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Australian Securities & Investments Commission

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Streamlining breach reporting

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ASIC

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APRA

Discussion Paper

Streamlining Breach Reporting

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Preamble

The *Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007 (SRR Act)* includes a number of amendments to the various prudential Acts¹ and the *Corporations Act 2001*.

The amendments introduce a consistent definition of reportable breaches across the four APRA-regulated industries: authorised deposit-taking institutions (ADIs), general insurers, life insurers (including friendly societies) and registrable superannuation entity (RSE) licensees (jointly referred to as regulated institutions). The amendments introduce a significance test for reportable breaches as well as a ten business day deadline for reporting these breaches to APRA and/or ASIC.

APRA currently offers an online breach reporting system for RSE licensees. APRA is proposing to allow all regulated institutions to report breaches to APRA using this online system from 1 January 2008.

APRA and ASIC also propose to offer regulated institutions a streamlined means of reporting breaches that need to be reported to both APRA and ASIC. If a regulated institution determines that a breach must be reported to both regulators, the institution can then choose to submit a single report to both APRA and ASIC using APRA's online system.

APRA and ASIC are working closely together to implement this online system. APRA and ASIC expect the streamlined reporting arrangements to be more efficient for regulated institutions.

APRA and ASIC welcome comments on the proposals. Written submissions should be forwarded via email by 31 October 2007 to:

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Australian Prudential Regulation Authority
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Important

Submissions will be treated as public unless clearly marked as confidential and the confidential information contained in the submission is identified.

Submissions may be the subject of a request for access made under the Freedom of Information Act 1982 (FOIA). APRA will determine such requests, if any, in accordance with the provisions of the FOIA.

¹ *Banking Act 1959, Insurance Act 1973, Life Insurance Act 1995 and Superannuation Industry (Supervision) Act 1993.*

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Introduction

On 15 August 2006, the Treasurer announced that the Government would streamline and simplify the prudential regulatory framework in response to the April 2006 Report of the Taskforce on Reducing Regulatory Burdens on Business, *Rethinking Regulation*.²

Rethinking Regulation noted that although Australia's regulatory structures are highly regarded internationally, there is scope to improve the regulatory framework. The Government has accepted all the *Rethinking Regulation* recommendations relevant to prudential regulation.

The Minister for Revenue and Assistant Treasurer released a discussion paper on 4 December 2006, *Streamlining Prudential Regulation: Response to 'Rethinking Regulation'*³, which included proposed changes to the framework governing breach reporting.

Legislative changes

The SRR Act, which received Royal Assent on 24 September 2007, implements many of the initiatives proposed in the discussion paper. The SRR Act includes a number of changes to each of the prudential Acts. These changes are set out in Attachment A and will be effective from 1 January 2008.

The Act amends and inserts a number of breach-related provisions in the prudential Acts. These changes will result in consistent breach reporting requirements across the four regulated industries.

The Act also provides an optional mechanism for entities regulated by both APRA and ASIC to report breaches that need to be reported to both regulators by means of a single breach report submitted to APRA.

Revised breach reporting obligations

Prior to the passing of the SRR Act, each regulated industry had different reporting requirements. The SRR Act amends the prudential Acts to require all APRA-regulated institutions to provide a written report to APRA if they commit a significant breach of a:

- provision of a prudential Act or Regulation;
- Prudential Standard;
- direction given by APRA; or
- condition of the institution's licence or authority.

Specifically, the SRR Act amends the prudential Acts and the *Corporations Act 2001* to introduce:

- a requirement that an ADI immediately notify APRA of a breach if the ADI may not be in a sound financial position;
- a requirement that a general insurer or life insurer immediately notify APRA if a breach relates to financial obligations the insurer has to its policy holders or to the insurer's minimum capital requirements;
- a requirement that an RSE licensee immediately notify APRA if it becomes aware of the occurrence of an event having a significant adverse effect on the financial position of the registrable superannuation entity (i.e. the fund);
- a test so that, apart from those breaches which must be notified immediately to APRA, only significant breaches need to be reported to APRA (previously ADIs and RSE licensees were required to report all breaches to APRA and general insurers and life insurers were not required to report any breaches to APRA);
- a significance test for breaches reportable to APRA identical to the test for breaches reportable to ASIC; and

² <http://www.treasurer.gov.au/tsr/content/pressreleases/2006/088.asp> and <http://www.regulationtaskforce.gov.au/>

³ <http://www.treasury.gov.au/contentitem.asp?NavId=0&ContentID=1199>

- a consistent time limit of ten business days for reporting significant breaches to both APRA and ASIC, apart from those which must be notified immediately to APRA (previously ADIs had to report breaches immediately, RSE licensees had to report breaches within 14 days, and ASIC-regulated Australian Financial Services Licensees had to report breaches to ASIC within five business days).

Regulated institutions will need to consider whether a breach is significant based on:

- the number or frequency of similar breaches;
- the impact the breach will have on the institution's ability to conduct its business;
- the extent to which the breach indicates that the institution's arrangements to ensure compliance with the prudential Act, Regulations or other requirements might be inadequate;
- the actual or potential financial loss arising or that will arise from the breach to the institution and its customers; and
- any other matters prescribed by the regulations.⁴

Implementation by APRA and ASIC

Changes are being proposed by APRA and ASIC that are designed to simplify the breach reporting process and reduce unnecessary reporting duplication faced by institutions regulated by both APRA and ASIC.

This paper proposes two major improvements to APRA's existing online breach notification system which RSE licensees currently use to report breaches to APRA. The proposed improvements are to:

- extend the online system so that ADIs, general insurers and life insurers can also use it to report breaches to APRA; and
- allow institutions regulated by both APRA and ASIC to use the online system to lodge breach reports with both APRA and ASIC simultaneously.

Breach reporting to APRA

APRA will encourage, but not require, regulated institutions to use the online breach reporting system. Use of the online system will be voluntary.

Draft forms that are proposed to be used for the online system are being released with this discussion paper. The forms have been designed to cater for the unique needs of each regulated industry. A general guide on how these forms will work is provided in Attachment B.

Removal of duplicated breach reporting to APRA and ASIC

The SRR Act inserts a provision into the *Corporations Act 2001* which allows regulated institutions to report significant breaches that are required to be reported to both regulators through a single breach report submitted to APRA. This will be implemented using the online system. A breach notification will be taken to have been lodged with ASIC if it is received by APRA using the online system and the institution has nominated that ASIC be notified of the breach. Regulated institutions will not be able to use the online system to report breaches which are reportable to ASIC only.

Where regulated institutions nominate that a particular electronically lodged breach report should be sent to ASIC as well, APRA will provide the report to ASIC. ASIC will then process the report in the usual way (see ASIC Regulatory Guide 78, *Breach reporting by AFS licensees* (RG 78), available from ASIC's website).

The proposed online system will be the only method available for advising both APRA and ASIC of a breach with a single notification. The online system will enable both regulators to receive the notification simultaneously.

⁴ These factors are contained in each prudential Act and the *Corporations Act 2001*.

A regulated institution can choose not to use the online system. However, in that case, a breach that has to be reported to both APRA and ASIC must be separately reported by the regulated institution to each regulator in the usual way (RG 78 describes the breach reporting procedure for ASIC breaches). For example, a letter notifying APRA of an ASIC breach will not be considered by ASIC as having been notified to ASIC (and vice-versa).

Expected benefits of the proposals

APRA and ASIC expect that the benefits of the changes proposed in this paper will be:

- a simple and efficient process for regulated institutions to report breaches that need to be reported to both APRA and ASIC; and
- a consistent breach reporting framework across regulated industries.

Proposed commencement and transitional arrangements

APRA proposes to offer the online breach reporting system to all regulated institutions from 1 January 2008.

APRA and ASIC welcome comments on any of the proposals in this paper by 31 October 2007.

Attachment A - Relevant Legislative Provisions

Provision	SRR Act Item Number (Schedule 1)	Updated Act Reference
Introduce a significance test for the reporting of prudential breaches	163	<i>Banking Act 1959 62A(1C)</i>
	179	<i>Insurance Act 1973 38AA(5)</i>
	220	<i>Life Insurance Act 1995 132A(5)</i>
	240	<i>SIS Act 1993 29JA(1A)</i>
Require breaches relating to minimum capital requirements to be notified to APRA Immediately	161	<i>Banking Act 1959 62A(1)</i>
	179	<i>Insurance Act 1973 38AA(1)</i>
	220	<i>Life Insurance Act 1995 132A(1)</i>
	241	<i>SIS Act 1993 106(1)</i>
Require all other significant breaches to be notified to APRA within 10 business days	161	<i>Banking Act 1959 62A(1B)</i>
	179	<i>Insurance Act 1973 38AA(4)</i>
	220	<i>Life Insurance Act 1995 132A(4)</i>
	240	<i>SIS Act 1993 29JA(1)</i>
Require financial services licensee to report to ASIC any significant breach within 10 business days	171	<i>Corporations Act 2001 912D(1B)</i>
Allow APRA to receive breach notifications on ASIC behalf	171	<i>Corporations Act 2001 912D(1C)</i>

Attachment B – How the online system will operate

(a) How to use the form

The proposed process for the online breach reporting forms is as follows:

Step 1	Create tailored form
	Enter ABN of the regulated institution to create a tailored form based on the APRA industry group of the institution.
Step 2	Identification
	Enter Identification details in order to verify the origin of the form.
Step 3	Complete Form
	Complete the form and submit to nominated 'Contact Person' within the regulated institution for verification and lodgement with APRA.
Step 4	Verification
	A verification email will be sent to the nominated 'Contact Person' within the regulated institution for approval. Once approved, the form will be considered lodged with APRA or APRA and ASIC.
Step 5	Acknowledgement
	An automatic email will be sent to the 'Contact Person' within the regulated institution acknowledging receipt of the form, along with an APRA reference number.
Step 6	ASIC Notification (if requested by institution)
	Automatic notification email sent by APRA to ASIC, which includes a copy of the completed form, attachments and APRA reference number.

(b) Content of Form

The form includes the type of information APRA and ASIC would generally expect to receive from a regulated institution in a breach notification. This will enable APRA and/or ASIC to appropriately assess the issues related to the breach and the likely impact of the breach. The online form is to be used only for breaches which are required to be notified to APRA, or to both APRA and ASIC, under the prudential Acts and *Corporations Act 2001*.

For the purposes of verifying the online form, the initial list of 'Contact Persons' will include the following roles within the institution (where APRA has an email address on record):

- APRA Prudential Contact
- Company Secretary
- Fund Secretary

If the institution wishes to nominate another person(s) to be able to verify the form, the institution should contact APRA.

(c) Technical Issues

The institution must be able to send and receive HTML formatted emails in order to use the online form. Institutions can attach additional material relating to the breach notification in a single zip file.



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