AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY
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Chairperson
Finance and Expenditure Committee
Parliament Buildings
Private Bag 18041
Wellington 6160

By email: Finance.Expenditure@parliament.govt.nz

Dear Chairperson,

APRA welcomes the invitation from the Finance and Expenditure Committee of the New Zealand House of Representatives to provide input on the Deposit Takers Bill (the Bill). We understand the Committee has a specific interest in the topics of proportionality and regulatory certainty, especially as regards non-bank deposit-taking institutions.

Respecting that the Bill is a matter for New Zealand's parliament, this submission is limited to sharing APRA's perspective in the context of the Australian market. We set out below some information on APRA's role and prudential framework, as well as background to Australia's resolution regime and deposit guarantee scheme.

APRA'S ROLE AND PRUDENTIAL FRAMEWORK

APRA is an independent statutory authority established under the *Australian Prudential Regulation Act 1998* (APRA Act). APRA is responsible for the prudential regulation and supervision of financial institutions and for promoting financial system stability in Australia. APRA also serves as Australia's resolution authority. In carrying out its functions and powers under the APRA Act, APRA is to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in balancing these objectives, is to promote financial system stability in Australia.[1,2]

In Australia, there are currently 142 authorised deposit-taking institutions (ADIs) subject to prudential regulation by APRA. The current composition of the ADI sector is shown in Table 1.

Table 1: Composition of ADI sector in Australia (September 2022)

	Number	Assets ($A billions)
Major banks	4	4,378
Other domestic banks	35	849
Subsidiaries of foreign banks	6	186
Branches of foreign banks	50	725
Credit unions and building societies	35	53

[1] See APRA Act, s8(2).

[2] The APRA Act (s8A) also obliges APRA to support the New Zealand authorities in meeting their statutory responsibilities relating to prudential regulation and financial system stability in New Zealand, and to the extent reasonably practicable, avoid any action that is likely to have a detrimental effect on financial system stability in New Zealand. A reciprocal obligation applies to the New Zealand authorities.

Through the legislation governing APRA's regulatory oversight of each regulated industry,[3] Parliament has delegated to APRA the power to determine the prudential and reporting requirements that Australian financial institutions must meet. In terms of legal status, APRA's prudential and reporting requirements are 'secondary legislation'.

APRA has a single prudential framework and supervision approach which applies to all ADIs. This ensures that all deposit-taking institutions are subject to an appropriate level of prudential regulation, and that depositors' interests are appropriately protected. Importantly:

- As a principles-based regulator, APRA generally seeks to achieve sound prudential outcomes wherever possible without specifying or prescribing the exact manner in which those outcomes must be achieved. APRA recognises that what may be appropriate and necessary for a large, internationally active bank may not be suitable for a regional-based institution or a smaller credit union.
- A key principle underpinning APRA's prudential standards is that ADIs should manage risks in a manner appropriate for the institution's size, business mix and complexity.
- Where appropriate, APRA's prudential standards provide for simplified requirements for ADIs below a specified size or subject to other criteria. Statistical reporting requirements are commonly stratified by size of institution to reduce reporting burden where the level of systemic risk and complexity do not require more detailed information. In 2022, APRA finalised a consultation process to settle the definition of 'significant financial institution'. This provides a foundation to enable APRA in the future to incorporate proportionality into the prudential framework to an even greater extent.
- APRA will also typically give consideration to staging implementation of any new or revised prudential requirements, and where appropriate provide smaller ADIs a longer period of transition.
- In carrying out its supervisory activities, APRA adopts a risk-based and proportionate approach. The intensity of supervisory oversight is dependent on an ADI's size and risk profile. Inevitably, the largest ADIs are typically subject to the most intense level of supervision.
- APRA undertakes broad and thorough consultation before creating or amending a prudential or reporting standard. This provides an opportunity for ADIs of different size, complexity and business models to highlight any considerations specific to their businesses.

Conferring on a financial regulator the power to determine the prudential framework is an approach adopted in several jurisdictions such as the United Kingdom, Canada and Singapore. Given the context in which APRA operates, there are distinct advantages to granting such powers. It facilities a framework that is flexible, timely and responsive, and aligned to international standards tailored where appropriate for domestic conditions. This has been shown to be particularly important and valuable in the context of the Global Financial Crisis and COVID-19.

APRA as an organisation – and more specifically APRA's power to make prudential and reporting standards – is subject to a range of accountability mechanisms as is appropriate. For example, APRA Executive Board Members regularly appear before Parliamentary committees, APRA's Annual Report is tabled in Parliament, and, like many other agencies, APRA is subject to self-assessments of its performance against the Regulator Performance Framework and requirements set by the Office of Impact Analysis. APRA is also subject to periodic review such as by the Financial Regulator Assessment Authority, established in 2021 to assess and report on the effectiveness and capability of the Australian Securities and Investments Commission (ASIC) and APRA.

[3] The relevant 'industry Acts' are the: *Banking Act 1959*, *Insurance Act 1973*, *Life Insurance Act 1995*, *Private Health Insurance (Prudential Supervision) Act 2015* and *Superannuation Industry (Supervision) Act 1993*. Reporting standards are made under the *Financial Sector (Collection of Data) Act 2001*.

In addition, the prudential standards applying to banking and insurance activities and the reporting standards applying to all regulated entities are disallowable by the Parliament of Australia. By contrast, the power to make prudential standards applicable to superannuation entities, which was conferred on APRA more recently, is not subject to disallowance by Parliament. To date, no prudential standards or reporting standards made by APRA have been disallowed.

APRA takes a number of steps to promote regulatory certainty and manage regulatory burden for industry. For example:

- External consultation on policy decisions is conducted by publishing a consultation package on the APRA website. Multiple rounds of public consultation will often be undertaken for proposed regulatory changes expected to have a material impact on industry.

- APRA has historically published an annual forward agenda for policy development for the next 12–18 months. This outlines the plans for new or revised prudential standards and supervisory activities — these are known as APRA's policy and supervisory priorities.[4]

- APRA provides further guidance through a range of communication channels, including APRA's Corporate Plan and public speeches.

- Regulatory burden is one important factor considered as part of APRA's policy development process. APRA is also undertaking work to modernise the prudential architecture – to make the regulatory framework simpler and more adaptable, and reduce burden where possible.

AUSTRALIA'S RESOLUTION REGIME AND DEPOSIT GUARANTEE SCHEME

The tools available to Australian authorities to deal with a failing ADI were enhanced by key legislative reforms. Crisis management reforms in 2008 and 2018 strengthened the Australian Government's and APRA's powers by expanding the options available to deal with the unlikely event of a failing ADI, safeguarding the Australian financial system in a crisis.

The Financial Claims Scheme (FCS) was introduced in 2008 to ensure depositors would have access to their funds in a timely manner in the unlikely event of an ADI failure. The FCS covers depositors up to $250,000 per account holder per ADI and provides protection to depositors from loss when activated. The Australian Government has the power to activate the FCS and APRA is tasked with administering its use.

APRA's crisis management powers were bolstered by the Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018. The implementation of the Act followed the 2014 Financial System Inquiry recommendation to strengthen the powers available to regulators to manage a crisis. The Act provides APRA with a range of crisis management powers that enhance its capacity to manage a failing ADI in an orderly way. The Act also gave APRA clear powers to set requirements for resolution planning, essential to ensuring preparations for failure can be made well in advance of an event occurring.

Yours sincerely,

[redacted]

Renée Roberts
Executive Director
Policy and Advice Division

[4] The last review was published in February 2023. See: APRA (2023), *APRA's releases policy and supervision priorities for 2023,* 2 February 2023. Available at: https://www.apra.gov.au/news-and-publications/apra-releases-policy-and-supervision-priorities-for-2023