

Banking exemption No. 2 of 2014

Banking exemption No. 3 of 2014

EXPLANATORY STATEMENT

Prepared by the Australian Prudential Regulation Authority (APRA)

Banking Act 1959, subsections 11(1) and 11(4)

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) of the Act do not apply to a person while the determination is in force. Under paragraph 11(2)(c) of the Act such a determination may be made subject to specified conditions. Under subsection 11(4) of the Act, APRA may, in writing, vary or revoke a determination made under subsection 11(1).

Banking exemption No. 2 of 2014 (**Determination No. 1**) revokes Banking exemption No. 1 of 2014 which was made on 13 June 2014 (**the old exemption**). Banking exemption No. 3 of 2014 (**Determination No. 2**) makes a new exemption under subsection 11(1) of the Act and is in substantially the same terms as the old exemption except that it adds an extra entity to the list of entities exempted under subsection 11(1). Determinations Nos. 1 and 2 will come into force on the day that they are registered on the Federal Register of Legislative Instruments (**FRLI**).

1. Background

Subsection 7(1) of the Act prohibits a person from carrying on banking business in Australia if the person is not a body corporate and there is no determination in force under section 11 of the Act that subsection 7(1) does not apply to the person. Subsection 8(1) of the Act prohibits a body corporate (other than the Reserve Bank of Australia) from carrying on banking business in Australia if the body corporate is not authorised by APRA to do so and there is no determination in force under section 11 of the Act that subsection 8(1) does not apply to the body corporate (the prohibitions in subsections 7(1) and 8(1) of the Act are collectively referred to in this Explanatory Statement as **the prohibition**).

The old exemption exempted from the prohibition the charitable development funds (**Funds**) listed in the Schedule attached to the old exemption titled ‘the class of persons to whom this determination applies’. The old exemption was made subject to the conditions specified in the ‘Schedule of conditions’ also attached to the old exemption (**the conditions**).

APRA has received an application from National Spiritual Assembly of the Baha’is of Australia Incorporated (**NSABAI**) for the Baha’i Investment Fund (**BIF**) to be exempted from the prohibition. APRA considers that this body meets all of the conditions. Further APRA has determined that this body should be exempt from the prohibition subject to the conditions.

2. Purpose of the instruments

The purpose of Determinations Nos. 1 and 2 is to revoke the old exemption and to make a new exemption in substantially the same terms as the old exemption, subject to the conditions, but adding BIF to the list of exempted Funds.

3. Consultation

APRA has consulted with NSABAI and with the Office of Best Practice Regulation (**OBPR**).

No further consultation was carried out by APRA in relation to Determinations Nos. 1 and 2 due to their minor and machinery purpose and because no costs are expected to be incurred by any organisation covered by these Determinations. NSABAI applied to APRA for an exemption from the prohibition under subsection 11(1) of the Act and NSABAI is the only entity directly affected by Determinations Nos. 1 and 2.

The OBPR confirmed that no further regulatory analysis in the form of a regulatory impact statement is required due to the minor and machinery nature of Determinations Nos. 1 and 2.

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.

Attachment A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Banking exemptions Nos. 2 and 3 of 2014

These Legislative Instruments are 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 Instruments

Subsection 7(1) of the *Banking Act 1959* (the Act) prohibits a person from carrying on banking business in Australia if the person is not a body corporate and there is no determination in force under section 11 of the Act that subsection 7(1) does not apply to the person. Subsection 8(1) of the Act prohibits a body corporate (other than the Reserve Bank of Australia) from carrying on banking business in Australia if the body corporate is not authorised by APRA to do so and there is no determination in force under section 11 of the Act that subsection 8(1) does not apply to the body corporate.

Banking exemption No. 3 of 2014 (**the new exemption**) determines that sections 7 and 8 of the Banking Act do not apply to the funds listed in the schedule attached to the new exemption titled ‘the class of persons to whom this determination applies’, including the Baha’i Investment Fund. The new exemption is subject to the conditions set out in the ‘Schedule of conditions’ attached to the new exemption.

Baha’i Investment Fund is a Religious Charitable Development Fund. Religious Charitable Development Funds are funds formed for religious and charitable purposes and operated on a not-for-profit basis.

Banking exemption No. 2 of 2014 revokes an earlier exemption, made under section 11 of the Banking Act, which is being replaced by the new exemption.

Human rights implications

APRA has assessed these Legislative Instruments and is of the view that they do 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 instruments are compatible with human rights.

Conclusion

These Legislative Instruments are compatible with human rights as they do not raise any human rights issues.