



8 May 2018

Brad Collins
Freedom of Information Officer
The Treasury
Langton Crescent
Parkes ACT 2600

By email: foi@treasury.gov.au

Dear Brad

INFORMATION COMMISSIONER REVIEW – MR17/00343
Request from Mr John Telford, on behalf of Victims of Financial Fraud (VOFF)

1. Thank you for inviting APRA to make submissions in relation to the above Information Commissioner review (**IC review**).
2. APRA consents to a copy of this letter being provided to the Office of the Australian Information Commissioner (**OAIC**) for the purpose of conducting the IC review. APRA requests that this letter be kept confidential and not be provided to the applicant, as it contains reference to the content of the document subject to this review. In accordance with the OAIC's email dated 7 May 2018, APRA has provided a separate version of the submission that can be shared with the applicant.
3. APRA has set out its submissions using the headings provided in the email dated 19 April 2018 from the OAIC to the Treasury.

Why exemptions were not relied on in original decision

4. In March 2017, the Treasury consulted with APRA in relation to the relevant document. APRA submitted that the document should be exempt in full as it contains deliberative material and disclosure would be contrary to the public interest. APRA did not consider that it was necessary to rely on further exemptions in its submissions. In the interest of time and cost efficiency APRA does not as a matter of practice rely on every available exemption when making a decision to release a document. Rather it relies on the strongest exemptions.
5. In March 2018, during the course of the Information Commissioner review, the Treasury recommended a partial release of the document with parts being redacted on the basis of the exemptions in sections 37(2)(b) and 47E(d). The Treasury's recommendation arose following the OAIC review officer indicating her preliminary view that there are strong public interest factors in favour of disclosure. APRA agrees with the approach proposed by the Treasury to partially release the document subject to the redaction of the exempt material.

The passage of time since the document was created

6. There have been no changes to the legislative provisions referred to in the relevant document since July 2012. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
7. There is general ongoing public debate about reforms needed to the superannuation framework to ensure that it remains fit for purpose as the superannuation industry continues to evolve and expand. Recent proposed reforms have focused on improving the legislative and regulatory framework, including through proposals to provide APRA with the power to issue directions [REDACTED]
[REDACTED] These reforms have not to date been implemented, nor do they specifically address the gaps discussed in the relevant document. The gaps in the legislation identified in the relevant document still exist today.

Reasonable expectation

8. In the OAIC's email to the Treasury dated 1 May 2018, Ms Cameron stated 'it is my view that the Commissioner may not be satisfied that a discussion of the legislation is a method or procedure for the purposes of s 37(2)(b)'. In response, APRA considers that the relevant document is not merely a discussion of the legislation. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
9. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
10. Disclosure of the document therefore would, or would be reasonably likely to, prejudice the effectiveness of a [REDACTED] method used by APRA, as a person with malicious intent could use the information to identify and exploit the weaknesses [REDACTED]
[REDACTED] Although some of the identified gaps in the SIS Act may be evident through studying the legislation, the relevant document draws particular attention to and explains what APRA considers to be weaknesses [REDACTED]
[REDACTED] This analysis by APRA provides an additional layer of information which could be misused by a person with malicious intent.

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

■ [REDACTED]

12. This would prejudice the effectiveness of APRA's methods, as APRA's [REDACTED] method for dealing with the identified gaps in the SIS Act would be rendered ineffective.

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

13. To counteract this harm, the legislation must be amended to close the identified gaps. Amendments to the legislative framework for superannuation are a matter for the Government. APRA is not aware of any plans to action reforms to address these legislative gaps in the short or medium term. It is a lengthy process to amend the legislation and there is a risk that individuals or entities would exploit the identified gaps in the intervening period.

Public interest factors

14. APRA agrees with the Treasury's submission that there is a significant public interest in government agencies being able to undertake their responsibilities in the most efficient and effective manner possible. As raised in the Treasury submission, efficiency reduces the amount of resourcing needed for regulators to function optimally, which is in the public interest.
15. APRA further submits that there is significant public interest in APRA being able to take appropriate enforcement action in relation to breaches of the SIS Act. Disclosure of the relevant document creates a heightened risk that APRA would be unable to prove a breach of the legislation due to individuals or entities exploiting the identified gaps and weaknesses in the current legislation.
16. Finally, APRA submits that there is significant public interest in preventing fraud from occurring in the superannuation industry. APRA considers that public confidence in superannuation is essential to the delivery of sound retirement outcomes for all Australians. Disclosure of the relevant document may facilitate the commission of fraud by enabling persons to exploit the identified gaps and weaknesses.
17. APRA considers that these public interest factors against disclosure equally apply to the section 47E(d) exemption and the section 47C exemption which, in APRA's view, is applicable to the redacted material. APRA considers that any public interest in debating

the issues raised in the relevant document is outweighed by the significant public interest factors against disclosure set out in paragraphs 14 to 16 above.

18. If you would like to discuss any aspect of this submission please contact me on ben.carruthers@apra.gov.au or (02) 9210 3764.

Yours sincerely



Ben Carruthers
Senior Manager, Legal