**Explanatory Statement**

**Select Legislative Instrument No. 223**

*Australian Prudential Regulatory Authority Act 1998*

*Australian Prudential Regulation Authority Regulations 2011 (No. 1)*

Section 60 of the *Australian Prudential Regulation Authority Act 1998* (the Act) provides that the Governor-General may make regulations prescribing matters which are required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed in order to carry out or give effect to the Act.

Subsection 56(5)(a) of the Act allows APRA to disclose protected information in the course of its prudential supervision to a financial sector supervisory agency or a prescribed agency (including foreign agencies) specified in the *Australian Prudential Regulation Authority Regulations 1998* (the Regulations). Protected information is information which APRA has obtained in relation to a prudential regulation framework law, relating to a financial sector entity, a related body corporate or a customer of certain classes of financial institution.

The Trans-Tasman Council on Banking Supervision (TTBC), which comprises APRA, the Reserve Bank of Australia (RBA), the Australian Treasury, the Australian Securities and Investments Commission (ASIC), the New Zealand Treasury and the Reserve Bank of New Zealand (RBNZ), was formed to enhance co-operation on the supervision and information sharing of deposit-taking institutions which have a substantial presence in both jurisdictions.

APRA can currently disclose protected information to all TTBC members under subsection 56(5)(a) of the Act and Regulation 5 of the Regulations, except for the New Zealand Treasury. In order to share protected information with New Zealand Treasury, APRA currently needs to make an instrument under subsection 56(5)(b) of the Act. The ability of APRA to share information efficiently with all TTBC members is important in diagnosing distress in a trans-Tasman institution and coordinating a response.

The proposed Regulations would improve the efficiency of information-sharing within the TTBC by prescribing New Zealand Treasury for the purposes of subsection 56(5)(a) of the Act. This would remove the additional requirement and harmonise APRA’s powers to share information with other TTBC members. Details of the Regulations are set out in **Attachment A**.

Treasury considers that consultation on the proposed Regulations was not necessary, as the proposed Regulations are of a minor or machinery nature. They do not alter the substance of APRA’s powers to disclose protection information to New Zealand Treasury, but rather the mechanism by which that information is shared. The Office of Best Practice Regulation has agreed with this assessment and so a Regulation Impact Statement has not been required.

Nevertheless, Treasury has undertaken targeted discussions on the proposed regulation with relevant stakeholders. Treasury consulted with the Australian Bankers’ Association, the industry group which represents all trans-Tasman deposit-taking institutions, in September 2011. No concerns were raised. Treasury has also consulted with APRA, the RBA, ASIC, New Zealand Treasury and the RBNZ over the course of 2010 in formulating the proposal. No concerns were raised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered.

**Attachment A**

***Details of Australian Prudential Authority Amendment Regulations 2011 (No. 1)***

**Regulation 1** specifies the name of the Regulations as the *Australian Prudential Regulation Authority Amendment Regulations 2011 (No. 1)*.

**Regulation 2** provides that the Regulations commence on the day after they are registered.

**Regulation 3** provides that Schedule 1 amends the *Australian Prudential Regulation Authority Regulations 1998*.

**Schedule 1 - Amendments**

Items 1 and 2 insert New Zealand Treasury into the list of prescribed agencies at Regulation 5 of the current Regulations. This will allow APRA to share information with New Zealand Treasury under subsection 56(5)(a) of the Act, rather than under 56(5)(b) of the Act.