

Lloyd's security trust fund instrument No. 2 of 2017

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Insurance Act 1973, section 70

Under subsection 70(1) of the *Insurance Act 1973* (the Act), APRA has the power to make rules that are applicable to the operation of designated security trust funds.

On 12 April 2017, APRA made Lloyd's security trust fund instrument No. 2 of 2017 (the new instrument) following the sunseting of Lloyd's Security Trust Fund Rules No 1 of 2000 made on 9 June 2000 (the old instrument).

The new instrument will take effect upon registration on the Federal Register of Instruments.

1. Background

The Act provides for regulation of the operations of Lloyd's in the Australian insurance market. This includes the capacity of APRA to require Lloyd's, under a legislative instrument, to have a security trust fund in Australia, into which amounts are deposited to provide for the protection of policy holders in Australia. APRA also has authority under the Act to make rules specifying certain aspects of the operation of security trust funds.

The relevant legislative instrument relating to security trust fund rules has lapsed. It is necessary to remake this legislative instrument to ensure that the security trust arrangements continue to work as intended.

Purpose and operation of the instrument

The new instrument sets out rules applicable to designated security trust funds, including rules relating to matters including: assets; liabilities; suspense accounts; records; notices; giving information and review of APRA decisions.

The requirements of the new instrument replicate in substance those of the old instrument. Minor amendments have been made to update the style and wording of the old instrument to align with current APRA practice. In consultation with Lloyd's, APRA has included in the instrument a discretion to approve from time to time the form of the audit certificate to be provided to APRA, so that it can be adjusted to reflect changed conditions.

Where the new instrument incorporates by reference the provisions of an Act or a legislative instrument then, unless the contrary intention appears in the new instrument, these provisions are incorporated as in force from time to time. Current and historic Australian legislation and legislative instruments referenced in this instrument are available at www.legislation.gov.au.

Consultation

The new instrument applies only to trustees of security trust funds that are established to fulfil obligations imposed on Lloyd's under any legislative instrument relating to security trust funds. APRA has consulted both with trustees of Lloyd's security trust funds and with Lloyd's on the making of the new instrument.

The new instrument will apply on the date of its registration on the Federal Register of Legislation.

4. Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for this legislative instrument.

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.

Attachment A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Lloyd's security trust fund instrument No. 2 of 2017 (the Legislative Instrument)

The Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

Overview of the Legislative Instrument

The purpose of the Legislative Instrument is to remake Lloyd's Security Trust Fund Rules No 1 of 2000. The legislative instrument sets out rules specifying certain aspects of the operation of Lloyd's security trust funds.

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

The Legislative Instrument is compatible with human rights because it does not raise any human rights issues.