

draft

Relevant Sections of the Australian Prudential Regulation Authority Act 1998 and the Banking Act 1959 of Australia

The relevant definition in section 3(1) of the Australian Prudential Regulation Authority Act 1998 (APRA Act) should be amended as follows:

action that is likely to have a detrimental effect on financial system stability in New Zealand includes (without limitation) an action that:

- (a) *prevents, or interferes with or otherwise disrupts an outsourcing arrangement;*
- (b) *would cause, or would be reasonably likely to cause, an ADI (within the meaning of the Banking Act 1959) to breach, in a material respect, an outsourcing arrangement, including on the appointment of an ADI statutory manager (within the meaning of the Banking Act 1959) or an administrator of an ADI's business (within the meaning of the Banking Act 1959);*
- (c) *would cause, or would be reasonably likely to cause, an ADI (within the meaning of the Banking Act 1959) to breach, in a material respect, any contractual obligation to provide transition-out services in connection with the sale or disposal by an ADI of its New Zealand subsidiary or separation of an ADI (within the meaning of the Banking Act 1959) from its New Zealand subsidiary by any other means.*

New Zealand related party means a financial institution registered or incorporated in New Zealand which is a related entity (within the meaning of the Corporations Act 2001) of an ADI.

transition-out services means any services provided by an ADI to a New Zealand subsidiary in relation to the transition by a New Zealand subsidiary of that ADI from an outsourcing arrangement with that ADI to a replacement arrangement with a third party or to an arrangement where that subsidiary itself performs some or all of the relevant services which were the subject of that outsourcing arrangement.

Section 8A of the APRA Act states:

8A Trans-Tasman cooperation

(1) *In performing and exercising its functions and powers, APRA must:*

- (a) *support the prescribed New Zealand authorities in meeting their statutory responsibilities relating to prudential regulation and financial system stability in New Zealand; and*
- (b) *to the extent reasonably practicable, avoid any action that is likely to have a detrimental effect on financial system stability in New Zealand*

(2) *Without limiting section 8A(1), APRA must not take any action:*

(a) *in relation to any outsourcing arrangement under which an ADI provides services to its New Zealand related party, which:*

- (i) *makes, or is likely to make, that outsourcing arrangement materially more onerous for the New Zealand related party;*
- (ii) *makes, or is likely to make, any termination or disengagement by the New Zealand related party from that outsourcing arrangement materially more onerous for the New Zealand related party; or*
- (iii) *otherwise disrupts, or is likely to disrupt, that outsourcing arrangement.*

including in circumstances where that New Zealand related party will cease, or is likely to cease, or it is possible that it will cease, to be a New Zealand related party of that ADI; and

(b) *in relation to any outsourcing arrangement under which an ADI provides services to a New Zealand financial institution who was, but has (for any reason) ceased to be, a New Zealand related party of that ADI, which:*

- (i) *makes, or is likely to make, that outsourcing arrangement materially more onerous for the New Zealand financial institution; or*
- (ii) *makes, or is likely to make, any termination or disengagement by the New Zealand financial institution from that outsourcing arrangement materially more onerous for the New Zealand financial institution; or*
- (iii) *otherwise disrupts, or is likely to disrupt, that outsourcing arrangement.*

(3) *Section 8A(2) applies irrespective of whether:*

(a) *the ADI is in statutory management; or*

(b) *any New Zealand financial institution who was, but has (for any reason) ceased to be, a New Zealand related party of an ADI is in statutory management (or is subject to a similar status under New Zealand law); or*

(c) any New Zealand related party is in statutory management (or is subject to a similar status under New Zealand law).

(42) APRA must balance the requirements of subsection (1) with the requirements specified in section 8.

(53) If:

(a) APRA proposes to take an action; and

(b) APRA has reasonable cause to believe that the action is likely to have a detrimental effect on financial system stability in New Zealand;

APRA must, except to the extent that APRA considers it is not reasonably practicable in the circumstances, having regard to urgency or other similar constraint, consult with and consider the advice of each prescribed New Zealand authority APRA considers to be relevant in the circumstances before taking the action.

(64) The performance of a function or the exercise of a power by APRA is not invalid merely because of a failure by APRA to comply with this section.

and Section 8 of the APRA Act states:

8 Purpose for establishing APRA

(1) The main purposes for which APRA exists are as follows:

(a) regulating bodies in the financial sector in accordance with other laws of the Commonwealth that provide for prudential regulation or for retirement income standards;

(b) administering the financial claims schemes provided for in the Banking Act 1959 and the Insurance Act 1973;

(c) developing the administrative practices and procedures to be applied in performing that regulatory role and administration.

(2) In performing and exercising its functions and powers, 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.

The relevant definition in section 5(1) of the Banking Act 1959 of Australia (Banking Act) **should be amended** as follows:

action that is likely to have a detrimental effect on financial system stability in New Zealand includes (without limitation) an action that:

- (a) *prevents, ~~or~~ interferes with or disrupts an outsourcing arrangement;*
- (b) *would cause, or would be reasonably likely to cause, an ADI to breach, in a material respect, an outsourcing arrangement, including on the appointment of an ADI statutory manager or an administrator of an ADI's business;*
- (c) *would cause, or would be reasonably likely to cause, an ADI to breach, in a material respect, any contractual obligation to provide transition-out services in connection with the sale or disposal by an ADI of its New Zealand subsidiary or separation of an ADI from its New Zealand subsidiary by any other means.*

A new section 11CA(7) **should be inserted** into the Banking Act as follows:

- (7) *To avoid doubt:*
 - (a) *section 8A of the Australian Prudential Regulation Authority Act 1998 (which deals with trans-Tasman cooperation) applies to the exercise of APRA's power to give directions in this section 11CA in light of its duties in section 12; and*
 - (b) *in exercising APRA's powers under this section 11CA, it must, to the extent reasonably practicable, avoid any action that is likely to have a detrimental effect on financial system stability in New Zealand.*

Section 12 of the Banking Act **should be amended** as follows:

12 APRA to protect depositors

- (1) *It is the duty of APRA to exercise its powers and functions under this Division for the protection of the depositors of the several ADIs and for the promotion of financial system stability in Australia.*
- (2) *To avoid doubt:*
 - (a) *section 8A of the Australian Prudential Regulation Authority Act 1998 (which deals with trans-Tasman cooperation) applies to the performance of functions and the exercise of powers by APRA under this Division;*
 - (b) *the duty in subsection (1) extends to the protection of depositors of subsidiaries of the several ADIs for the promotion of financial system stability in New Zealand and, to the extent reasonably practicable, to avoiding any action that is likely to have a detrimental effect on financial system stability in New Zealand.*

END