

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Financial Sector (Collection of Data) Act 2001

Australian Prudential Regulation Authority Act 1998

Treasury Laws Amendment (Agricultural Lending Data) Regulations 2017

Section 30 of the *Financial Sector (Collection of Data) Act 2001* (the FSCOD Act) provides that the Governor-General may make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act. Section 60 of the *Australian Prudential Regulation Authority Act 1998* (the APRA Act) provides the same in respect of the APRA Act.

The Government seeks to improve the quality of available data on debt held by the agricultural sector in order to support policies that better target assistance measures to farmers. More specifically, over time, the improved data would enable the Government to better target assistance measures such as concessional loans, the Rural Financial Counselling Service and a nationally consistent Farm Debt Mediation scheme. It may also assist with developing and implementing other assistance measures, such as mental health and social support measures, community development measures and income support measures.

The *Treasury Laws Amendment (Agricultural Lending Data) Regulations 2017* (the amending Regulations) amend the *Financial Sector (Collection of Data) Regulations 2008* (the FSCOD Regulations) and the *Australian Prudential Regulation Authority Regulations 1998* (the APRA Regulations). The amendments allow the Australian Prudential Regulation Authority (APRA) to collect data on debt held by the agricultural sector and share it with the Department of Agriculture and Water Resources (DAWR) to assist it to better perform its functions and exercise its powers (as detailed in the preceding paragraph).

The FSCOD Act enables APRA to collect information from bodies in the financial sector for the purposes of, among other matters, ‘assisting another financial sector agency to perform its functions or exercise its powers’ (paragraph 3(1)(b)). Section 31 of that Act provides that ‘financial sector agency’ means ASIC, the Reserve Bank, or a Commonwealth, State or Territory authority prescribed by the regulations. The amending Regulations prescribe DAWR as a ‘financial sector agency’ for the purposes of section 31 of the FSCOD Act. This allows APRA to collect information from financial sector bodies (such as banks) for the purpose of assisting DAWR.

The APRA Act imposes certain secrecy obligations on APRA officers in relation to protected documents and information, including documents and information collected from bodies in the financial sector (section 56). The Act creates offences for contravening those obligations (for example, subsection 56(2)). Subsection 56(5) provides that a disclosure of such information is not an offence if the APRA officer is satisfied that the disclosure will assist an agency specified in the regulations ‘to perform its functions or exercise its powers and the disclosure ... is to that agency’. The amending Regulations prescribe DAWR for the purposes of subsection 56(5) of the APRA Act. This allows APRA to share the information collected with DAWR.

The amending Regulations prescribe DAWR using this formulation: ‘the Department administered by the Minister administering the *Agricultural and Veterinary Chemicals Act 1994*’ (this Act is considered core legislation in the agriculture portfolio). Prescribing DAWR by reference to core legislation that it administers reduces the likelihood of having to remake the amending Regulations in the event of a machinery of government change affecting DAWR.

Details of the amending Regulations are set out in [Attachment B](#).

The Acts do not specify any conditions that need to be met before the powers to make the amending Regulations may be exercised.

Separate consultation on the amending Regulations was not undertaken, given that they implement matters that were consulted on by APRA. APRA undertook formal consultation on the new data collection itself (including APRA’s proposed reporting standard) from 28 March to 26 May 2017. The Discussion Paper made available for the purposes of that consultation canvassed the regulatory changes needed to allow APRA to collect the data and share it with DAWR. None of the submissions raised any objections or concerns that would alter the regulatory changes that were proposed.

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required in respect of the agricultural lending data collection proposal. The OBPR consultation reference is 20819.

The amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The amending Regulations commenced on the day after registration on the Federal Register of Legislation.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (Agricultural Lending Data) Regulations 2017

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

The *Treasury Laws Amendment (Agricultural Lending Data) Regulations 2017* (the amending Regulations) amend the *Financial Sector (Collection of Data) Regulations 2008* and the *Australian Prudential Regulation Authority Regulations 1998*. The amendments allow the Australian Prudential Regulation Authority (APRA) to collect data on debt held by the agricultural sector and share it with the Department of Agriculture and Water Resources (DAWR) to assist it to better perform its functions and exercise its powers.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Collection and sharing of personal information

The amending Regulations expand the purposes for which APRA can collect information from financial sector bodies (including personal information), by adding the purpose of assisting DAWR to perform its functions or exercise its powers. The amending Regulations also expand the range of government agencies that can access such information, by listing DAWR as one of those agencies. The personal information in question will broadly concern the borrowing and lending activities of agricultural sector participants.

These aspects of the amending Regulations do not engage article 17 of the International Covenant on Civil and Political Rights, because the collection and sharing of the personal information cannot be said to constitute ‘arbitrary or unlawful interference’ with the privacy of the individuals concerned. The collection and sharing will be conducted lawfully and in furtherance of legitimate policy goals. It will have the defined and limited purpose of assisting DAWR to perform its functions and exercise its powers.

Conclusion

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

Attachment B

Details of the Treasury Laws Amendment (Agricultural Lending Data) Regulations 2017

Section 1 – Name of Regulations

This section provides that the name of the Regulations is the *Treasury Laws Amendment (Agricultural Lending Data) Regulations 2017*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *Australian Prudential Regulation Authority Act 1998* and the *Financial Sector (Collection of Data) Act 2001*.

Section 4 - Schedules

This section provides that the Schedule amends or repeals the legislative instruments specified.

Schedule 1

Item 1 amends regulation 5 of the *Australian Prudential Regulation Authority Regulations 1998* to insert the Department of Agriculture and Water Resources, which is described as ‘the Department administered by the Minister administering the *Agricultural and Veterinary Chemicals Act 1994*’, in the list of prescribed agencies.

Item 2 amends regulation 5 of the *Financial Sector (Collection of Data) Regulations 2008* to insert the Department of Agriculture and Water Resources, which is described as ‘the Department administered by the Minister administering the *Agricultural and Veterinary Chemicals Act 1994*’, in the list of specified agencies.