

MEMORANDUM OF UNDERSTANDING

Between

THE TREASURY (Treasury)

And

THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA)

Objective

1. This Memorandum sets out an agreed basis for policy and operational co-ordination between Treasury and APRA. The Memorandum is non-binding and each party reserves the right to vary its terms at any time, following consultation with the other party.
2. Treasury is a Department of the Commonwealth which, through its Markets Group, is charged with advising the Government on policies and a framework of legislation and industry supervision that assists in increasing the efficiency, competitiveness and stability of Australia's financial system. Treasury is also responsible for advising Government on retirement income policies, including in relation to superannuation.
3. APRA is a statutory body established for the purpose of regulating, subject to various laws, banks and other deposit-taking institutions, life and general insurance companies and certain superannuation entities; administering the financial claims schemes provided for in the *Banking Act 1959* and the *Insurance Act 1973*; and developing the administrative practices and procedures to be applied in the performance of its regulatory role.

Responsibilities

4. Treasury has the primary responsibility for advising the Government on financial system laws and policies. It is the principal adviser of Treasury Ministers and is directly accountable to the Treasurer.
5. APRA is established by statute as an independent regulatory agency and its policy role is primarily related to the exercise of the powers conferred on it under the various laws for which it has administrative responsibility. The APRA Members have prudential policy-making responsibility for the agency (subject to override by the Treasurer only in exceptional circumstances).
6. Financial system laws specify those areas where the Treasurer has decision-making authority and other areas where authority is vested in APRA:
 - the Treasurer has general responsibility for the laws themselves, for appointments of the APRA Chair, Deputy Chair and Member(s), for the approval of shareholdings in financial institutions as prescribed in legislation, and for the exercise, in special circumstances, of a right to give written direction about the policies APRA should pursue, or priorities it should follow, in performing or exercising any of its functions or powers;

- APRA has responsibility, subject to various laws, for developing and undertaking administrative practices and procedures for the conduct of prudential regulation, including through granting and revocation of licences, the making of prudential standards and the issuance and enforcement of directions.
7. Treasury will advise the Treasurer in relation to ministerial responsibilities but, subject to any restrictions imposed by Government, will consult with APRA in the development of its advice. Treasury, consulting with APRA, has responsibility for the development of laws relating to APRA (as for the Reserve Bank of Australia and the Australian Securities and Investments Commission). This may include laws, legislative amendments and regulations proposed by APRA. Where agreed, policies, drafting instructions and other materials may be developed by joint working parties involving Treasury and APRA staff.
 8. APRA has responsibility for developing prudential standards and prudential practice guides under its authority. APRA will consult Treasury in the substantive development of its prudential policies (whether through standards or guidelines). In general, this consultation may take a form and timing equivalent to any industry or public consultation, and in respect of many of these, it is expected that Treasury will often not wish to comment. However, in areas of particular significance or sensitivity, prior consultation (or, if agreed, joint policy work) will be undertaken. This will include:
 - any proposal to alter the coverage of the classes of entities regulated by APRA;
 - major changes to the approach to prudential regulation;
 - any regulations substantively affecting entry to financial service markets or the class of activities permitted for regulated financial entities; and
 - other proposals that may impact on the efficiency, competitiveness or accessibility of Australia's financial system or that may have implications for areas of policy beyond APRA's sole responsibility.
 9. The administrative responsibility for the licensing of financial institutions and regulation of ownership and control of financial institutions is split between the Treasurer and APRA, and the Treasurer may delegate some of his powers in relation to shareholdings to APRA.
 10. Treasury will keep APRA informed of issues and developments emerging from relevant financial sector fora. APRA will keep Treasury informed of developments in the financial system, and in domestic or international regulatory fora, that may have policy significance for Treasury or that may result in representations to the Treasurer.

Financial Distress and Instability

11. Where appropriate, in the event of financial distress in an APRA-regulated entity or financial instability generally, APRA and other regulatory agencies have responsibilities to keep the Treasurer informed. APRA will also advise Treasury in these circumstances and keep it informed of other important developments in this area.
12. A specific Memorandum of Understanding has been entered into between the members of the Council of Financial Regulators (including Treasury and APRA), which sets out the objectives, principles and processes for dealing with stresses in the Australian financial system.

Operational Functions

13. APRA is an operationally independent statutory authority and its funding is dependent on levies determined by the Treasurer. APRA will work with Treasury to ensure that appropriate estimates are prepared for annual Budget purposes of the Commonwealth.
14. Treasury and APRA will consult in the exercise of operational functions. This will include consultation on:
 - general policies of the Government that APRA may be required to adopt;
 - conflict of interest provisions under s48B of the *Australian Prudential Regulation Authority Act 1998*;
 - the development of estimates for the Budget and advice to the Treasurer on the determination of industry levies; and
 - the provision by Treasury of advice to the Treasurer or other Ministers in response to representations, parliamentary questions, or other information requests relating to matters dealt with by APRA. It is expected that APRA will provide any information required by Treasury that will assist the Department in responding to such requests.

Consultation and Co-ordination Processes

15. Senior executives of APRA and Treasury will meet regularly to co-ordinate and give effect to the consultation processes agreed by the Memorandum.

[JF LAKER]

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Chair
Australian Prudential Regulation Authority

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