



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

12 November 2020

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: Josh.Frydenberg.MP@aph.gov.au

CC: tsrdlos@treasury.gov.au; Committeescrutiny@treasury.gov.au;
chris.reside@treasury.gov.au

Dear Treasurer,

Australian Prudential Regulation Authority (confidentiality) determination No. 1 of 2020 [F2020L00945]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Compliance with authorising legislation—compliance with legislative preconditions

Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act and otherwise complies with all legislative requirements.

The instrument provides that APRA may disclose certain information provided to it under reporting standards by general insurers and Lloyd's underwriters, for the purposes of the National Claims and Policies Database.

The instrument was made under subsection 57(2) of the *Australian Prudential Regulation Authority Act 1998* (APRA Act). Subsection 57(3) of the Act requires that APRA must not make a determination under subsection 57(2) unless APRA has given interested parties a reasonable opportunity to make representations in relation to whether or not the relevant reporting documents contain confidential information.

The explanatory statement to the instrument explains that consultation in relation to confidentiality of disclosures was undertaken in 2008 and 2009 and that no further consultation was undertaken in relation to this instrument as APRA was satisfied that the prior consultation was appropriate.

In the absence of further information, it is unclear whether all interested parties for the determination were provided with a reasonable opportunity to make representations in relation to confidential information as required by subsection 57(3) of the APRA Act.

The committee therefore requests your advice as to whether, prior to making this specific instrument, APRA gave all parties interested in the instrument a reasonable opportunity to make representations in relation to whether or not the relevant reporting documents contain confidential information, noting the requirements in subsection 57(3) of the APRA Act.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation



THE HON JOSH FRYDENBERG MP
TREASURER

Ref: MS20-002573

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

Dear Senator Fierravanti-Wells

Thank you for your letter on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee) regarding the *Australian Prudential Regulation Authority (confidentiality) determination No. 1 of 2020* (the Instrument).

In that letter, the Committee sought my advice as to whether prior to making the Instrument, the Australian Prudential Regulation Authority (APRA), who made the Instrument, gave all parties interested in the Instrument a reasonable opportunity to make representations in relation to whether or not the relevant reporting documents contain confidential information, noting the requirements in subsection 57(3) of the *Australian Prudential Regulation Authority Act 1998*. APRA was consulted in the drafting of this response.

As you may be aware, the Instrument determines that certain information provided to APRA under specified reporting standards by general insurers and Lloyd's underwriters (Lloyds) for the purposes of the National Claims and Policies Database (NCPD) is not confidential. Since 2010, APRA has made this determination annually.

APRA is of the view that interested parties have, and continue to have, a reasonable opportunity to make representations as to whether or not the relevant reporting documents contain confidential information.

This view has been effectively sustained since 2010. As outlined in the Instrument's Explanatory Statement, APRA conducted extensive consultation with general insurers and Lloyds in 2008 and 2009 for the purposes of determining information provided by them to be non-confidential for the purposes of the *Australian Prudential Regulation Authority (confidentiality) determination No. 10 of 2010*. Since then, the scope of the information used for NCPD has remained static.¹ This is consistent with the Instrument which provides the same limited scope of financial information, reported by general insurers and Lloyds every six months, as being treated as non-confidential information.

¹ For the information of the Committee, APRA is currently consulting on a proposal to collect and publish cyber insurance and management liability data within the NCPD collection. <https://www.apra.gov.au/consultation-on-collection-of-cyber-insurance-and-management-liability-data-national-claims-and-0>

The NCPD statistical publication was launched in 2003, and APRA has been publishing insurance policy and claims data since 2005. The publication is deeply established in industry practice and has been relied upon by general insurers and Lloyds and the wider insurance industry to inform their activities since the early 2000s.

APRA confirms that the reporting requirements under the relevant reporting documents to the Instrument have also not changed since 2008. The relevant reporting documents to this Instrument are the Reporting Standards GRS 800.1, GRS 800.2, GRS 800.3, LOLRS 800.1, LOLRS 800.2 and LOLRS 800.3. These Reporting Standards have been the basis of the NCPD since 2005. As provided by the combined Explanatory Statement to the current versions of these Reporting Standards,² the information collected by these Reporting Standards remained consistent since 2006.

Since the 2010 consultation, APRA has not received feedback from a general insurer or Lloyds expressing concern about the financial information being determined as non-confidential. In addition to this, APRA has not received feedback from any industry associations that the financial information of their general insurer participants should not be determined as non-confidential.

For the small number of new entrants to the general insurer reporting population since the 2010 consultation, APRA have advised that these general insurers are informed during their authorisation process that they will be required to report their financial information, and that certain segments of that information may be included in a non-confidential determination by APRA. The new entrants are also advised that the purpose behind APRA's non-confidential determination is to publish the data for the purpose of informing the wider insurance industry. Therefore, APRA have advised that the authorisation process provides general insurers, who were authorised after the 2010 consultation, with a reasonable opportunity to make representations as to whether or not the relevant reporting documents contain confidential information.

Given the long-standing history of the NCPD, APRA have advised that it is well-understood in the industry that the relevant information identified in the Instrument will form part of the NCPD statistical publication. APRA considers that all general insurers and Lloyds continue to have an opportunity to make representations about the confidentiality of their financial information at all times, either when submitting the financial information to APRA or prior to the regular release of the NCPD statistical publication.

Given the above explanation, APRA has advised that they are satisfied that all interested parties were given a reasonable opportunity to make representations regarding the confidentiality of the information. APRA has also expressed that it would be willing to include additional information in the Explanatory Statement addressing the Committee's concerns.

Thank you for bringing your concerns to my attention.

Yours sincerely

THE HON JOSH FRYDENBERG MP

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² Please see: <https://www.legislation.gov.au/Details/F2016L01411/Explanatory%20Statement/Text>.



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22 January 2021

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: tsrdlos@treasury.gov.au
CC: committeescrutiny@treasury.gov.au

Dear Treasurer,

**Australian Prudential Regulation Authority (confidentiality) determination No.1 of 2020
[F2020L00945]**

Thank you for your response of 1 December 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 22 January 2021. On the basis of your advice, the committee has concluded its examination of the instrument.

In relation to the instrument's compliance with legislative pre-conditions, the committee notes that advice that interested parties have, and continue to have, a reasonable opportunity to make representations as to whether or not the relevant reporting documents contain confidential information. The committee considers that, as a matter of best practice for the future, such information should be included in an instrument's explanatory statement.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

Thank you for your assistance with this matter.

Yours sincerely,

Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation