

Australian Prudential Regulation Authority (confidentiality) determination No. 1 of 2024

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. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to issue an instrument the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to revoke any such instrument.

On 7 June 2024, APRA made Australian Prudential Regulation Authority (confidentiality) determination No. 1 of 2024 (the instrument), which:

- (i) revokes *Australian Prudential Regulation Authority (confidentiality) determination No 3 of 2023* (Existing Confidentiality Determination); and
- (ii) determines a new version of the Existing Confidentiality Determination which provides that certain information provided to APRA under specified reporting standards by financial sector entities, is not confidential.

The instrument commences at the start of the day after the day the instrument is registered 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.

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.

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,

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.

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.

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 publications and confidentiality letter in October 2023 and held two industry roundtable discussions.

The publications and confidentiality letter paper set out the specified parts of reporting forms⁴ that APRA proposed to determine does not contain confidential information⁵ 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). The publications and confidentiality letter and roundtables provided all interested parties a reasonable opportunity to make representations on the proposed determinations. The consultation period ended in November 2023.

Submissions were received from RSE licensees and industry bodies in response to the consultation package. These were valuable in assessing whether APRA's proposal to determine much of the data reported as non-confidential was reasonable. The submissions were generally supportive of APRA's proposal. 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 and investment values for detailed asset allocation characteristics.

APRA's general proposal, outlined in the publications and confidentiality letter, was that most of the data collected under certain reporting standards would be determined non-confidential and publicly accessible. However, APRA 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

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

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

public interest of such disclosure outweighs any detriment to commercial interests that such a disclosure may cause.

In March 2024, APRA released a response to consultation, incorporating the feedback received from industry into the draft versions of the publications and confidentiality positions.

The instrument is intended to update the Existing Confidentiality Determination to reflect the positions outlined in the March 2024 response to consultation in addition to the existing positions. APRA does not consider it necessary to consult affected parties in relation to the existing positions in this determination as affected parties were consulted prior to the determination of the Existing Confidentiality Determination in relation to APRA's proposal to determine this data to be confidential as part of the 2023 consultation.

APRA is satisfied the consultation was appropriate and reasonably practicable with the final determinations set out in the Schedule to the instrument.⁶

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.

⁶ 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*

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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

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.