



20 June 2017

Senior Manager, Data Collection
Statistics
Australian Prudential Regulation Authority
Level 12, 1 Martin Place
SYDNEY NSW 2001

Email: statistics@apra.gov.au

Dear Sir/Madam,

Reporting Standard ARS 760.0
ATO Collection for *Major Bank Levy Act 2017*

The Australian Financial Markets Association (**AFMA**) represents the interests of well over 100 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets.

We refer to the release by the Australian Prudential Regulation Authority (**APRA**) of the proposed Reporting Standard ARS760.0 (**the proposed Reporting Standard**) and the accompanying letter from APRA dated 13 June 2017 to all authorised ADIs. We have set out below comments in relation to the proposed Reporting Standard, noting that at the time of writing the *Major Bank Levy Bill 2017* and the *Treasury Laws Amendment (Major Bank Levy) Bill 2017* (the **Major Bank Levy Bill**) have both been passed by the House of Representatives and the Senate and are awaiting Royal Assent.

In setting out our comments below, we note the short consultation period in respect of the proposed Reporting Standard and will provide additional comments as they arise.

Report on a Licensed ADI basis – application to foreign bank branches

The proposed Reporting Standard states that “(A)n ADI to which this Reporting Standard applies must provide APRA with the information required by ARF 760.0 for each reporting period on a Licensed ADI basis.” The definitions section of the proposed Reporting Standard provides that “Licensed ADI refers to the operations of the ADI on a stand-alone basis.”

Our concern with this approach is that, on a purely technical reading of the proposed Reporting Standard, for those inbound ADIs that operate in Australia through a foreign bank branch, as opposed to a separate subsidiary, the requirement to report on a standalone ADI basis may potentially require the reporting of global figures as opposed to just those referable to the Australian branch. To the extent that this would result in such foreign bank branches being inadvertently subject to the Major Bank Levy, where the “total liabilities” (global) disclosed is above the levy threshold, such an outcome would be contrary to the policy intent of the levy, which is that it is to apply to the major Australian banks that have total liabilities in excess of the levy threshold of initially \$100 billion.

It is acknowledged that, for those ADIs to which the Major Bank Levy is to apply, the calculation basis for the levy is in respect of the global operations of that ADI, but not including activities of separate bodies corporate. Paragraph 1.16 of the Explanatory Memorandum to the Major Bank Levy Bill states:

“In this regard, the major bank levy applies to a body corporate that is a licensed ADI. This includes the business of the ADI ordinarily described as ‘foreign bank branch’ activity, but does not include other body corporates in the ADI’s group (such as foreign or non-banking subsidiaries, or non-operating holding companies).”

We understand the above to be the basis for the disclosures on the proposed Reporting Standard for those banks to which the Major Bank Levy is to apply.

For the avoidance of doubt with respect to the inadvertent application of the Major Bank Levy to foreign bank branches, it is our recommendation that the proposed Reporting Standard explicitly be amended for foreign bank branches such that the determination of “total liabilities” and “applicable liabilities” is expressly in respect of the Australian operations and not the global ADI. This could be done in a manner consistent with ARS 320.0 Statement of Financial Position (Domestic Books).

Definition of “applicable reporting standard”

Section 3 of the Major Bank Levy Bill provides that an “applicable reporting standard” means a standard that:

- (a) is determined by the Australian Prudential Regulation Authority under section 13 of the *Financial Sector (Collection of Data) Act 2001*; and
- (b) relates to reporting amounts for the purposes of this Act (whether or not it relates to other matters).”

Our understanding is therefore that only the disclosures made by the ADI in respect of the proposed Reporting Standard are those which will be relevant for determining applicability of, and calculating, the Major Bank Levy for a particular ADI. That is, to the extent that an ADI operating in Australia through a foreign branch that was not captured by the Major Bank Levy was to disclose global liabilities to APRA under another reporting standard, and this disclosure was in excess of the levy threshold (as defined by the Major Bank Levy Bill) then this would not inadvertently bring the ADI within scope for the levy. Clarity on this point would be appreciated.

Licensed ADI v authorised ADI

It is noted that the proposed Reporting Standard, and indeed the Explanatory Memorandum, refers to the term “licensed ADI” as opposed to “authorised ADI,” being the term that is used in the *Banking Act*. We have assumed that for present purposes the two terms may be used interchangeably; however please advise as to any material differences between the two terms.

Please contact me either on 02 9776 7996 or by email at rcolquhoun@afma.com.au if further clarification or elaboration is needed.

Yours sincerely,



Rob Colquhoun
Director, Policy