



FOI 21-77

28 October 2021

Phillip Sweeney

By email: foi+request-7519-49170837@righttoknow.org.au

Dear Mr Sweeney,

NOTICE OF DECISION MADE UNDER SECTION 23 OF THE FREEDOM OF INFORMATION ACT 1982 (CTH) (FOI ACT) WITH REASONS FOR DECISION PROVIDED UNDER SECTION 26

Applicant: Phillip Sweeney

Decision-maker: Ha (person number 1843), an authorised officer of the Australian Prudential Regulation Authority (**APRA**) for the purposes of subsection 23(1) of the FOI Act.

FOI request: 'The documents I seek are copies of the application form and other documents lodged by Corporate Combined Superannuation Pty Ltd (or CCSL Ltd) to obtain Licence L0000758 from APRA.'

(FOI request)

My decision: Refuse access to the relevant documents based on the reasons outlined in this Notice of Decision.

MATERIAL FACTS

1. On 17 June 2021, you made the FOI request by email under the FOI Act.
2. On 18 June 2021, APRA acknowledged receipt of the request by email.
3. On 14 July 2021, due to the COVID-19 restrictions in Sydney and Melbourne, APRA extended the decision date under section 15AA of the FOI Act until 16 August 2021.
4. On 11 August 2021, due to the ongoing COVID-19 restrictions in Sydney and Melbourne, APRA extended the decision date under section 15AA of the FOI Act until 15 September 2021.
5. On 28 September 2021, the Office of the Australian Information Commissioner approved APRA's request to extend the decision date under section 15AC of the FOI Act until 29 October 2021.

EVIDENCE AND MATERIAL RELIED ON

6. In making my decision, I have relied on the following evidence and material:
 - a. the Applicant's request received by APRA on 17 June 2021;
 - b. acknowledgment email from FOI Officer to the Applicant dated 18 June 2021;
 - c. email correspondence between APRA staff between 30 June 2021 and 27 October 2021;
 - d. relevant sections of the *Australian Prudential Regulation Authority Act 1998* (Cth) (**APRA Act**);
 - e. relevant sections of the FOI Act; and
 - f. guidelines issued by the Office of the Australian Information Commissioner to date (**FOI Guidelines**).
7. APRA has conducted all reasonable searches of its records and identified 163 documents relevant to your FOI request (**relevant documents**).

REASONS

8. I have decided to refuse access to the relevant documents. My reasons for the refusal are as follows:
 - a. section 38: Documents 1-163 contain 'protected information' for the purposes of section 56 of the APRA Act; and
 - b. section 47F: Documents 8-10, 18-22, 44 and 69 contain information that if disclosed, would be an unreasonable disclosure of personal information.

Secrecy Provisions

9. I have taken the following approach in applying section 38 of the FOI Act and section 56 of the APRA Act:
 - i. under section 38 of the FOI Act, a document is exempt if disclosure is prohibited under a provision of an enactment and section 38 expressly applies to that provision;
 - ii. subsection 56(11) of the APRA Act expressly applies section 38 of the FOI Act so that any document that is a 'protected document' or contains 'protected information' within the meaning of subsection 56(1) of the APRA Act is also an exempt document under section 38 of the FOI Act;
 - iii. under subsection 56(2) of the APRA Act it is an offence to directly or indirectly disclose protected documents and/or protected information unless a specified exemption applies. This offence provision is binding on me as an APRA employee. The offence is punishable by up to two years imprisonment;
 - iv. a 'protected document' is defined in subsection 56(1) of the APRA Act to include documents given or produced under or for the purposes of a prudential regulation framework law, and containing information relating to the affairs of a financial

sector entity. The *Superannuation Industry (Supervision) Act 1993* (Cth) is a prudential regulation framework law. The relevant documents were given or produced and disclosed or obtained under, or for the purposes of, this prudential regulation framework law. Therefore, the documents are protected documents, except if publicly available;

- v. 'protected information' is defined in subsection 56(1) of the APRA Act to include information disclosed or obtained under or for the purposes of a prudential regulation framework law, and relating to the affairs of a financial sector entities. For the same reasons set out in paragraph (iv) above, information contained in the documents is protected, except if publicly available; and
 - vi. the information and the documents are not otherwise publicly available.
10. I am satisfied that the relevant documents are protected documents, and/or contain protected information as defined in subsection 56(1) of the APRA Act and that Documents 1-163 are consequently exempt under section 38 of the FOI Act.
11. An extract of section 38 of the FOI Act and section 56 of the APRA Act are attached to these reasons.

Personal privacy

12. Subsection 47F(1) of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information.
13. 'Personal information' has the same meaning as in the *Privacy Act 1998* (Cth). Personal information includes information or an opinion, whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent or can be reasonably ascertained from the information or opinion.
14. Paragraph 6.157 of the FOI Guidelines provides that disclosure of a document that includes information about an individual's disposition or private characteristics, is likely to be unreasonable. This is distinguishable from a document that includes an individual's personal information because it relates to their usual duties or responsibilities, which would not be unreasonable to have such information released.
15. The disclosure of the Documents 8-10, 18-22, 44 and 69 would be unreasonable for the following reasons:
- a. the documents contain personal information;
 - b. the information is not available from publicly accessible resources; and
 - c. it would unreasonably infringe the individuals' right to personal privacy.

Application of the public interest test

16. I have reviewed the FOI Act and FOI Guidelines and consider the following factors favouring the disclosure of the documents would apply, as disclosure would or could reasonably be expected to:
- a) promote the objects of the FOI Act; and
 - b) enhance the public's knowledge of a particular superannuation trustee.

17. I have also considered the following factors against the disclosure of the documents would apply, as disclosure would or could reasonably be expected to:
 - a) prejudice APRA's ability to obtain confidential information;
 - b) prejudice APRA's ability to protect the right to privacy; and
 - c) unreasonably infringe individuals' right to personal privacy.
18. I have not taken any of the irrelevant factors listed in subsection 11B(4) of the FOI Act into account in determining whether access to the document would, on balance, be contrary to the public interest.
19. I have determined that, on balance, the public interest factors against disclosure outweigh the public interest factors in favour of disclosure of the documents as disclosure would unreasonably infringe individuals' right to personal privacy.

RIGHTS OF REVIEW

Application for Internal Review of Decision

20. Under section 54 of the FOI Act, you have the right to apply for an internal review of the decision if you disagree with my decision. If you make an application for review, another officer of APRA will be appointed to conduct the review and make a fresh decision on the merits of the case.
21. Under section 54B of the FOI Act, you must apply in writing for a review of the decision within 30 days after the day the decision has been notified to you.
22. You do not have to pay any other fees or processing charges for an internal review, except fees and charges applicable for providing access to further material, if any, in the document(s) released as a result of the review (for example, photocopying, inspection, etc).
23. No particular form is required to apply for review, although it is desirable (but not essential) to set out in the application, the grounds on which you consider that the decision should be reviewed.
24. Application for an internal review of the decision should be addressed to:

FOI Officer
Australian Prudential Regulation Authority
GPO Box 9836, Sydney NSW 2001
Telephone: (02) 9210 3000
Facsimile: (02) 9210 3411
25. If you make an application for internal review and we do not make a decision within 30 days of receiving the application, we are deemed to have affirmed the original decision. However, under section 54D of the FOI Act, APRA may apply, in writing to the Information Commissioner for further time to consider the internal review.

Application for review by Information Commissioner

26. Under section 54L of the FOI Act, you have the right to apply to the Information Commissioner for a review of the original decision or a review of a decision made on review.
27. Any application must be in writing and must give details of an address where notices may be sent and include a copy of the original decision or the decision made on internal review.
28. An application for review by the Information Commissioner may be lodged in the following ways:

Online	Complete and lodge the online review form at: https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/
Post	Director of FOI Dispute Resolution GPO Box 5218, Sydney NSW 2001
Email	foidr@oaic.gov.au
Facsimile	(02) 9284 9666
Delivered in person	Office of the Australian Information Commissioner Level 3, 175 Pitt Street Sydney NSW 2000

Application for review by Administrative Appeals Tribunal

29. If the decision on review by the Information Commissioner is not to grant access to all of the documents within your request, you would be entitled to seek review of the Information Commissioner's decision by the Administrative Appeals Tribunal (AAT).
30. The AAT is an independent review body with the power to make a fresh decision. An application to the AAT for a review of an FOI decision does not attract a fee. The AAT cannot award costs either in your favour or against you, although it may in some circumstances recommend payment by the Attorney-General of some or all of your costs. Further information is available from the AAT on 1300 366 700.

Complaints to the Information Commissioner

31. You may complain to the Information Commissioner concerning action taken by APRA in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Information Commissioner will conduct an independent investigation of your complaint.
32. You may complain to the Information Commissioner, either orally or in writing, by any of the methods outlined above, or by telephone on 1300 363 992.

Ha (person number 1843)
FOI Officer
Australian Prudential Regulation Authority

Document Schedule

Document No.	Description	Exemption(s)	Access
1	Exempt document	Section 38	Refused
2	Exempt document	Section 38	Refused
3	Exempt document	Section 38	Refused
4	Exempt document	Section 38	Refused
5	Exempt document	Section 38	Refused
6	Exempt document	Section 38	Refused
7	Exempt document	Section 38	Refused
8	Exempt document	Section 38 Section 47F	Refused
9	Exempt document	Section 38 Section 47F	Refused
10	Exempt document	Section 38 Section 47F	Refused
11	Exempt document	Section 38	Refused
12	Exempt document	Section 38	Refused
13	Exempt document	Section 38	Refused
14	Exempt document	Section 38	Refused
15	Exempt document	Section 38	Refused
16	Exempt document	Section 38	Refused
17	Exempt document	Section 38	Refused
18	Exempt document	Section 38 Section 47F	Refused
19	Exempt document	Section 38 Section 47F	Refused
20	Exempt document	Section 38 Section 47F	Refused
21	Exempt document	Section 38 Section 47F	Refused
22	Exempt document	Section 38 Section 47F	Refused
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162	Exempt document	Section 38	Refused
163	Exempt document	Section 38	Refused

FREEDOM OF INFORMATION ACT 1982

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;

- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Access given to qualified person instead

- (4) Subsection (5) applies if:
- (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information concerning the applicant, being information that was provided by a qualified person acting in his or her capacity as a qualified person; and
 - (b) it appears to the principal officer of the agency or to the Minister (as the case may be) that the disclosure of the information to the applicant might be detrimental to the applicant's physical or mental health, or well-being.
- (5) The principal officer or Minister may, if access to the document would otherwise be given to the applicant, direct that access to the document, so far as it contains that information, is not to be given to the applicant but is to be given instead to a qualified person who:
- (a) carries on the same occupation, of a kind mentioned in the definition of **qualified person** in subsection (7), as the first-mentioned qualified person; and
 - (b) is to be nominated by the applicant.
- (6) The powers and functions of the principal officer of an agency under this section may be exercised by an officer of the agency acting within his or her scope of authority in accordance with arrangements referred to in section 23.
- (7) In this section:

qualified person means a person who carries on, and is entitled to carry on, an occupation that involves the provision of care for the physical or mental health of people or for their well-being, and, without limiting the generality of the foregoing, includes any of the following:

- (a) a medical practitioner;
- (b) a psychiatrist;
- (c) a psychologist;
- (d) a counsellor;
- (e) a social worker.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

38 Documents to which secrecy provisions of enactments apply

- (1) Subject to subsection (1A), a document is an exempt document if:
- (a) disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment; and
 - (b) either:
 - (i) that provision is specified in Schedule 3; or

- (ii) this section is expressly applied to the document, or information, by that provision, or by another provision of that or any other enactment.
- (1A) A person's right of access to a document under section 11 or 22 is not affected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment concerned or any other enactment.
- (2) Subject to subsection (3), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.
- (3) This section applies in relation to a document so far as it contains personal information about a person if:
 - (a) the person requests access to the document; and
 - (b) disclosure of the document, or information contained in the document, is prohibited under section 503A of the *Migration Act 1958* as affected by section 503D of that Act.
- (4) In this section:
enactment includes a Norfolk Island enactment.

56 Secrecy—general obligations

(1) In this section:

body regulated by APRA includes a body that has at any time been a body regulated by APRA.

court includes a tribunal, authority or person having the power to require the production of documents or the answering of questions.

financial sector entity has the same meaning as in the *Financial Sector (Collection of Data) Act 2001*.

officer means:

- (a) an APRA member; or
- (b) an APRA staff member; or
- (c) any other person who, because of his or her employment, or in the course of that employment:
 - (i) has acquired protected information; or
 - (ii) has had access to protected documents;other than an employee of the body to which the information or document relates.

personal information has the same meaning as in the *Privacy Act 1988*.

produce includes permit access to.

protected document means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, a prudential regulation framework law and containing information relating to the affairs of:

- (a) a financial sector entity; or
- (b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA or to a registered entity; or
- (c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA or of a registered entity;; or
- (ca) a person in relation to whom information is, or was, required to be given under a reporting standard made in accordance with subsection 13(4A) of the *Financial Sector (Collection of Data) Act 2001*;
- (cb) a person in relation to whom information is, or was, required to be given under Part IIAA of the *Banking Act 1959*;

other than:

- (d) a document containing information that has already been lawfully made available to the public from other sources; or
- (e) a document given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:
 - (i) administered by the Commissioner of Taxation; or
 - (ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

It also includes a document that is given to APRA under Part 7.5A of the *Corporations Act 2001*, other than a document containing information that has already been lawfully made available to the public from other sources.

protected information means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, a prudential regulation framework law and relating to the affairs of:

- (a) a financial sector entity; or
- (b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA or to a registered entity; or
- (c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA or of a registered entity;; or
- (ca) a person in relation to whom information is, or was, required to be given under a reporting standard made in accordance with subsection 13(4A) of the *Financial Sector (Collection of Data) Act 2001*;
- (cb) a person in relation to whom information is, or was, required to be given under Part IIAA of the *Banking Act 1959*;

other than:

- (d) information that has already been lawfully made available to the public from other sources; or
- (e) information given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:
 - (i) administered by the Commissioner of Taxation; or
 - (ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

It also includes information that is given to APRA under Part 7.5A of the *Corporations Act 2001*, other than information that has already been lawfully made available to the public from other sources.

registered entity means a corporation that is, or has at any time been, a registered entity within the meaning of the *Financial Sector (Collection of Data) Act 2001*.

- (2) A person who is or has been an officer commits an offence if:
- (a) the person directly or indirectly:
 - (i) discloses information acquired in the course of his or her duties as an officer to any person or to a court; or
 - (ii) produces a document to any person or to a court; and
 - (b) the information is protected information, or the document is a protected document; and
 - (c) the disclosure or production is not in accordance with subsection (3), (4), (5), (5AA), (5A), (5AB), (5AC), (5B), (5C), (5D), (6), (6A), (7), (7A), (7B), (7C), (7D), (7E) or (7F).

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (3) It is not an offence if the disclosure of protected information or the production of a protected document by a person is for the purposes of a prudential regulation framework law.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) It is not an offence if the disclosure of protected information or the production of a protected document by a person:
- (a) is by an employee of the person to whose affairs the information or document relates; or
 - (b) occurs after the person to whose affairs the information or document relates has agreed in writing to the disclosure or production.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) It is not an offence if the disclosure of protected information or the production of a protected document by a person:
- (a) occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist a financial sector supervisory agency, or any other agency (including foreign agencies) specified in the regulations, to perform its functions or exercise its powers and the disclosure or production is to that agency; or
 - (aa) occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist the operator of the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*) to perform its functions or exercise its powers, and the disclosure or production is to that operator; or
 - (b) is to another person and is approved by APRA by instrument in writing.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (5AA) It is not an offence if the disclosure of protected information or the production of a protected document is made:
- (a) by an officer of an agency to which the information or document has been disclosed or produced under paragraph (5)(a); and
 - (b) for the same purpose as the information or document was so disclosed or produced to that agency.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5AA) (see subsection 13.3(3) of the *Criminal Code*).

- (5A) It is not an offence if the production by a person of a document that was given to APRA under section 9 or 13 of the *Financial Sector (Collection of Data) Act 2001* is to the Australian Statistician for the purposes of the *Census and Statistics Act 1905*.

Note: A defendant bears an evidential burden in relation to matters in subsection (5A) (see subsection 13.3(3) of the *Criminal Code*).

- (5AB) It is not an offence if the disclosure of protected information or the production of a protected document by a person is for the purpose of APRA complying with any of the following:
- (a) section 55B (ASIC requests);
 - (b) section 55D (Notifying ASIC of reasonable belief of material breach of ASIC provisions).

Note: A defendant bears an evidential burden in relation to the matters in subsection (5AB) (see subsection 13.3(3) of the *Criminal Code*).

- (5AC) It is not an offence if:
- (a) the disclosure of protected information or the production of a protected document is by ASIC, for the purposes of the performance of ASIC's functions, or the exercise of ASIC's powers; and

- (b) the protected information was disclosed previously to ASIC, or the protected document was produced previously to ASIC, for the purpose of APRA complying with any of the following:
 - (i) section 55B (ASIC requests);
 - (ii) section 55D (Notifying ASIC of reasonable belief of material breach of ASIC provisions).

Note: A defendant bears an evidential burden in relation to the matters in subsection (5AC) (see subsection 13.3(3) of the *Criminal Code*).

(5B) It is not an offence if the production by a person of a document that was given to APRA under section 9 or 13 of the *Financial Sector (Collection of Data) Act 2001* is to:

- (a) the Reserve Bank of Australia; or
- (b) another prescribed authority.

Note: A defendant bears an evidential burden in relation to matters in subsection (5B) (see subsection 13.3(3) of the *Criminal Code*).

(5C) If:

- (a) a document is a reporting document given to APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001*; and
- (b) either:
 - (i) a determination has been made under section 57 that the document does not, or documents of that kind do not, contain confidential information; or
 - (ii) a determination has been made under section 57 that a specified part of the document, or of documents of that kind, does not contain confidential information;

it is not an offence to disclose the document or that part of the document, or any information contained in the document or that part of the document, to any person (including by making the document, the part of the document or the information available on APRA's website).

(5D) It is not an offence if the production by a person of a document that was given to APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001* is to the Commissioner of Taxation for the purposes of the *Major Bank Levy Act 2017* (including the administration of that Act).

Note: A defendant bears an evidential burden in relation to matters in subsection (5D) (see subsection 13.3(3) of the *Criminal Code*).

- (6) It is not an offence if the disclosure of protected information or the production of a protected document is to:
 - (a) an APRA member; or
 - (b) an APRA staff member;

for the purposes of the performance of APRA's functions, or the exercise of APRA's powers, under a law of the Commonwealth or of a State or a Territory.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

(6A) It is not an offence if the disclosure of protected information or the production of a protected document is to:

- (a) an auditor who has provided, or is providing, professional services to a general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC; or

- (b) an actuary who has provided, or is providing, professional services to a general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC;

and the disclosure is for the purposes of the performance of APRA's functions, or the exercise of APRA's powers, under a law of the Commonwealth or of a State or Territory.

- (7) It is not an offence if the information, or the information contained in the document, as the case may be, is in the form of a summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (7A) It is not an offence if the information, or the information contained in the document, as the case may be, is all or any of the following:
 - (a) the names of bodies that are regulated by APRA;
 - (b) the addresses at which bodies referred to in paragraph (a) conduct business;
 - (c) any other information that is reasonably necessary to enable members of the public to contact persons who perform functions in relation to bodies referred to in paragraph (a).

Note: A defendant bears an evidential burden in relation to the matters in subsection (7A) (see subsection 13.3(3) of the *Criminal Code*).

- (7B) It is not an offence if the information, or the information contained in the document, as the case may be, is:
 - (a) a statement of APRA's opinion as to whether or not a body regulated by APRA is complying, or was complying at a particular time, with a particular provision of a prudential regulation framework law; or
 - (b) a description of:
 - (i) court proceedings in relation to a breach or suspected breach by a person of a provision of a prudential regulation framework law; or
 - (ii) activity engaged in, or proposed to be engaged in, by APRA in relation to such a breach or suspected breach; or
 - (c) a description of action under a prudential regulation framework law that APRA has taken or is proposing to take in relation to:
 - (i) a body regulated by APRA; or
 - (ii) an individual who holds or has held a position with or in relation to such a body.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7B) (see subsection 13.3(3) of the *Criminal Code*).

- (7C) If information referred to in subsection (7A) or paragraph (7B)(a) that relates to a body that is, or has at any time been, regulated by APRA under the *Superannuation Industry (Supervision) Act 1993* is disclosed to the Registrar of the Australian Business Register established under section 24 of the *A New Tax System (Australian Business Number) Act 1999*, the Registrar may enter the information in that Register.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7C) (see subsection 13.3(3) of the *Criminal Code*).

- (7D) It is not an offence if:

- (a) the disclosure of protected information or the production of a protected document is to an ADI (within the meaning of the *Banking Act 1959*); and
- (b) the information, or the information contained in the document, as the case may be, is information contained in the register kept under section 37H of the *Banking Act 1959*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7D) (see subsection 13.3(3) of the *Criminal Code*).

(7E) It is not an offence if:

- (a) the disclosure of protected information or the production of a protected document is to an individual; and
- (b) the information, or the information contained in the document, as the case may be, is only personal information about the individual; and
- (c) the information, or the information contained in the document, as the case may be, is information contained in the register kept under section 37H of the *Banking Act 1959*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7E) (see subsection 13.3(3) of the *Criminal Code*).

(7F) It is not an offence if:

- (a) the disclosure of protected information or the production of a protected document is by APRA; and
- (b) the information, or the information contained in the document, as the case may be, is information that discloses:
 - (i) whether a person is disqualified under section 37J of the *Banking Act 1959*; or
 - (ii) a decision made under Subdivision C of Division 6 of Part IIAA of that Act, or the reasons for such a decision.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7F) (see subsection 13.3(3) of the *Criminal Code*).

(8) A person who is, or has been, an officer cannot be required to disclose to a court any protected information, or to produce in a court a protected document, except when it is necessary to do so for the purposes of a prudential regulation framework law.

(9) If a person discloses information or produces a document under this section to another person, the first person may, at the time of the disclosure, impose conditions to be complied with in relation to the information disclosed or the document produced.

(9B) Subsection (9) does not apply if the information is disclosed, or the document is produced, in accordance with subsection (5AB) or (5AC).

(10) A person commits an offence if the person fails to comply with a condition imposed under subsection (9).

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(11) A document that:

- (a) is a protected document; or
- (b) contains protected information;

is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.

Note: For additional rules about personal information, see the *Privacy Act 1988*.

- (12) A disclosure of personal information is taken to be authorised by this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6 if:
- (a) the information is protected information and the disclosure is made in accordance with any of subsections (4), (5), (5AA), (5AB), (5AC), (6), (7A), (7B), (7C), (7D), (7E) and (7F); or
 - (b) the information is contained in a protected document and the disclosure is made by the production of the document in accordance with any of those subsections.