Australian Banking Association

29 April 2022

Redacted
General Manager, Policy
Australian Prudential Regulation Authority

By email: Redacted
CC: Redacted

Dear Mr Redact ,

Strengthening crisis preparedness

The Australian Banking Association (**ABA**) welcomes the release, on 2 December 2021, of the discussion paper, *Strengthening crisis preparedness*, along with the *draft Prudential Standard CPS 190 Financial Contingency Planning* (**CPS 190**) and *draft Prudential Standard CPS 900 Resolution Planning* (**CPS 900**).

Our position

The banking industry is supportive of Australian Prudential Regulation Authority's (**APRA**) crisis preparedness reforms which are aimed at ensuring entities are prepared to deal with threats to their viability. This complements the rigorous prudential, legal and regulatory regimes already in place, and banks' strong management and unquestionably strong capital positions.

The APRA-ABA roundtable discussions have assisted industry's understanding of APRA's intent with the draft standards. Industry, however, feels that greater industry engagement is required for these significant and potentially very impactful reforms, particularly CPS 900.

The banking industry is in general familiar with the recovery planning requirements to be formalised through CPS 190, with recovery plans having been developed by many banks for some years now under supervisory arrangements.

In contrast, the banking industry is less familiar with the resolution concepts being introduced under CPS 900. As currently drafted, and in the absence of formal Guidance to contextualise the principles-based nature of CPS 900, the ability for industry to meaningfully engage in the policy development process has been limited.

Banks are also concerned that it will be challenging to efficiently and effectively plan for the implementation of CPS 900, and that there may be inconsistency of implementation and wasteful cost incurrence across the industry; There is uncertainty regarding what actions banks may be required to conduct (both before being engaged in bilateral resolution planning discussions and afterwards) and when these actions should be conducted. Based on the draft CPS 900, it is not possible for a wide range of banks to know for certain if they are subject to the standard at all.

Furthermore, the ABA is not aware of any jurisdiction that has developed a single standard for banks, insurers and superannuation funds/pension funds. Given their inherent differences, both in terms of risk and resolution options, the ABA recommends APRA consider developing industry specific Standards and Guides.

The ABA also notes that the foreign regimes, to which APRA has referred, including in Hong Kong, Singapore, the United Kingdom and the United States, provide considerably more detail on their

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resolution regimes. This level of detail is, in the ABA's view, appropriate and more likely to lead to consistent implementation with reduced regulatory burden.

To enhance the policy development process and to reduce the likelihood of avoidable regulatory burden, the industry requests greater clarity on APRA proposals. In industry's view, this can be best achieved by APRA:

1) revising its policy development and industry engagement process, for example, consulting on the draft Guides alongside the draft Standards;
2) developing its policy position on elements of the framework that are common to all banks, before engaging additional banks in pilot exercises; and
3) considering the development of industry specific Standards and Guides.

This process would optimally provide greater detail of the proposals themselves, APRA's intent, the timing at which the obligations contained in the CPS 900 will apply to individual firms, the individual firms likely to be captured and the preparatory steps that APRA is expecting firms to take ahead of bilateral resolution planning engagement being instigated by APRA. Providing this detail will also facilitate industry more effectively supporting APRA with timely implementation of its resolution planning objectives.

Industry's concerns are expanded in Appendix A, while Appendix B and Appendix C include the questions previously provided to APRA regarding this consultation.

The issues identified in this letter are potentially even more acute for the insurance and superannuation industries, where international (and domestic) thinking regarding resolution is less developed. To emphasise the cross-industry concern, the banking and insurance industry have also submitted a joint letter in response to this consultation.

If you require further information or would like to discuss any of the content of this letter, please do not hesitate to contact me on Redacted or Redacted.

Regards,

Redacted

Brendon Harper

Policy Director
Australian Banking Association

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

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Appendix A: Key issues

1. Enhanced industry engage in the policy development process is required

Industry is supportive of the aims of these reforms and is wanting to engage meaningfully in the policy development process. Banks are also keen to understand APRA's intent and to conduct the necessary work to both assist APRA's resolution planning and their own financial contingency planning. The lack of detail, particularly in CPS 900, has inhibited banks' ability to do this. The questions previously provided to APRA, reproduced in Appendix B and Appendix C, illustrate the wide range of ongoing uncertainties regarding these reforms. While the information provided by APRA at the two industry workshops was helpful, considerable uncertainties remain.

Additionally, it is inefficient and arguably inappropriate for banks, including their Boards and Senior Management, to rely on informal feedback from such forums to understand APRA's intent regarding these reforms – it is better practice to include greater detail in the consultation documents, in this case, the two draft Standards. Industry is, for example, uncomfortable with relying on informal assurances regarding the way APRA is likely to approach implementation of CPS 900. It would be appropriate that it be clear in the final Standard that obligations do not commence for individual firms until resolution planning is formally instigated by APRA.

In its workshops with industry, APRA also noted that the Financial Stability Board (**FSB**), in addition to regulators in Hong Kong, Singapore and the United Kingdom and the United States have produced relevant material. These broad references provided limited assistance to banks who should not be expected to research a range of foreign approaches, none of which represent APRA's approach, so that they can better understand concepts of resolution planning that may be relevant to understanding APRA's intent. Such an approach is not best practice for policy development or industry engagement.

To the extent that aspects of the international literature is relevant to APRA's policy thinking, industry recommends it be included in the draft Standards.

It is also unclear to industry how it should interpret differences between APRA's approach and international precedents. APRA's definition of critical functions, for example, is less detailed and arguably sets a lower threshold than international precedent. The draft CPS 900 defines critical functions as:

> "*any function… that is important to financial system stability or the availability of essential financial services to a particular industry or community…*'.

The FSB's more detailed (2013) definition refers to a "material impact" and "systemic relevance" rather than being "important":

> "*the sudden failure to provide that function would be likely to have a material impact on the third parties, give rise to contagion or undermine the general confidence of market participants due to: the systemic relevance of the function for the third parties…*".[1]

The European (2014) Bank Recovery and Resolution Directive also provides a seemingly higher threshold referring to "activities, services or operations… that are essential":

> *"'Critical functions' means activities, services or operations the discontinuance of which is likely in one or more Member States, to lead to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations".*[2]

Industry appreciates that (CPS 190 and) CPS 900 are "unlike any other APRA prudential standard", in that it provides a "toolkit" from which APRA will draw when developing entity specific resolution plans,

[1] FSB (2013) *Guidance on Identification of Critical Functions and Critical Shared Services*, p7
[2] European Commission (2014) Bank recovery and resolution - Directive 2014/59/EU

resolvability assessments and prepositioning requirements.[3] Given the uniqueness of this standard, it is appropriate that industry engagement be enhanced, such as by consulting on the high level Standards at the same time as the more detailed Guides.

The ABA notes that while a draft CPG 190 is expected to be release in July 2022. It remains unclear when, and in what form, the resolution planning Guide or Guides will be released. It is the ABA's understanding that APRA does not intent to consult on a Guide or Guides for CPS 900 before finalising the Standard. This, in industry's view, would not align with best practice for policy development. It would also not allow industry to meaningfully engage in the development of these important reforms.

2. Uncertainty may create inefficient, ineffective and unnecessary preliminary work through the '*test pilot's dilemma'*

It is industry's understanding that APRA plans to engage some banks, or 'test pilots' in the below analogy, in pilot programs over the coming years to assist in the development of its policy framework for resolution planning. The ABA understands that these are likely to be banks with a large market share and those that provide the opportunity to develop APRA's policy thinking that can be applied to similar banks.

Industry has taken some comfort in APRA's articulation that banks will not be required to undertake major work regarding CPS 900 until they are 'tapped on the shoulder', which for most banks will not be until after 1 January 2024. However, comfort from this articulation is reduced by three factors:

1. **It is unclear which non-significant financial institutions (SFIs) are captured by CPS 900**

CPS 900 states that it relates to SFIs and non-SFIs that provide critical functions. A 'critical function' is defined in very broad terms, as discussed above. Additionally, APRA has clarified that its considerations of potential critical functions will include market or regional dominance. Despite requesting greater clarity, it remains unclear to industry which functions, industries, communities, regions and, therefore, banks, APRA is considering.

As such, a wide range of banks must consider that they may be captured by CPS 900.

2. **It is unclear which banks will be required to undertake pilot programs before 1 January 2024 or when other banks will be selected in the years following**

All those banks potentially captured must consider the possibility that they may be chosen as a 'test pilot' before 1 January 2024, or shortly thereafter. It is not possible for any individual bank to know that they will not be selected either due to their market share (to a particular market or community), commercial complexity or simply as a representative 'test pilot' from which learnings can be made.

As such, a wide range of banks must consider that they may be selected as a future 'test pilot'.

3. **Banks are expected to be prepared when they are selected for bilateral engagement**

In the 6 April APRA-industry workshop, APRA articulated that banks should have considered the issues in CPS 900 before they are 'tapped on the shoulder' and be in a position to engage with APRA. It is unclear what APRA's expectation are in this regard to this preliminary work. This uncertainty is multiplied when considering the lack of clarity in many aspects of CPS 900 and the lack of industry's understanding of APRA's intent.

Given this combined lack of clarity, any preliminary work conducted by banks will quite possibly not align with APRA's expectations. Divergence in interpretations between banks' assumptions and APRA's actual intent could include:

- the definition of 'a community' in the assessment of potential critical functions;
- the resolution options likely to be considered suitable for an entity;

[3] Roberts, R. (2022) *Failing to plan is a plan to fail*, Speech to Risk Management Institute of Australasia Annual Conference 2022, 31 March

- the materiality of barriers that need to be addressed;
- the breadth of legal contracts that should be identified for review ahead of time; and
- a plethora of other aspects of resolution planning.

As a result, banks' preliminary work could very likely be inefficient and ineffective, and possibly of little or no assistance to the bank or APRA.

The combination of these factors has the potential to create avoidable, wasteful regulatory burden through '*the test pilot's dilemma*'. That is a wide range of banks will need to conduct inefficient and ineffective preliminary work, based on little guidance, which ultimately may prove to be completely unnecessary, just in case they are chosen as a 'test pilot'.

This regulatory burden could be greatly reduced by providing greater clarity, both in terms of APRA's intent and timelines.

3. Unequal burdens and avoidable inefficiencies

As described above, some banks will be chosen to participate in future pilot resolution exercises. These pilot exercises will presumably assist APRA in developing its policy thinking, including refining how assessments are conducted, which resolution options are most appropriate for different cohorts of banks, which barriers are most material and which corrective actions are most effective.

Relying on this process, rather than developing policy thinking on aspects of the regime common to all banks, has the potential to also create avoidable inefficiencies and does not align with APRA seeking to "minimise "peacetime" cost and disruption"[4].

Additionally, subsequent banks will benefit from more targeted engagements and streamlined requirements. The ABA strongly encourages APRA to consider options to minimise the inequalities and inefficiencies of this approach, including developing detailed policy position on elements of the framework that are common to all banks, before engaging in additional banks in pilot exercises. In many areas this can be done by leveraging international precedents.

This stagged and 'learn as you go' approach also builds an increased burden on industry and a range of inefficiencies, which again will be concentrated on the pilot participants. A pilot participant or other bank selected early in APRA's policy development process may, for example, be required to adjust its third-party contracts to ensure they are sufficiently accommodative of APRA's preferred resolution strategy or strategies – this is one area where banks have requested additional clarity and detail. It would be extremely difficult for a 'first mover' bank to renegotiate its contracts with third-parties, including with large overseas based providers, without clear public guidance from APRA that it can refer to. Furthermore, it is reasonable to assume that APRA's expectations of a preferred third-party agreement will develop as its policy thinking develops. This may require those pilot and early selected banks to again renegotiate their third-party contracts.

These difficulties and inefficient regulatory burdens could be avoided, or at least minimised, by developing detailed policy position for aspects of the resolution regime which are common to all banks before conducting additional pilot exercises.

[4] Roberts, R. (2022) *Failing to plan is a plan to fail*, Speech to Risk Management Institute of Australasia Annual Conference 2022, 31 March

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Appendix B: Additional questions provided to APRA ahead of second CPS 190/900 workshop: 9 March 2022

Additional points with regards CPS 190

Role of the Board	18 (b)	Board requirement to 'Oversee reviews of contingency plans' – what is the expectation here?
Contingency Plan	19 (e)	Requirement to include 'credible exit actions that could be taken to effect an orderly and solvent exit from regulated activity'. To discuss APRA's expectations with regards this. What would be an example of a 'credible exit action'?
	19 (f)	Requires 'scenario analysis that assesses the effectiveness of the trigger framework...' What is the expectation with regards this?
	19 (g)	Requires 'an assessment of recovery capacity, which is the aggregate impact of plausible recovery actions under each scenario. Recovery capacity must be measured in quantitative terms by calculating the amount of capital and liquidity that can be rebuilt during or following stress'. To clarify the expectation here
	21	Requires the Board 'form a view on the sufficiency of recovery capacity to restore financial resilience and where this is insufficient, consider other actions the APRA-regulated entity may add to the contingency plan or other actions to improve recovery capacity' – what is expectation/ how should this be evidenced?
Capabilities, monitoring and execution	26	Requires 'reasonable preparatory steps' – again further clarity required, what is their expectation?
	29	Requires a 3 yearly 'comprehensive review' of the plan which is to be undertaken by operationally independent, experienced and competent persons. The comprehensive review requires operational testing of the plan. To understand more – what are APRA expecting here?

Additional points with regards CPS 900

General

- What detail will be contained in the draft prudential guidance? When is this likely to be released for consultation? What form will the guidance take, for example, will there be one or three guides?
- Given APS 190/900 are relatively high level, would APRA consider consulting on the draft CPS and draft guidance together so that industry can see understand the proposals in more detail?

Specific on the draft CPS 900

- Para 11: What kinds of functions are likely to be considered as 'critical functions'? How will this be determined? How often will they be assessed?

- Pare 13: What is the difference between a 'critical function' and a 'material business activity'? (How) Will a materiality threshold be applied? How will this threshold differ for a systemic impact vs customer impact? How will APRA measure/consider substitutability?
- Para 13: At the ABA-APRA workshop, APRA mentioned that regional concentration would be a consideration when assessing critical functions. Can APRA provide more detail on this? What metrics and thresholds will be applied?
- Para 14: Does resolution always mean the entity will no longer exist? Recapitalisation as one option seems to imply the entity can continue.
- How many resolution options will APRA and the institution settle on? Ideally this would be limited to two as we understand more than this would generate significant additional time and effort to work out the other steps for (resolvability assessment, prepositioning etc).
- Para 15 "An APRA-regulated entity must support APRA in the development and implementation of a resolution plan": what might this involve? Para 14 is light on with the description of what this means.
- Para 16 "An APRA-regulated entity with overseas operations must support the development and maintenance of cross-border components of the resolution plan": what would these components look like?
- Para 19: Does APRA require all entities to do this, which APRA develops a resolution plan for? Assume from APRA workshop the answer is yes. Is this resolvability assessment part of helping APRA develop the resolution plan?
- Para 19 "The resolvability assessment must be conducted by personnel with appropriate skills and experience" – what are expectations here? Are external advisors required?
- Para 22 "APRA may require an APRA-regulated entity to develop and implement a pre-positioning plan"
    - Query why implementation of a pre-positioning plan should ever be required by APRA. Development of one makes sense – but implementation (particularly of steps like changing org / legal structure or renegotiating contracts) could be costly and complex – compared to the low likelihood of a major ADI requiring resolution.
- Para 23 "The prepositioning plan must include … changes to organisational or legal structure; renegotiation of contracts; wind-down plans for particular businesses / assets; operational continuity of key functions".
    - Clarity on the term "key functions" in para 23(d) is requested. Recommend that it be amended to read "critical function" which is clearly defined in para 11.
- Paras 24 and 26 are very brief but could have very material implications for industry and result in significant regulatory burden. These could include alterations of business strategies, destroying synergies, duplication of structures, systems and staff for no reason other than potentially assisting APRA implement a resolution plan in the unlikely occurrence that a resolution plan is implemented.

  How will APRA determine the pre-positioning actions required? How will these determinations balance the (potential) benefits against the (certain) costs? How will APRA balance its goals under resolution with its broader statutory objectives?
- Para 25 "An entity must develop and maintain the capabilities required to execute a resolution plan… including crisis governance arrangements; operational capabilities; data and systems; and a post-crisis stabilisation plan":
    - If it is the case that the entity after resolution will no longer exist (tbc by APRA), then what could a "post-crisis stabilisation plan" consist of?
    - Recommend replacing reference to "crisis" with "resolution" in Para 25, for example: "Resolution governance arrangements" and "Post-resolution stabilisation plan". This

will provide clarity that the resolution planning is separate to existing crisis management arrangements in place within all entities (as required by CPS 232) even if the resolution planning leverages parts of those crisis management arrangements.

  - 25(c) what is the 'data and systems' to be maintained here?

- Para 34 "APRA-regulated entity must not make any disclosures on resolution planning without the approval of APRA": what sort of disclosures is this referring to?

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Appendix C: ABA letter to APRA ahead of initial CPS 190/900 workshop: 9 March 2022

Australian Banking Association

9 March 2022

Redacted
General Manager, Policy
Australian Prudential Regulation Authority

By email: Redacted

Dear Mr Redact ,

Strengthening crisis preparedness

Thank you for agreeing to hold a workshop with the Australian Banking Association (**ABA**) and its members, ahead of formal submissions on 29 April 2022, on your important policy proposals to strengthen crisis preparedness within the Australian financial system.

The banking industry is broadly supportive of the Australian Prudential Regulation Authority's (**APRA**) proposals which should increase the safety and stability of Australia's financial system. This complements the rigorous prudential, legal and regulatory regimes already in place, and banks' strong management and unquestionably strong capital positions.

The draft CPS 190 Financial Contingency Planning (**CPS 190**) appears largely in line with APRA's ADI Recovery/Contingency Planning guidance and feedback provided over the years since its inception. That being said, further consideration needs to be given to the definitions, differences and implications of ADIs' developed recovery actions against the requirement to develop exit actions, which is a key additional requirement to APRA's previous expectations on ADI recovery plans.

As currently drafted, the standards, particularly CPS 900 Resolution Planning (**CPS 900**), are insufficiently detailed for industry to fully understand APRA's intent and, as such, to be able to fully assess their impacts, implications, costs or benefits. The ABA strongly encourages APRA to ensure this detail is provided, and industry is given sufficient time to consider and respond to that detail before the standards are finalised. Greater detail is also required for banks to be able to plan for and resource implementation of the new requirements.

Additionally, it is critical that the draft prudential guidance, which are set to accompany these standards, are descriptive and provides greater clarity on the requirements, including examples of expectations and application. An understanding of APRA's timeline for the development and release of these draft prudential guidance would also assist industry's preparations. If APRA is not able to provided increased clarity on the draft standards without the draft prudential guidance, industry recommends consideration be given to consulting on the draft prudential guidance concurrently with the draft standards.

The following preliminary observations and questions are provided to assist the APRA-industry workshop expected to be held on Thursday, 24 March 2022. The ABA and industry will provide further comments ahead of the consultation's 29 April 2022 deadline.

If you require further information or would like to discuss any of the content of this letter, please do not hesitate to contact me on Redacted or Redacted .

Regards,

Redacted

Brendon Harper

Policy Director
Australian Banking Association

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

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Appendix A: Key themes for discussion

The key themes that industry wishes to explore with APRA in the workshop are provided below with additional observations and detail included in Appendix B below.

Timeline and development plan for resolution planning: Industry is concerned that draft CPS 900 is insufficiently detailed to permit scoping and implementation of the new requirements and that APRA's timeline for working with entities to develop its resolution plans has not been clearly communicated. Industry is concerned that the risk obligations under the standard that could come into force before that engagement has concluded, if guidance that facilitates detailed scoping and resource mobilisation is not provided promptly.

Distinction between contingency and resolution planning: Some aspects of contingency planning described in CPS 190 (for example, exit actions in paragraph 13) have the potential to overlap with concepts that larger ADIs would expect to address in resolution planning. More generally, there is an unclear distinction under the draft standards as to where contingency/recovery activities stop and resolution actions begins. Clarity from APRA on this distinction and how individual banks' circumstances will be considered would be particularly useful. Additionally, greater clarity on whether draft CPS 190 will require banks with recovery plans currently in place to make materially changes is needed.

Pre-positioning planning versus implementation: APRA's expectations relating to the implementation of pre-positioning plans as distinct from detailed pre-positioning planning is unclear to industry. Significant costs and business distraction may be incurred, and commercial synergies may be significantly impacted, if steps to remove barriers to resolution are required to be implemented in a non-stress scenario where an entity remains clearly viable.

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Appendix B: Additional observations and detail

CPS 190 Financial Contingency Planning

As noted above, the draft requirements of CPS 190 appear largely in line with APRA's Recovery/Contingency Planning guidance and feedback provided over the years since its inception. Industry's initial feedback on CPS 190 focusses on components of the draft standard that introduce new requirements, or relate to existing components of recovery planning where the requirements in the draft CPS 190 appear to differ from previous guidance provided by APRA. These are outlined below, grouped into themes.

Exit actions

Paragraph 13(b) outlines the requirement for a financial contingency plan to demonstrate an ADI's 'orderly and solvent exit from regulated activity if actions to recover financial resilience are not effective'. Industry would like to understand APRA's expectations for ADI's, and in particular how this would interact with APRA's requirements for ADI's under CPS 900. In particular, for larger ADIs, industry expects that the process to exit regulated activity would be more akin to a resolution of that entity, rather than a de-licensing process, as has been the case for smaller ADIs recently.

Scenario analysis and recovery capacity

Paragraph 19(f) outlines the requirement for entities to conduct 'scenario analysis that assesses the effectiveness of the trigger framework, shows how contingency actions would be implemented, and measures the impact and effectiveness of those actions'. Industry would like to understand further details on APRA's expectations for how to undertake scenario analysis to evidence these points.

Paragraph 19(f) also requires the inclusion of at least two scenarios – systemic and idiosyncratic. Industry notes that this deviates from previous APRA feedback, for example, 2017 ADI Recovery Planning which states, "such analysis would be expected to include at least the following three broad scenario types, encompassing both fast-burn and slow burn: idiosyncratic, systemic and a combination of idiosyncratic and systemic elements which occur simultaneously." It would be helpful to understand whether APRA expects an ADI to use detailed and specific scenarios (such as a Global Trade War or China Downturn), or whether these would be generic scenarios to make the plan more applicable to any stressed outcome.

Paragraph 19(g) requires 'an assessment of recovery capacity, which is the aggregate impact of plausible recovery actions under each scenario. Recovery capacity must be measured in quantitative terms by calculating the amount of capital and liquidity that can be rebuilt during or following stress'. Can APRA provide further clarity on its expectations for meeting and evidencing compliance with this requirement?

Role of the Board

Industry would like to understand APRA's expectations with respect to the role of the Board in contingency planning and how it can evidence its compliance, in particular for the requirements relating to:

- Paragraph 38(b) to 'oversee reviews of contingency plans';
- Paragraph 38(c) to 'oversee the execution of contingency actions'; and
- Paragraph 21 to 'form a view on the sufficiency of recovery capacity to restore financial resilience and where this is insufficient, consider other actions the APRA-regulated entity may add to the contingency plan or other actions to improve recovery capacity'.

Comprehensive review

Paragraph 29 requires a three-yearly 'comprehensive review' of the plan which is to be undertaken by operationally independent, experienced and competent persons. The comprehensive review requires operational testing of the plan. Industry would like to understand APRA's definition of "operationally independent" for the purposes of these review requirements. Additionally, is APRA comfortable that the comprehensive review continues to be conducted by Internal Audit?

In addition to the above, paragraph 30 outlines the requirement for an operational test to stimulate the use of the contingency plan as part of the comprehensive review. Industry notes previous APRA expectations in this regard, in particular 2017 ADI Recovery Planning which outlines – "It is advisable to conduct regular (for example, at least annual) dry-runs and training exercises focusing on internal escalation processes, functioning of crisis management teams and determination of communication plans."

Given the above, industry would like to clarify APRA's expectations for operational testing of contingency plans, and if annual testing is required in addition to the three-yearly 'comprehensive review' conducted by operationally independent persons. Additionally, from an operational perspective, industry would support the option to meet all testing scope requirements within a three-year cycle, rather than requiring all the components of the testing to be completed together once every three years.

Other matters

Paragraph 16 outlines that an entity 'must not assume extraordinary public sector support'. Industry would like to understand APRA's definition of "extraordinary public sector support" in this paragraph, and whether it remains consistent with APRA's 2017 ADI Recovery Planning. Industry notes that paragraph 8 of the 2017 guidance considers existing liquidity facilities offered by the Reserve Bank of Australia in this definition.

Paragraphs 22(a)-(c) of CPS 190 allow APRA to require the inclusion or exclusion of a particular recovery or exit action within the contingency plan, the inclusion of an APRA-determined scenario within the contingency plan, or the use of particular assumptions when assessing recovery capacity. Industry would like further information from APRA about the circumstances in which APRA may require any element of these paragraphs to be implemented in the contingency plan. Industry's view is that APRA may only seek to require these points where it deems that an entity's contingency plan has a deficiency to be addressed.

Paragraph 26 outlines that an entity 'must take reasonable preparatory steps to support the timely and effective implementation of the contingency plan…'. Industry would like to further understand APRA's expectations for this requirement.

CPS 900: Resolution Planning

As noted above, the ABA encourages APRA to provide further details on resolution planning to ensure industry can understand APRA's intent and, as such, to be able to fully assess the implications of CPS 900. In particular, the ABA notes that in APRA's discussion paper, entities would not be required to meet the requirements of the standard until APRA commences resolution planning with individual entities. Further detail would be useful regarding APRA's broad timeline to engage ADIs on commencing resolution planning, as well as its expectations at a high-level of the timeline and steps to develop and implement a resolution plan under CPS 900, including:

- Supporting APRA in determining if an entity provides critical functions;
- Supporting APRA in developing a resolution plan;
- Conducting a resolvability assessment;
- Developing and implementing any required pre-positioning plans; and
- Developing the capabilities to execute the resolution plan (including post-crisis stabilisation).

Providing this additional detail would enable ADIs to start meaningful discussions and preparation work on resolution planning ahead of APRA engagement post 2024.

Further details on industry's specific questions on the requirements of CPS 900 are outlined below.

Definitions, and adjustments and exclusions

Paragraph 11(a): Further information on APRA's approach to determining whether an entity provides 'critical functions' would be helpful, including the frequency of the review and potential update of this assessment on an ongoing basis. Identification of critical functions for each ADI appears to be the foundation that the plan is then built on. Industry would also like to understand from APRA if its determination of critical functions is a 'gating' matter, and once a resolution plan is required there are no further implications for those critical functions.

Is APRA able to provide a list of potential critical functions to help guide banks? Additionally, has consideration been given to how APRA's critical functions assessment leverages off, complements, differs or otherwise interacts with other relevant assessments by other government agencies, such as the Cyber and Infrastructure Security Centre's work on Critical Infrastructure Resilience?

Paragraph 11(c): Clarification is required on APRA's definition of 'non-viable' for the purposes of resolution, and how this compares with the definition of 'resolution' per paragraph 11(c) of CPS 900 and section 5 of the Banking Act. Industry notes that the definition of 'resolution' contains elements of subjectivity, in particular where an entity could be "being considered likely to be unable, or considered likely to become unable, to meet its obligations". It is unclear to industry the process by which APRA would reach this assessment. This definition is important as, amongst other reasons, some Financial Market Infrastructures may base their decision of suspension or termination on some notion of non-viability, entry into resolution, use of mandatory transfer powers or appointment of a statutory manager.

Paragraph 12 notes APRA may adjust or exclude a specific requirement. The language throughout the draft standard is 'APRA may require', as such, it is difficult to gain clarity on what would be required. Can APRA provide greater clarity or guidance on which of the specific requirements may be adjusted or excluded?

Resolution planning

Paragraph 14 outlines that 'APRA may determine a resolution plan for an APRA-regulated entity or a cohort of APRA-regulated entities' and that 'this may include resolution options such as a solvent wind-down, transfer, or recapitalisation of the entity or entities'. Industry seeks clarification from APRA as to whether resolution of an entity would always be expected to result in APRA revoking the license of the

entity, as for example, the recapitalisation of an entity as a resolution implies that the entity will continue as a going concern.

Further to this, and as noted above, industry would like to understand APRA's expectations on the support an entity would be required to provide APRA in the development and implementation of a resolution plan (per paragraph 15).

Role of the Board

Paragraph 17 outlines that the 'Board of an APRA-regulated entity is ultimately responsible for ensuring the entity is resolvable'. As outlined in APRA's discussion paper, entities would not be required to meet the requirements of the standard until APRA commences resolution planning with individual entities. Once APRA commences resolution planning with an entity, that entity would be required to support APRA in the development and implementation of a resolution plan, under CPS 900. As the resolution plan is developed by APRA, if APRA has not developed a resolution plan for the entity, then the Board may be unable to ensure that the entity is resolvable. For the avoidance of doubt, industry notes that this requirement of paragraph 17 may not be achievable, until such a time that:

- a resolution plan has been developed for the APRA-regulated entity;
- a pre-positioning plan has been developed and implemented by the APRA-regulated entity; and
- an APRA-regulated entity has developed capabilities that are reasonably necessary to implement the resolution plan.

Further, the appropriateness of the Board having ultimate responsibility for ensuring resolvability in circumstances where resolvability occurs under an APRA owned plan is contentious. It would be more aligned with the role of a Board under such a process, and with the formulation of the role of the Board in paragraph 17 of draft CPS 190, to more clearly frame this in the first sentence of paragraph 17 of CPS 900 as responsibility for oversight of resolution planning and preparedness to support enaction by APRA of the resolution plan.

When referring to the Board, is APRA referring to the full Board or relevant members of the Board through an appropriate Board Committee? Similarly, could responsibility be delegated to a Board sub-committee?

Resolvability assessment

Paragraph 19 notes that 'APRA may require an APRA-regulated entity to conduct a resolvability assessment to assess the feasibility of resolution options'. Industry would like clarification on:

- Whether this requirement is considered part of meeting the requirement of paragraph 15 for an entity to support APRA in the development of a resolution plan; and
- How this requirement interacts with the three-yearly review of the resolution plan (per paragraph 31). In particular, industry notes that paragraph 19 states 'APRA may require' a resolvability assessment, whereas paragraph 31 notes that 'an entity must' review the resolvability assessment.

Paragraph 19 "The resolvability assessment must be conducted by personnel with appropriate skills and experience": Further detail is required regarding how APRA assesses a party to be appropriately skilled in resolution planning, noting the challenges of having internal resources for this given resolution planning is a new area of regulation in Australia.

Similarly, guidance is required on APRA's thinking regarding an independent review of the resolvability assessment. For example, does this apply to the initial resolvability assessment only? Is the independent review to be conducted by an internal or external party?

Pre-positioning

Paragraph 22 outlines that 'APRA may require an entity to develop and implement a pre-positioning plan'. Industry would like to clarify APRA's expectations on the potential 'implementation' of pre-positioning for resolution, noting that steps such as changing an entity's organisational / legal structure could be costly and complex, compared to the remote likelihood of some ADIs requiring resolution. In this context, has APRA given consideration to an 'escalating pre-positioning' framework, similar to the trigger framework in recovery planning or, more broadly, how it would balance the guaranteed costs to customers and the broader economy of prepositioning against potential future benefits and APRA's various legislative objectives?

Paragraph 23(b), the renegotiation of contracts to incorporate resolution-ready terms may be challenging to deliver given the number of contracts an ADI may have, including those with third-party service providers, and that suppliers may be offshore and/or provide services to several industries. As a result, renegotiating contracts to capture "resolution-ready" terms may be highly complicated. Industry requests further guidance from APRA on its expectations on the scope and timing of renegotiating contracts, including with third-party service providers. Clear, public guidance would also assist third-party service providers understand APRA's expectations/banks' requirements. Clear guidance is also relevant for banks entering new contracts between now when the standards are implemented – currently there is insufficient detail on what terms would be required with third-party providers.

For some groups of third-party providers, it may be more practical to achieve the renegotiation of contracts with third-party service providers by coordinating with APRA and other industry bodies.

Can APRA clarify its definition of the term "key functions" in paragraph 23(d), and outline how it differs to the defined term of "critical function" per paragraph 11?

Capabilities for resolution

Industry seeks additional clarity on what is required by way of "capabilities required to execute a resolution plan" per paragraph 25, in particular:

- Crisis governance arrangements, and how these are expected to be integrated into the entity's current risk management framework;
- Data and systems, and what resolution-specific components APRA is expecting to be maintained; and
- Post-crisis stabilisation plan, including steps to rebuild long-term financial resilience such as capital and funding plans, and how this may differ from existing contingency plans which may contain similar actions or business as usual capital and funding plans.

Industry also recommends replacing reference to "crisis" with "resolution" for example: "resolution governance arrangements" and "post-resolution stabilisation plan". This will provide clarity that the resolution planning is separate to existing crisis management arrangements in place within all entities (as required by CPS 232) even if the resolution planning leverages parts of those crisis management arrangements.

Industry would also appreciate clarification on the capabilities 'reasonably necessary' for resolution (per paragraph 26), including the scope and criteria APRA may apply when making this assessment. Industry notes that this determination will influence ongoing compliance costs to meet the new requirements for resolution planning.

External advisors

Paragraph 30 covers requirements for an APRA-regulated entity to engage, at the entity's expense, external advisors to support with aspects of CPS 900. Industry suggest qualifying these requirements with "as it relates to the entity" to clarify that entities are not expected to pay for third-party advisers to

APRA who are working on the regime more broadly, such as industry reviews or drafting further guidance.

Disclosures

Paragraph 34 outlines that an 'APRA-regulated entity must not make any disclosures on resolution planning without the approval of APRA'. Industry requests that APRA set out its proposed approval process for disclosures, for example, in the context that an APRA-regulated entity believes it is required to disclose information (such as under continuous disclosure obligations), and if APRA does not provide approval, would APRA propose to issue a direction (with a secrecy provision) to provide a regulated entity with protection?