

Banking exemption No. 1 of 2021

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Banking Act 1959, section 11

Under subsection 11(1) of the *Banking Act 1959* (the Act), APRA may, in writing, determine that any or all of the provisions of the Act referred to in paragraphs 11(1)(a) to (e) do not apply to a person while the determination is in force.

On 24 May 2021, APRA made Banking exemption No. 1 of 2021 (the instrument), which replaces Banking exemption No. 1 of 2017 (2017 Exemption).

The instrument commences on 24 May 2021.

1. Background

Under section 7 of the Act, it is an offence for a person who is not a body corporate to carry on banking business in Australia, except where there is a determination in force under section 11 of the Act that section 7 does not apply to the person. Under section 8 of the Act, it is an offence for a body corporate to carry on banking business in Australia if the body corporate is not an authorised deposit-taking institution or the Reserve Bank, except where there is a determination in force under section 11 of the Act that section 8 does not apply to the body corporate.

The persons administering the religious charitable development funds (RCDFs) listed in the Schedule to the instrument are exempt from the prohibitions in sections 7 and 8 of the Act, provided that they comply with the conditions specified in Schedule 2 of the instrument.

RCDFs are funds that have been set up to borrow and use money for religious and charitable purposes. While the business of such entities has traditionally fallen within the definition of ‘banking business’ under the Act, such entities have historically been exempt from the need to be authorised under the Act through a series of exemptions under subsection 11(1) of the Act, the most recent of which was the 2017 Exemption. The 2017 Exemption is subject to conditions imposed on RCDFs, which are intended to reduce the likelihood that an investor in an RCDF might confuse such an investment with a deposit. These conditions include:

- retail products offered to retail investors have a minimum term or call period of 31 days;
- RCDFs may release funds early where exceptional circumstances exist that warrant the early release;
- certain transactional banking facilities such as Electronic Funds Transfer at Point of Sale (EFTPOS), BPAY facilities and Automatic Teller Machine (ATM) facilities must not be offered to retail investors; and

- restrictions on use of certain words and expressions including ‘at-call’ and ‘deposit’.

2. Purpose and operation of the instrument

The purpose of the instrument is to continue the exemptions currently provided in the 2017 Exemption to RCDFs under subsection 11(1) of the Act, and provide the below minor update to paragraph 2 of Schedule 1 to reflect the correct entity name:

- "Diocese of Maitland – Newcastle – Catholic Development Fund (or The Trustees of Church Property for the Diocese of Newcastle)" is removed and replaced with "Diocese of Maitland-Newcastle – Catholic Development Fund (or The Trustees of the Roman Catholic Church for the Diocese of Maitland-Newcastle)"

3. Consultation

This instrument does not substantially alter existing arrangements applicable to RCDFs in the 2017 Exemption. Consequently, APRA did not consult externally in relation to the instrument other than with the entity whose name has been updated in the instrument.

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

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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

Under section 7 of the *Banking Act 1959* (Banking Act), it is an offence for a person who is not a body corporate to carry on banking business in Australia except where there is a determination in force that section 7 does not apply to the person. Under section 8 of the Banking Act, it is an offence for a body corporate to carry on banking business in Australia if the body corporate is not an authorised deposit-taking institution or the Reserve Bank, except where there is a determination in force that section 8 does not apply to the body corporate.

This Legislative Instrument determines that sections 7 and 8 of the Banking Act do not apply to Religious Charitable Development Funds, subject to conditions relating to the facilities offered in connection with the financial products, and any advertising or marketing in connection with the financial products. Religious Charitable Development Funds are funds formed for religious and charitable purposes and operated on a not-for-profit basis.

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.