

29 April 2022

General Manager, Policy  
Policy and Advice  
Australian Prudential Regulation Authority

By email: Redacted

Dear Sir/Madam

### **Strengthening crisis preparedness**

Thank you for the opportunity to lodge a submission in relation to APRA's draft prudential standards, CPS 190 Financial Contingency Planning and CPS 900 Resolution Planning.

ARITA is the preeminent professional body for professionals practicing in the area of financial distress and as such we have considered the prudential standards from the perspective of seeking timely expert and trustworthy advice to:

- reduce the likelihood of entity failure and risks to financial system stability, and
- minimise the impact of entity failure on beneficiaries and the financial system.

You can read more about ARITA at the end of this letter.

As noted in the discussion paper, there can be significant costs that stem from disorderly failures and we support AFCA's proactive steps to ensure that the superannuation, banking and insurance industries are prepared, protected and do not rely on public funds in the event of financial distress.

The role of expert advisors in contingency and resolution planning is paramount and we note that draft CPS 900 specifically states that 'APRA may require an APRA-regulated entity to:

- (a) engage, at the expense of the APRA-regulated entity, expert external advisors as may be prescribed by APRA, to support with any aspect of this Prudential Standard;
- or

(b) pay the costs of external advisors engaged by APRA to support in the exercise of APRA's powers and functions under this Prudential Standard.<sup>1</sup>

In our view, the value of ARITA members in both the contingency and resolution planning stages should not be overlooked. ARITA members are experts in the area of financial distress, including assisting entities resolve financial distress and reviving entities without the need for their failure.

Notably, the safe harbour provisions of the *Corporations Act 2001* (Cth), specifically encourages businesses to obtain assistance from an appropriately qualified entity (s 588GA(2)(d) of the Act) to develop a course of action reasonably likely to lead to a better outcome for the company (s588GA(1)(a) of the Act). The 'course of action' requirements of safe harbour align with the development of a financial contingency plan required by proposed CPS 190.

The Review of the Insolvency Trading Safe Harbour Report issued in November 2021, specifically recognised that 'the experience of either a registered liquidator with turnaround experience or a turnaround specialist with deep insolvency knowledge will be required to analyse the 'better outcome'<sup>2</sup>. ARITA members, and in particular its registered liquidator members, have the breadth of experience and unique appropriate skillset to develop and implement plans for rebuilding financial resilience or effecting an orderly exit.

We recommend to APRA that consideration be given to prescribing that only appropriately qualified and insured advisors are engaged by APRA-regulated entities in implementing the requirements of the proposed prudential standards.

Should you wish to discuss any of these matters further with ARITA, please do not hesitate to contact our Technical & Standards Director, Redacted.

Yours sincerely

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**John Winter**

Chief Executive Officer

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<sup>1</sup> APRA CPS 900 paragraph 30

<sup>2</sup> [Review of the insolvent trading safe harbour - Final report](#), The Treasury, November 2021, page 54



## About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have more than 2,200 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

Around 80% of Registered Liquidators and Registered Trustees choose to be ARITA members.

ARITA's ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We achieve this by providing innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large. In 2020, ARITA delivered 70 professional development sessions to over 8,200 attendees.

ARITA promotes best practice and provides a forum for debate on key issues facing the profession.

We also engage in thought leadership and public policy advocacy underpinned by our members' knowledge and experience. We represented the profession at 15 inquiries, hearings and public policy consultations during 2020.