

Banking (BEAR) determination No. 1 of 2020

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Banking Act 1959, subsection 37F(3)

Under subsection 37F(3) of the *Banking Act 1959* (Banking Act), APRA may, by legislative instrument, determine, for the purposes of paragraph 37F(2)(b), a period for the purposes of paragraphs 37F(1)(a) and (b) of the Banking Act.

On 26 March 2020, APRA made Banking (BEAR) Determination No. 1 of 2020 (the Determination).

The Determination commences on the date of its registration.

1. Background

Accountability statements are documents provided by Authorised Deposit-taking Institutions (ADIs) for each of their accountable persons. The statements set out the responsibilities of those persons. Accountability maps set out the names of all accountable persons of an ADI and set out details of the reporting lines and lines of responsibility of those accountable persons. The statements and maps are part of the Banking Executive Accountability Regime introduced into the Banking Act by *Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Act 2018*.

Sections 37F(1) and (2) of the Banking Act require ADIs to notify APRA of any changes to the statements and maps. This must be done within the period, after the change, provided under subsection 37F(2) of the Banking Act. Subsection 37F(2) provides that the period is 14 days, or such other period as determined under subsection 37F(3) of the change occurring. Subsection 37F(3) of the Banking Act provides for APRA, by legislative instrument, to determine another period for notification.

2. Purpose of making the instrument

The purpose of making the Determination is to replace the existing 14 day period for notification of changes to accountability statements and maps with a 30 day period. The changed notification will affect all ADIs and will provide them with more time to comply with their notification obligations.

3. Consultation

The Australian Banker's Association (ABA) has requested APRA provide ADIs with relief from their obligations to notify APRA in relation to changes to accountability statements and accountability maps.

The ABA points to the resourcing constraints (such as illness, lockdowns, remote access and work-from-home arrangements) and the singular focus that is required by

ADIs to meet the economic and social challenges associated with COVID-19 as justifying the extending of time for notification of changes to maps and statements. The ABA has requested APRA alter the period to 30 days. APRA fully supports the efforts of ADIs to remain focused on delivering essential services to the Australian community during these turbulent times and has changed the notification period to 30 days. APRA considers that, taking into account the urgent need to provide assistance to ADIs in meeting the needs of the Australian community, appropriate consultation has taken place.

4. Regulation Impact Statement

The Office of Best Practice Regulation has advised that as the making of the Determination was not likely to have a regulatory impact on business, community organisations or individuals, a Regulation Impact Statement was not required.

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

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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*.

Overview of the Legislative Instrument

Accountability statements are documents provided by Authorised Deposit-taking Institutions (ADIs) for each of their accountable persons. The statements set out the responsibilities of those persons. Accountability maps set out the names of all accountable persons of an ADI and set out details of the reporting lines and lines of responsibility of those accountable persons.

This Legislative Instrument replaces the existing 14 day period for notification of changes to accountability statements and maps with a 30 day period. The changed notification will affect all ADIs and will provide them with more time to comply with their notification obligations.

Human rights implications

APRA has assessed this 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 *Human Rights (Parliamentary Scrutiny) Act 2011*. Accordingly, in APRA's assessment, the instrument is compatible with human rights.

Conclusion

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