**Australian Prudential Regulation Authority (confidentiality) determination No. 2 of 2021**

**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 a relevant reporting document contains, or does not contain, confidential information.

On 26 July 2021, APRA made Australian Prudential Regulation Authority (confidentiality) determination No. 2 of 2021 (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], which includes information or documents provided to APRA under a "prudential regulation framework law"[3].

The *Financial Sector (Collection of Data) Act 2001* (FSCOD Act) is a prudential regulation framework law, and the reporting documents 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:

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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.

(a) all or a specified part of a relevant reporting document contains, or does not contain, confidential information; or
(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 aims of the NCPD, which are:

(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 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 Lloyd's 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 declares 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. The same type of information provided under the Reporting Standards was also determined to be not confidential under previous APRA determinations[4].

The instrument applies to the specified information given by 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.*

## 3. Consultation

APRA conducted consultation for the instrument. In November 2020, APRA released consultation on the publication of data in the NCPD, including data relating to cyber insurance and management liability (which were proposed to be collected within the NCPD as separate, standalone, categories to replace the then existing approach of collecting cyber insurance and management liability data as data that had been aggregated with data on other product classes)[5].

No objections or concerns were raised to the proposal for cyber insurance and management liability data to be published on an aggregation level consistent with the existing level for publication of product data in the NCPD, and for the continued publication of data in the NCPD at existing levels of aggregation.

APRA considered the potential detriment to the commercial interest of general insurers and Lloyd's underwriters that disclosure of commercially sensitive information might cause 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 considers that the benefit from the disclosure would outweigh any potential detriment to the commercial interests that disclosure might cause.

## 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.

[4] See *Australian Prudential Regulation Authority (confidentiality) determination No. 10 of 2010*; *Australian Prudential Regulation Authority (confidentiality) determination No. 18 of 2011*; *Australian Prudential Regulation Authority (confidentiality) determination No. 19 of 2012*; *Australian Prudential Regulation Authority (confidentiality) determination No. 5 of 2013*; *Australian Prudential Regulation Authority (confidentiality) determination No. 8 of 2014*; *Australian Prudential Regulation Authority (confidentiality) determination No. 10 of 2015*; *Australian Prudential Regulation Authority (confidentiality) determination No. 2 of 2016*; *Australian Prudential Regulation Authority (confidentiality) determination No. 2 of 2017*; *Australian Prudential Regulation Authority (confidentiality) determination No. 1 of 2018;* *Australian Prudential Regulation Authority (confidentiality) determination No. 1 of 2019;* and *Australian Prudential Regulation Authority (confidentiality) determination No. 1 of 2020.*

[5] See APRA's 5 November 2020 letter to general insurers and other interested parties (https://www.apra.gov.au/consultation-on-collection-of-cyber-insurance-and-management-liability-data-national-claims-and-0).

**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 2021

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 and Lloyd's underwriters 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.