

**Australian Prudential Regulation Authority (confidentiality) determination
No. 2 of 2017**

**Information provided by general insurers and Lloyd’s underwriters for the
purposes of the National Claims and Policies Database under Reporting
Standard GRS 800.1, GRS 800.2, GRS 800.3, LOLRS 800.1, LOLRS 800.2 and
LOLRS 800.3.**

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Australian Prudential Regulation Authority Act 1998, s 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 relevant reporting documents of a specified kind contain, or do not contain, confidential information.

On 20 June 2017, APRA made Australian Prudential Regulation Authority (confidentiality) determination No.2 of 2017 (the instrument) which determines that certain information provided to APRA under specified reporting standards by general insurers and Lloyd’s underwriters for the purposes of the National Claims and Policies Database (NCPD), 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, being 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 forms listed in the instrument, having been provided to APRA 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 in relation to the 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 contains, or does not contain, confidential information; or

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.

- (b) all or a specified part of relevant reporting documents of a specified kind contains, or do not contain, confidential information;

if, taking into account any representations made under subsection 57(3) in relation to the document or documents of that kind, APRA considers that the benefit to the public from the disclosure of the document(s) or information outweighs any detriment to commercial interests that the disclosure may cause.

2. Purpose and operation of the instrument

The determination of certain NCPD data to be non-confidential will enable APRA to achieve the original aims of the NCPD. These were:

- (a) to provide insurers, the community and State and Federal governments with a better understanding of public & product liability insurance and professional indemnity insurance; and
- (b) to help make these products more affordable and available by providing insurers with detailed information to help them assess risks and determine appropriate premiums for these insurance products.

The instrument provides that certain information given to APRA under any of the following reporting standards, or any prior reporting standards, made under section 13 of the FSCOD Act (collectively, Reporting Standards) is non-confidential:

Reporting Standards for General Insurers

- GRS 800.1 Policy Data: Public and Product Liability and Professional Indemnity Insurance
- GRS 800.2 Claim Data: Public and Product Liability and Professional Indemnity Insurance
- GRS 800.3 Facility Business Data: Public and Product Liability and Professional Indemnity Insurance

Reporting Standards for Lloyds of London:

- LOLRS 800.1 Policy Data: Public and Product Liability and Professional Indemnity Insurance
- LOLRS 800.2 Claim Data: Public and Product Liability and Professional Indemnity Insurance
- LOLRS 800.3 Facility Business Data: Public and Product Liability and Professional Indemnity Insurance

The instrument applies to all general insurers including foreign general insurers operating in Australia through branch operations and Lloyd's underwriters authorised to carry on insurance business in Australia under section 93 of the *Insurance Act 1973*. The instrument applies to information given under Reporting Standards prior to the date of the instrument.

3. Consultation

This instrument is made by APRA which has declared certain information given to APRA under the reporting standards to be not confidential to allow for publication of statistical information relating to general insurers and Lloyd's underwriters.

Consultation November 2008:

APRA commenced consultation with contributing insurers by issuing a discussion paper in November 2008. Responses were required by 30 January 2009. The first set of level 2 reports was made available at this time for use in the consultation process. The released reports contained the full confidentiality masking. The discussion paper proposed the following three options for the level of confidentiality protection to be applied to the future release of level 2 reports:

- Option A: releasing level 2 reports containing aggregate *policy* and *claim* information with full confidentiality protection in place; or
- Option B: releasing the level 2 *claim* reports without masking the aggregated data, but not identifying individual insurers. APRA recognises that claim data may be considered less commercially sensitive than premium data and applying the same confidentiality treatment to both impacts the usefulness of the reports. *Policy* reports would continue to be treated with full confidentiality protection; or
- Option C: releasing level 2 reports containing aggregate *policy* and *claim* information with no confidentiality masking in place.

APRA's goal in proposing the three options was to find a balance between industry's requirements of protecting confidentiality and the wider public interest in the availability of useful output from the NCPD.

APRA requested that contributing insurers provide comment on each of the three options for the release of the reports. Other interested parties were welcome to submit comments on the paper but did not have access to the reports that were made available to contributing insurers. Insurers were also advised that submissions received in response to this consultation would be considered in conjunction with submissions received from other stakeholders as part of a wider consultation that APRA on the future of the NCPD.

There were 25 responses to the initial consultation, 20 from contributing insurers (including one public insurer) and five from other stakeholders. Support was evenly spread with 10 supporting option A (all contributors), 10 supporting Option C (six contributors and four other submissions) and five supporting option B (two contributors and three other submissions).

Consultation June 2009:

APRA commenced a second round of consultation in June 2009. Responses were required by 12 August 2009 however several organisations requested an extension with the final response being received on 9 November 2009. A second discussion

paper was issued for this consultation and access to fully masked level 2 reports was offered to all stakeholders.

The purpose of this second consultation was to seek information on the nature and level of public interest in releasing liability insurance data from the NCPD, and in particular how this would be affected by each of the options for confidentiality protection of the reports outlined in the November discussion paper. To enable APRA to make an informed decision on the confidentiality protection to be applied to the level 2 reports, it was important that APRA had a thorough understanding of both of the industry's and other stakeholders' perspectives to provide a balanced view. APRA also requested feedback from stakeholders as to the uses and benefits that could result from release of data that is collected by the NCPD but not released in the level 2 reports.

To enable access to the reports, interested stakeholders were required to send a signed terms and conditions to APRA before access to the data was enabled. APRA received 94 requests for access but this was only supported by 31 signed terms and conditions. There were 11 responses to the second consultation, two of which were from contributing insurers. The nine responses received from other stakeholders all supported removal of the confidentiality masking and provided some good arguments in support of this view.

Opposition to the determination

The main opposition to determining the NCPD data to be non-confidential has come from the contributing insurers. The main issues raised in support of option A were:

- Data is commercially sensitive - several of the contributors that supported option A stated that the release of unmasked policy data would make available sensitive data. For some niche insurers, it was claimed that releasing their data into the public domain would seriously prejudice their competitive position and be detrimental to the company's ongoing operations. There was no supporting argument or evidence provided to indicate how this would happen or if it did, why it would be an issue for insurers.
- Privacy concerns for individual claims - the removal of confidentiality masking would not negate the need for APRA to consider the impact that this may have on privacy issues. APRA is currently considering options to protect the privacy of individual claimants. Confidentiality masking for claims reports will remain in place until privacy masking is implemented.
- The extremely sensitive nature of some claims and concerns that reports would reveal either directly or indirectly, the nature or quantum of claims.
- Potential for data to be confusing or misleading - the lack of data or the lack of full data is more likely to create confusion for users and thereby enhance the prospect that data will be misleading or lead to poor decision making. By providing full access to all data the risk that data will be

misused will also reduce as the option to make ‘educated guesses’ to fill in the blanks will be removed.

Support for the determination

The main support for determining the NCPD data to be non-confidential has come from other stakeholders and potential external users of NCPD data. The main issues raised in support of option C were:

- Use of NCPD data can be used to determine policy. Government bodies would be able to utilise NCPD data to evaluate policy and support reasoned debate on industry performance and viability. Data could also be used to identify areas of high risk or over regulation and to identify gaps in legislation.
- Complete data would enable liability insurance to be more readily priced and for more accurate reserving. Data would provide greater transparency in pricing, a better understanding of risk distribution and the impact of large losses, improved capital modeling and improved reserving capabilities.
- The nature of liability insurance can lead to skewed analysis as data can be impacted by a small number of very large claims. The liability insurance is also considered to be more fragmented than other major classes and that it may be difficult for individual insurers to identify trends in their own data that may be readily apparent in industry data.

The Reports

The number of data fields and the range of data currently provided in the level 2 reports was reduced after discussions with industry and the Insurance Council of Australia. This was done in order to reduce the number of cells in the reports that were likely to fail the confidentiality checks and result in data being masked. There are a large number of data fields that could be provided in revised level 2 reports if the data was to be determined non-confidential. The inclusion of the additional data fields would significantly enhance the usefulness of the level 2 reports and provide more meaningful data to the report users. The provision of data on the cause and nature of claims and the expansion of the occupation and industry codes would enable risk analysis to be performed for specific industry sectors and assist in lowering claims costs. Further consultation will be undertaken before APRA enhances the format and content of the level 2 reports.

General public interest

Publication of the level 1 and level 2 reports will provide information on various aspects of the liability insurance market that is not provided for in the aggregate data currently published by APRA. APRA’s NCPD reports will provide comprehensive data as well as an authoritative view of a segment of the general insurance market that is difficult to price and reserve for.

APRA believes there is a public benefit in increased disclosure of information about the liability insurance market, as APRA can promote well informed decision making by providing detailed information which facilitates further analysis. In addition, as liability insurance data is not available to the public elsewhere, APRA has the ability to offer more complete and authoritative data to the financial sector and the general public.

APRA considers that this instrument strikes the appropriate balance between protecting general insurers' and Lloyd's underwriters' commercially sensitive information and the public interest in releasing data that will enable the public to gain a greater understanding of the financial strength of individual insurers and offer further insight into the Australian insurance market. APRA will not remove the confidentiality masking from claims data until such time as appropriate privacy protection is implemented.

4. 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

Australian Prudential Regulation Authority (confidentiality) determination No. 2 of 2017

This 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

This Legislative Instrument will enable APRA to disclose certain information provided to APRA, under reporting standards by general insurers and Lloyd's underwriters, for the purposes of the National Claims and Policies Database (NCPD).

Human rights implications

APRA has assessed this Legislative Instrument against the international instruments listed in section 3 of the HRPS Act and determined that only Article 17 of the International Covenant on Civil and Political Rights (ICCPR) is conceivably of relevance to this Legislative Instrument.

Article 17 of the ICCPR prohibits the arbitrary or unlawful interference with a person's privacy, family, home and correspondence, and attacks on reputation. Article 17 is exclusively concerned with prohibiting interference with the privacy and/or reputation of individual persons. It does not extend to the privacy and/or reputation of corporate entities.

This Legislative Instrument will facilitate the disclosure of specific information given to APRA by general insurers in accordance with certain reporting standards. This Legislative Instrument does not involve the disclosure of information directly relating to individual persons. Further, APRA reviews all releases of data received under reporting standards to ensure that no information pertaining to an individual person can be deduced from the data.

Consequently, this Legislative Instrument 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, this Legislative Instrument is compatible with human rights.

Conclusion

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