

9 December 2022

Mr Gideon Holland  
General Manager – Policy Development  
Australian Prudential Regulation Authority

Via email: [policydevelopment@apra.gov.au](mailto:policydevelopment@apra.gov.au)

Dear Mr Holland

### **Information Paper: Modernising the prudential architecture**

COBA appreciates the opportunity to provide feedback to APRA on its *Information Paper: Modernising the prudential architecture*.

COBA is the industry association for Australia's customer-owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has over \$160 billion in assets, around 10 per cent of the household deposit market and around five million customers. Customer-owned banking institutions account for around two-thirds of the total number of domestic Authorised Deposit-taking Institutions (ADIs).

### **Supporting modernising prudential architecture**

COBA supports APRA simplifying and rationalising the prudential architecture to become clearer, simpler, and more adaptable. This project is overdue, and we look forward to working with APRA to make the framework easier for our members to comply with and understand while meeting APRA's broader policy objectives.

We welcome the APRA's recognition that complexity in the prudential standards makes it more difficult for regulated entities to understand and comply with their obligations. As smaller regulated entities, we bear a disproportionate regulatory burden given the fixed costs involved in regulation. Reducing this complexity is welcome.

We agree that the number and size of standards can be reduced and made simpler without undermining the regulatory intent of the law. These changes can ensure that APRA achieves its regulatory outcomes at the lowest possible cost. We also support APRA's intent to take a digital-first approach and address new risks in a manner that minimises the burden of regulation on regulated entities.

Together these changes can make regulation simpler and easier for all organisations involved, including APRA and external stakeholders without undue costs.

### **Objectives and approach**

COBA acknowledges and understands the limitations of this project. We broadly agree with what is proposed by APRA within its limitations, however, more could be done to simplify and rationalise the corporations and financial laws. All regulators and legislators should look to do this in a way that

minimises compliance costs for our members without a material drop in consumer protection or financial safety.

We recognise and support the work being undertaken by the Australian Law Reform Commission (ALRC) on financial law simplification. However, much like the APRA's modernisation project, the ALRC has strict limitations on what it can consider and propose, especially on the policy settings of the law.

Over the last 20 years, there has been an exponential increase in the volume of laws that apply to our members. The law has grown so rapidly that it has become cumbersome, bloated, and incoherent leading to the need for these simplifications. We question the necessity and effectiveness of much of this law and consider it an unfortunate tendency of Governments to resort to complex and unwieldy new regulatory regimes instead of making targeted changes to existing laws to close gaps and address issues.

These changes are often in response to bad behaviours from the listed banks which generally do not afflict our members. Despite the purported intention of these changes to protect customers, we believe they often undermine genuine competition, and the accompanying consumer benefits, that our sector provides. Instead, these changes often further entrench the oligopoly of the major banks by hitting our members with disproportionate compliance costs that hinder our ability to compete.

Considering the above, we believe that regulators and legislators need to do much more across the board, however, APRA's suggested approach to addressing new challenges is a welcome place to start.

## Key considerations

COBA supports APRA's proposed approach and believes that targeting better regulation, new digital approaches, and changing APRA's approach to responding to new challenges will be helpful to our members by ensuring a clear and effective prudential framework. We provide some considerations on these elements below.

### Better regulation

#### *Ensuring simplicity and consistency that works*

Improvements to readability and simplification of the standards are highly desirable, however, in doing so APRA needs to be cautious that it does not undermine the clarity and nuance in the standards. As part of these improvements, APRA should consider how it can simplify and consolidate definitions as well as simplify the cross references between standards as these contribute to making the obligations complex and convoluted. The need to align definitions covers both between prudential standards and with reporting taxonomies. In addition, the reduction in the number of standards needs to ensure that this simplification is coherent and meaningful in reducing regulatory costs and does not increase ambiguity. APRA should also consider how to simplify different group-level requirements and reporting, or at least more clearly communicate the differences.

#### *Implementing continuous improvement*

COBA believes that APRA should also consider how it can continuously improve the framework based on user feedback once the project is complete. We expect this project to lead to positive changes, but a continuous improvement approach through both the project and beyond will ensure that it continues to meet its outcomes.

For example, COBA welcomes APRA's work to develop a banking Board Director handbook as a strong and practical first step in addressing the issue of prudential complexity. Consolidating all the disparate obligations on directors across the standards into a single document will be helpful to our members. We welcome its recent release and look forward to APRA engaging with its users to

understand how it can continue to improve this product alongside the APRA's periodic updates as the underlying framework changes.

#### *Ensuring the clear status of standards and guidance*

An important issue for modernising the prudential framework is to ensure that the elements are properly focused, and their individual legal status is clear. COBA notes that some standards may contain material that is better suited to practice guides whilst some practice guides contain material that should be in the standards. Cleaning up the standards and practice guides will provide clarity to our members on knowing what the binding standards are while also having clear examples and guidance to help them apply these standards. In delineating between these elements, we support APRA's recent moves to link guidance with the applicable requirements in its bank director handbook and the proposed financial contingency guides.

#### *Increasing the navigability of the framework*

Finally, it must be easy for regulated entities to find and distinguish between different versions of the standards and practice guides, such as what is currently in force and who will be in force in future. This will support entities to clearly understand what they are currently subject to and what they will be subject to.

APRA also needs to improve how it archives defunct documents and communicates the history of changes. More information on how the standards and practice guides have evolved will allow our members to better understand the how and why of APRA's changes. This may be an additional layer of contextual information added to the current standards and guidance suite. While the accompanying Discussion Papers may contain this information, they can be difficult to navigate and locate both now and in future. APRA's website should also clearly note which documents are no longer current given some users may find these documents via web search.

#### *Increasing transparency of policy development framework*

An essential aspect of improving policy development is for APRA to increase the transparency of its policy development framework. This will allow stakeholders to understand the process better and provide suggestions on how it could potentially be improved through stakeholder engagement. APRA could achieve this transparency through the public release of its framework in full or in summarised form to inform stakeholders of the why, what and how of APRA's policy development process. The UK Prudential Regulation Authority has recently done this as part of its implementation of the Future Regulatory Framework Review.<sup>1</sup>

COBA also believes that APRA could improve transparency and regulation through the full release of the APRA business case on new and existing regulations (i.e. why a standard and not another approach). This will help stakeholders better understand the need and case to change regulations.

#### *Embedding multi-faceted proportionality*

We support APRA's approach to entrench proportionality in its standards through the bifurcated significant financial institutions framework. This framework recognises that what may be an appropriate response for the major banks may not be so for our members and that a one size fits all approach is not always best. However, we do caution that the design of APRA's framework in this bifurcated world should allow for proportionality within groups (i.e. not two sizes fits all). COBA's largest members are likely to be the smallest of the SFIs in the very near future and should not be excessively burdened by a framework targeted at larger entities. We also note that there is also significant size variation in the non-SFI grouping as well.

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<sup>1</sup> See <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/discussion-paper/2022/dp422.pdf>

## Digital first

### *Introducing modern digital navigation of the framework*

COBA supports APRA making more digital tools available to make it quicker and easier to access and navigate the framework. We support the proposed improvements to APRA's website and the creation of the prototype digital handbook. We suggest APRA include a tool to assist entities to find and identify the relevant standards for different groups of entities (e.g. standardised credit risk non-SFIs). APRA should also consider whether these tools could filter on an individual entity basis given APRA is likely to have this information in an internal database. We would welcome any opportunities to 'road test' any digital navigation.

### *Creating Regtech-friendly regulations*

Regtech providers can allow smaller entities to reduce the manual costs of dealing with regulation. We therefore support APRA investigating how it can "draft standards in a way that facilitates Regtech solutions and supports entities' governance, risk and compliance (GRC) systems." In this investigation, we suggest that APRA consult as widely as possible with the Regtech community to ensure that this can reach the desired goal.

## New risks, new rules

### *Flexible framework*

We welcome APRA's desire to take a more integrated approach to responding to new issues rather than simply bolting on yet another standard as a response. As noted above, it has been the tendency of Governments for many years to respond to challenges with new and unnecessarily complicated regulatory regimes rather than taking a targeted response. If APRA can successfully adopt a more considered approach to developing its standards, then this would be most welcome to our members.

### *An evolving supporting framework*

We would also support APRA increasing the frequency of its frequently asked questions (FAQs) updates. As a form of guidance, these FAQs respond to in-demand issues after the release of practice guides and can have very valuable. Publishing FAQs increases transparency as it provides this information to all entities and stakeholders. APRA should also clearly present and link these FAQs in the handbook to the relevant passages.

We welcome the opportunity to continue working with APRA on this project and future opportunities to provide feedback.

We thank APRA for holding roundtable sessions for our members and welcome any further opportunities to meet with APRA to discuss any issues as this project unfolds.

Thank you for the opportunity to respond to this Information Paper. If you wish to discuss any aspect of this submission, please contact Mark Nguyen ([MNguyen@coba.asn.au](mailto:MNguyen@coba.asn.au)).

Yours sincerely



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