



Australian Government
The Treasury

MEMORANDUM OF UNDERSTANDING ON FINANCIAL DISTRESS MANAGEMENT

BETWEEN THE MEMBERS OF THE COUNCIL OF FINANCIAL REGULATORS

This Memorandum of Understanding (MOU) between the members of the Council of Financial Regulators (Council) sets out the objectives, principles and processes for dealing with stresses in the Australian financial system.

The MOU identifies the responsibilities of each Council member and is intended to facilitate a coordinated response to stresses in the financial system.

1. Introduction

The Council's membership comprises representatives of the Reserve Bank of Australia (RBA), the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and the Treasury. The Council is chaired by the Governor of the RBA.

The Council provides a forum for facilitating coordination among the members in order to ensure prompt and effective identification of, and responses to, developments that pose a threat to the stability of the financial system.

The circumstances to which this MOU relates include, but are not limited to, the following:

- financial distress in an authorised deposit-taking institution (ADI), general insurer, life insurer or superannuation fund;
- disruption to financial markets; or
- interruptions to the smooth functioning of financial system infrastructure (including payment and settlement systems).

2. Responsibilities of the Council and member agencies

The Council's objectives are to contribute to the efficiency and effectiveness of regulation and to promote stability of the Australian financial system.

Each member is fully responsible for discharging its own responsibilities within its statutory mandate.

The responsibilities of each member for dealing with stress in the financial system are as follows:

- The RBA has primary responsibility for the maintenance of overall financial system stability, including stability of the payments system, and for providing liquidity support to the financial system or to individual financial institutions where appropriate.
- APRA is responsible for the prudential supervision of banks, building societies, credit unions, life and general insurance companies, friendly societies and certain superannuation funds. In performing its functions to protect the interest of depositors, policyholders and fund members, APRA is required 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. APRA has failure management and enforcement powers to deal with a distressed institution and will be responsible for administering the Financial Claims Scheme (FCS).
- ASIC is responsible for monitoring, regulating and enforcing corporations and financial services laws, and for promoting market integrity and consumer protection across the financial services sector and the payments system.
- The Treasury provides advice to the Government on policy and possible reforms that promote a sound financial system, including on financial distress management arrangements. The Treasury has responsibility for advising the Government on matters relating to the exercise of the Treasurer's powers, and on the broader economic and fiscal implications of developments that pose a threat to the stability of the financial system.

Each agency has responsibility for liaising and coordinating responses with its equivalent agencies in other countries in situations where financial stress has cross-border implications.

3. Objectives of financial distress management

In exercising their respective financial distress management responsibilities Council members will seek to balance the following objectives:

- Protecting depositors, policyholders or superannuation fund members, with a view to avoiding or minimising losses where possible.
- Maintaining the stability of, and confidence in, the financial system.
- Resolving the distress situation effectively and as quickly as practicable.
- Ensuring that the owners, directors and management of a distressed or failed institution bear appropriate responsibility.
- Minimising the economic and fiscal impacts of any financial distress resolution arrangements, and maintaining appropriate market disciplines.

4. Principles that guide decisions and actions

Private sector or market-based solutions are generally the preferred means of responding to financial system distress. However, there may be circumstances where a public sector response is required in order to satisfactorily resolve a financial distress situation. In these circumstances, and

where Council members need to exercise any of the statutory powers available to them, the following principles will be considered:

- The response will be guided by the relevant statutory objectives of each member and the objectives referred to in this MOU.
- In considering the most appropriate means for resolving financial distress, the impacts on the broader economy will be taken into account.
- Any resolution option will also take into account short- and long-term benefits, costs and risks.
- Communication will be timely, coordinated and focused on the information needs of stakeholders.
- The response to financial distress will take into account cross-border implications where relevant, with a view to achieving a satisfactory outcome for all affected jurisdictions, subject to ensuring that the outcome meets the needs of the Australian financial system and depositors, policyholders and fund members in Australia. Trans-Tasman issues are particularly important in this context, given the integration between Australia and New Zealand in the financial area and relevant legislative mandates.

5. Financial distress: detection and responses

The process for monitoring and responding to emerging financial distress includes the following elements.

5.1 *Detection of emerging distress*

The Council members have the following responsibilities for detecting emerging distress in the financial system:

- The RBA has lead responsibility for monitoring financial markets, and payment and settlement systems, and for advising the Treasurer or other relevant Minister on emerging distress in these markets and systems.
- APRA has lead responsibility for monitoring and prudentially supervising financial institutions. It also has statutory responsibilities to advise the Treasurer or other relevant Ministers in the event that a supervised institution is unable, or about to become unable, to meet its financial obligations.
- ASIC has lead responsibility for monitoring financial service providers and for advising on emerging vulnerabilities in this area.
- The Treasury, through its liaison activities with industry and other agencies, will inform the other Council members of any concerns regarding the financial system or a particular institution and seek their advice on these matters for the purpose of keeping the Government apprised of the situation.

Notwithstanding these responsibilities, once a Council member becomes aware of an emerging vulnerability or distress situation that is relevant to the responsibilities of the other members, it will advise the other members as a matter of urgency. In particular, Council members will advise each

other as early as possible of information that gives rise to concerns on the condition of a financial institution or market, and in respect of potential threats to financial stability.

Timely advice will be provided to the Treasurer and the Treasury on developments and proposed steps to be taken, both in regard to a distressed institution and potential threats to financial stability and the economy.

5.2 Assessment of financial stress and implementation of response options

If significant potential or actual financial distress has been identified, the Council serves as a coordination forum for assessing the situation and considering possible response options. If a decision and its implementation fall directly within the responsibility of a Council member, that agency is responsible for that decision.

Members of the Council have the following responsibilities:

- The RBA has lead responsibility for assessing and advising on the nature and scale of the systemic impact of significant financial stress, including implications for financial markets and the payments system. The RBA is also responsible for evaluating and implementing response options that involve liquidity support or the use of payments system powers.
- APRA has lead responsibility for assessing and advising on the nature and extent of financial distress in a supervised institution, including liquidity and solvency, and for evaluating and implementing supervisory response options relating to any affected institutions. In particular, APRA is responsible for decisions relating to the investigation of a supervised institution, giving directions to such an institution, appointing a statutory manager to an ADI, giving directions to a statutory manager, and recommending to the court that a judicial manager be appointed to a general insurer or life insurer. If the FCS has been invoked in respect of an ADI or general insurer, APRA has responsibility for administering the FCS in respect of that institution.
- ASIC has lead responsibility for assessing and advising on the regulatory implications of the situation for financial markets and investors, the disclosure implications of any resolution option, and for liaising with market operators. ASIC is responsible for decisions relating to public disclosure statements by institutions that are subject to the Corporations Act.
- The Treasury has lead responsibility for providing policy advice to the Government, through the Treasurer, on any responses that involve Government action.

Where a Council member's action could impact on the performance of responsibilities by another member or where the action may have implications for the overall response to the distress situation, the first member will ensure sufficient notice of the proposed action is provided.

5.3 Coordination of response

The implementation of a response to resolve a distressed institution or broader financial system stress will be coordinated between the members of the Council, where more than one member has responsibility for responding to the situation.

Where the Treasurer or the Government makes a decision on a response, the Treasury will inform the other Council members of that decision as early as possible. The members of the Council will work together to implement the Government's decision.

The Council members will keep the Treasurer and the Treasury informed on the progress of the implementation of a response to financial stress.

5.4 Coordination of communication

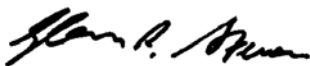
Each member will develop and implement communications with stakeholders, including public communications, in its respective areas of responsibility. Where the response involves actions by more than one Council member, communications are to be coordinated across members of the Council, and with the Government.

Subject to their statutory obligations, Council members have the following particular responsibilities:

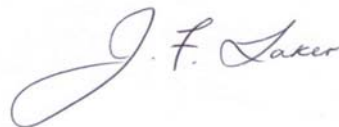
- The RBA has responsibilities for public communications on liquidity support and the payments system.
- APRA has responsibilities for public communications on supervisory actions taken with respect to supervised institutions and implementation of the FCS. APRA is responsible for communications regarding individual supervised institutions prior to any coordinated response.
- ASIC has responsibility for public communications relating to the Corporations Act and regulatory actions taken in relation to financial markets.
- The Treasurer/Government has lead responsibility for communicating to the public any resolution options that involve a Government decision, including the decision to apply the FCS to an ADI or general insurer.

5.5 Cross-border cooperation

Members will endeavour to assist each other in meeting cross-border cooperation obligations.



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Governor
Reserve Bank of Australia



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Chairman
Australian Prudential Regulation Authority



Tony D'Aloisio
Chairman
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Commission



Ken Henry
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The Treasury

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