Licensing for authorised deposit-taking institutions

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Introduction

I welcome the opportunity to comment on APRA's proposed licensing framework for locally incorporated authorised deposit taking institutions.

The stated objectives of the reform are sound. Australia needs a licensing process that is clearer, faster and more transparent. Depositors must be protected. The Financial Claims Scheme must not become a public backstop for weak entry, speculative business models or operationally immature institutions. Any entity authorised to accept deposits must possess adequate capital, liquidity, governance, risk management, operational resilience and credible recovery and exit arrangements.

Those requirements establish the prudential floor, but they do not resolve the central policy problem. A framework can be formally neutral while protecting incumbents by practical effect. A licensing regime that requires a new entrant to carry the institutional weight, cost structure and organisational maturity of an established bank before it can meaningfully test its business model can become an incumbent protection mechanism, whether or not that is APRA's intention.

APRA should not lower the prudential floor, but it should also not confuse depositor protection with incumbent replication. The public interest is not served by licensing undercapitalised or poorly governed banks. It is equally not served by a framework under which only already large, already well funded, already institutionally mature or incumbent backed applicants can realistically enter the market.

The proper test is not whether the proposed framework is stricter or looser than the existing framework. The proper test is whether every requirement is necessary, proportionate, correctly timed and connected to a clear prudential or public purpose.

Overall position

APRA should proceed with reform, but not in its present form.

The draft improves transparency by replacing largely guidance-based expectations with legally effective criteria. A defined application period is preferable to open ended regulatory engagement, and publication of licensing decisions is preferable to leaving applicants and the market to speculate about APRA's expectations.

However, greater clarity does not necessarily produce greater contestability. A clear wall is still a wall, and a one-sided clock is not transparency but administrative pressure.

The proposed framework removes the Restricted authorised deposit taking institution pathway and replaces it with a single direct pathway. APRA says the framework will be applied proportionately according to the applicant's size, complexity, business model and risk. That assurance is not enough. Proportionality must be visible in the criteria, the evidence requirements, the application process, the capital treatment, the operational readiness requirements and APRA's published reasons for decisions.

The framework must also contain a genuine time toll mechanism. The proposed twelve-month period should measure time reasonably controlled by the applicant. It should not continue running while the application is sitting with APRA, another regulator or a connected approval body.

The public purpose of ADI licensing

The public purpose of ADI licensing is not to make banking entry easy. It is to ensure that any institution permitted to accept deposits is safe enough, governable enough, liquid enough, capitalised enough, operationally ready enough and capable of recovery or orderly exit.

That is the floor.

There must also be a regulatory ceiling. Licensing requirements should not become so expensive, cumulative, procedurally uncertain or shaped around incumbent structures that they prevent new institutions from challenging the existing banking market.

Large established banks already possess deposit bases, capital market access, recognised brands, tested technology, experienced boards, risk teams, internal audit functions, reporting systems, payment access arrangements and long-standing regulatory relationships. A new entrant must build these capabilities while seeking permission to become the type of institution capable of earning banking revenue.

That asymmetry matters. A requirement that is routine for an incumbent may be existential for a new entrant. A rule can therefore be equal in form while unequal in effect.

APRA should assess the final framework not only against prudential safety, but also against the real economics of entry and the cumulative burden imposed on credible new applicants.

The twelve-month period requires a genuine time toll mechanism

A twelve-month application period may be justified where it disciplines applicants, prevents incomplete applications from drifting indefinitely and allows APRA to close files that are not progressing.

It is not justified if it measures total elapsed time rather than applicant-controlled time.

Where an application is with APRA for review, internal assessment, scheduling, technical consideration, consultation, document classification or a determination about substantial completeness, that period is not applicant delay and should not count against the applicant.

The same principle should apply where APRA requires, expects or reasonably depends upon an applicant obtaining information, consent or approval from ASIC, AUSTRAC, Treasury, the Australian Taxation Office, the Australian Business Registry Services, the Foreign Investment Review Board, the Reserve Bank of Australia, a payment system operator or another connected body. Time spent waiting for a necessary regulatory step outside the applicant's reasonable control should not be treated as applicant delay.

The time toll should operate automatically rather than depend on an applicant persuading APRA that exceptional circumstances exist. An extension power based only on exceptional circumstances does not cure a defective clock. Ordinary regulatory review and connected approval delays are foreseeable features of the process, not exceptional events.

APRA should therefore maintain two transparent clocks. The applicant clock should measure periods during which APRA is waiting for material or action reasonably required from the applicant. The regulator clock should measure periods during which the application is with APRA or another body whose input is necessary to APRA's decision.

The applicant clock should stop when the requested material is supplied and restart only when APRA gives written notice identifying the outstanding action, the reason it is required and the time allowed to respond. APRA should not be able to consume the application period through internal delay, repeated document handling, changing expectations or late requests for material that could reasonably have been identified earlier.

Once APRA determines that an application is substantially complete, the proposed decision period should operate as a genuine APRA service standard. It should be

paused only for clearly identified applicant delay, not for APRA's internal resourcing, scheduling or decision-making processes.

The licensing portal or case record should show the date each document was submitted, whether it has been accepted, whether further information is required, which party presently controls the next step, when the relevant clock stopped and when it restarted. This would give real content to APRA's stated objective of transparency.

KPMG and Islamic Money Australia have already identified the practical problem created by fragmented approvals and prolonged regulatory processes. Islamic Money Australia's experience also demonstrates that time itself consumes applicant capital and can undermine the business before authorisation is achieved. The solution is not merely a shorter nominal period. It is a reciprocal and auditable allocation of responsibility for delay.

Removal of the Restricted ADI pathway

APRA is entitled to conclude that the former Restricted authorised deposit taking institution pathway did not work as intended. The pathway appears to have consumed capital, constrained commercial validation, created investor uncertainty and failed to provide a sufficiently predictable route to full authorisation.

The correct conclusion is that the former restricted pathway was badly calibrated. It does not follow that staged entry itself is inherently unsound.

Abolishing the pathway may simplify the framework on paper while making entry harder in practice. The danger is that a new applicant will be required to reach full institutional maturity before it can conduct enough controlled commercial activity to establish customer demand, validate its systems, demonstrate its operating model and attract further capital.

APRA should preserve a controlled route for applicants whose permitted activities can safely be restricted by product, geography, customer class, deposit volume, balance sheet size or transaction limits. Such an applicant should not be permitted to accept deposits until the mandatory depositor protection conditions are satisfied. However, APRA should distinguish between requirements that must exist before any deposit is accepted and requirements that can safely mature in line with the institution's authorised scope.

A restricted regional bank, mutual bank, cooperative bank, community bank, specialist small business bank or public purpose bank may present different risks from a nationally scaled digital bank. Those risks should be supervised directly rather than used as a reason to force every applicant through the same institutional doorway.

The failure of one restricted model should not become the justification for an incumbent shaped licensing monopoly.

Proportionality must be legally and operationally real

The draft guidelines refer to proportionality, but the practical content of that proportionality remains insufficiently defined.

APRA should publish a clear distinction between universal requirements and scalable requirements.

Capital adequacy, liquidity, honest disclosure, fit and proper responsible persons, supervisory visibility, operational resilience, information security, Financial Claims Scheme readiness and credible recovery and exit arrangements must apply to every deposit taker.

Other requirements should be demonstrably connected to the permitted business model. APRA should explain why a particular board structure, governance layer, technology architecture, documentation package or operational capability is necessary for the applicant's authorised activities.

The framework should include model specific guidance for mutuals, cooperatives, regionally restricted institutions, specialist banks, public institutions and applicants proposing narrow product sets. Without that guidance, proportionality will remain a broad discretion exercised behind closed doors rather than a predictable regulatory principle.

An applicant should also be permitted to propose alternative evidence or alternative controls that satisfy the same prudential purpose. APRA should be required to consider that alternative on its merits and explain any rejection.

Capital requirements and the cumulative entry burden

The draft requires Common Equity Tier 1 Capital equal to the greater of $15 million or nine months of forecast operating expenditure at authorisation, followed by continuing capital plans based on the greatest of the applicable fixed amount, operating expenditure measure or risk weighted capital requirement.

A minimum capital floor may be entirely justified. However, APRA should publish the evidence supporting both the fixed amount and the operating expenditure formula, including how those settings affect different banking models.

The operating expenditure test may create a circular burden. APRA required governance, advisers, technology development, independent validation, audit, risk management and compliance resources increase forecast operating expenditure, which then increases the capital required to support that expenditure. The higher

capital requirement may in turn extend the capital raising process and increase professional and holding costs.

APRA should explain whether one off licensing costs are included, how duplicated pre authorisation and post authorisation costs are treated and whether the formula unintentionally rewards applicants that understate expenditure or outsource essential functions.

The correct response is not to abandon a capital floor. It is to ensure that the floor measures prudential risk rather than the cost of navigating the licensing process itself.

APRA should also assess the cumulative burden. Capital, liquidity, board composition, accountable persons, independent system validation, operational readiness, public product revenue, recovery planning, exit planning and Financial Claims Scheme readiness may each be defensible in isolation. Their combined cost may nevertheless prevent entry by applicants that could operate prudently within a narrower authorised scope.

Clarity alone does not answer that problem.

Operational readiness and technology validation

APRA is correct to require fit for purpose technology, information security, operational resilience and independent validation before an institution is allowed to accept deposits.

However, the framework should distinguish between the capability necessary to demonstrate that a system is safe and the capability necessary to operate immediately at national scale.

Applicants should be able to test systems through simulation, limited non-deposit activity, controlled pilots and staged independent assurance, provided no public deposits are exposed before final readiness is established.

APRA should also address the dependency problem. An applicant may need access to payment systems, banking infrastructure, service providers, identity systems and external testing environments that are controlled by incumbent institutions or other regulated bodies. APRA should not require evidence that cannot reasonably be obtained until those bodies cooperate.

Where access to necessary infrastructure is delayed by an incumbent provider or connected approval body, the application clock should stop and APRA should actively assist in resolving the blockage.

Governance and board composition

Strong governance is indispensable, but a fixed board structure should not be treated as self-evidently proportionate for every authorised model.

The proposed requirement for a board of at least five directors, with a majority independent and ordinarily resident in Australia, may be appropriate for many applicants. APRA should nevertheless explain why that exact structure is necessary in every case and how independence will be assessed for mutual, cooperative, community and publicly owned institutions.

Governance quality depends on competence, accountability, challenge, conflicts management and the ability to supervise the authorised business. It does not arise merely from reaching a specified headcount.

APRA should retain a hard skills and independence standard while allowing an applicant to demonstrate an equivalent governance structure where its permitted activities, ownership model and risk profile justify it.

The requirement to generate revenue before authorisation

The draft criteria require the applicant to generate revenue through at least one financial product available to the general public.

APRA should explain the prudential purpose of this requirement and how it applies to applicants whose proposed banking product cannot lawfully or commercially operate before authorisation.

The requirement may force applicants to construct a separate pre authorisation product merely to satisfy the licensing test. That could distort the business model, consume capital and create an activity that has little connection to the proposed banking institution.

A better test would be credible evidence of customer demand, distribution capability, revenue assumptions and commercial viability. Existing revenue may be relevant evidence, but it should not become a universal gate where it does not serve a clear prudential purpose.

Connected regulatory architecture

ADI licensing does not occur in isolation.

An applicant may need to navigate ASIC licensing, AUSTRAC obligations, ownership approval, corporate registration, restricted word approval, foreign investment processes, payment system access, the Financial Accountability Regime and numerous prudential and reporting standards.

A well-funded applicant may be capable of managing those processes concurrently. A local, mutual, cooperative, specialist, community or public applicant may face a materially greater burden.

APRA should establish a coordinated application pathway with the relevant Commonwealth bodies. The applicant should receive a single regulatory map identifying the approvals required, the responsible body, the information needed, the sequencing of decisions and the applicable service standard.

Where the same information is required by more than one regulator, it should be submitted once through a coordinated process wherever legally possible. Applicants should not be forced to reproduce substantially identical corporate, governance, ownership, technology and financial material across multiple agencies.

Where another approval is necessary to APRA's decision, APRA should accept responsibility for coordinating that dependency rather than merely advising the applicant to contact the other agency.

A fragmented regulatory system should not transfer the cost of government coordination failure onto a new entrant.

Competition and a plural banking system

APRA's statutory purpose is prudential, but prudential design has competition consequences.

Australia should not have a licensing framework that only comfortably accommodates investor owned, nationally scaled, digitally intensive institutions. A sound banking system can contain major banks, mutual banks, cooperative banks, specialist banks, regional banks, community banks and publicly owned banks, provided each institution is properly capitalised, supervised and capable of orderly exit.

Your own previous submissions on regional banking, digital payments, cash access, productivity and housing finance show why institutional diversity matters. Banking supports local credit assessment, small business formation, regional continuity, cash services, payment access and economic participation. When banking becomes more concentrated and more remote, communities lose more than a shopfront. They lose part of their economic infrastructure.

The final framework should expressly explain how the criteria would apply to a Commonwealth or state-owned bank, a bank operating through the Australia Post network, a member owned cooperative and an institution restricted to a particular region or customer class.

The issue is not whether those models should receive weaker prudential treatment. The issue is whether the framework can recognise different risk structures without forcing every applicant to replicate a major bank.

Small scale is not inherently safe, but neither is it inherently unsafe. The relevant questions are capital, liquidity, governance, concentration risk, operational resilience, supervisory visibility and exit capability.

APRA should regulate those risks directly.

Cash, payments and service capability

An ADI licence provides access to public confidence, the national monetary system, deposit protection arrangements and essential settlement infrastructure. Those privileges should carry public responsibilities.

The draft framework focuses heavily on the applicant's ability to accept deposits but says little about the broader service obligations associated with becoming a bank. APRA should at least require applicants to disclose their intended approach to cash access, customer support, service continuity, debanking risk, complaints handling, vulnerable customers and regional access where those matters are relevant to the business model.

This does not mean that every new bank must operate a national branch network. It means that APRA should understand the service consequences of the model being authorised and should not treat banking as a purely technical balance sheet activity.

A digital applicant should explain how customers who cannot use its ordinary digital channel will obtain support. A regionally focused applicant should explain its physical service model. A public or community applicant should be permitted to build around an Australia Post or shared service network without being treated as institutionally inferior merely because its structure differs from an incumbent bank.

Publication of licensing decisions

APRA should publish substantive reasons when an application is refused.

Publishing only the fact of refusal would provide little guidance to future applicants and could damage the reputation of the unsuccessful applicant without explaining the actual deficiency.

Reasons should identify the criteria not satisfied, the evidence considered, the material findings, the opportunities given to respond and whether the refusal arose from capital, governance, operational readiness, viability, ownership, supervisory or process concerns.

Commercially sensitive information, personal information and information that could prejudice financial stability should be protected. Confidentiality does not justify an absence of reasons.

Before a refusal is finalised, APRA should provide the applicant with a statement of preliminary adverse findings and a reasonable opportunity to correct factual errors or respond to concerns. The applicant should also be permitted to comment on the factual accuracy of any proposed public statement.

Published reasons would improve future applications, discipline regulatory decision making and allow the market to distinguish between a weak applicant and an applicant rejected because of a narrow or disputed interpretation of the framework.

Response to APRA's questions

Clarity and completeness of the licensing criteria

The proposed criteria are clearer than the existing framework, but they are not yet sufficiently precise.

The final criteria should distinguish universal prudential requirements from scalable institutional requirements. They should explain the operation of proportionality, the treatment of alternative evidence, the relationship between capital and licensing expenditure, the meaning of public product revenue, the application of board requirements to different ownership models and the interaction between the twelve-month period and delays outside the applicant's control.

Additional licensing guidance

The final guidelines should contain a criterion to evidence matrix showing the usual evidence APRA expects, the purpose of that evidence and the alternative forms of evidence that may be accepted.

The guidelines should contain separate explanatory material for mutual, cooperative, regional, community, specialist and publicly owned applicants. They should also explain what must be completed before application, what may develop during assessment and what must be fully operational before deposits are accepted.

Licensing process

APRA should publish a full process map showing the start and stop points for both the applicant clock and the APRA clock.

The process should include written milestone notices, document status tracking, version control, a clear process for further information requests, coordination with other regulators, preliminary adverse findings before refusal and published reasons for final decisions.

The clock should stop automatically whenever the next step is controlled by APRA or another necessary regulatory body.

Required documentation

The documentation checklist should state which documents are mandatory, which may be proportionate, which may be supplied later and what constitutes an acceptable version.

APRA should not repeatedly request substantially the same information under different headings. Each document should be marked as accepted, conditionally accepted, requiring amendment or outstanding.

Where APRA changes its expectations after material has been submitted, the change should be recorded and the application period should be adjusted accordingly.

Publication of refusals

APRA should publish reasons, not merely the fact of refusal.

A bare refusal provides little regulatory guidance and may unfairly stigmatise the applicant. A reasoned decision, appropriately redacted, improves transparency, consistency and accountability.

Conclusion

APRA's reform should proceed, but it should not be mistaken for a competition reform merely because it is clearer than the existing framework.

The proposed framework remains a heavy prudential gate. Much of that weight is justified because deposits must be protected. The unanswered question is whether every part of the gate is necessary for every applicant, whether the cumulative burden is proportionate and whether the process allows genuinely different banking institutions to emerge.

The final framework should preserve the hard prudential floor while rejecting incumbent replication as the unstated licensing standard. It should provide legally and operationally real proportionality, a controlled pathway for restricted business models, coordinated regulatory approvals, substantive reasons for refusals and a reciprocal time toll mechanism that allocates delay to the party responsible for it.

Australia does not need weak banks. It also does not need a licensing regime that welcomes competition in public statements while making only incumbent shaped institutions realistically capable of entering the market.

Depositor protection and banking diversity are not opposing objectives. A properly designed framework can secure both.