule to the instrument.⁷

4. Regulation Impact Statement

The Office of Impact Analysis advised that a Regulatory Impact Statement was not required.

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 provided at Attachment A to this Explanatory Statement.

⁷ 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>

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. 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 the Legislative Instrument and is of the view that it 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, the Instrument is compatible with human rights.

Conclusion

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