

Australian Prudential Regulation Authority instrument fixing charges No. 2 of 2020

Approval of ADIs' applications with respect to the Reserve Bank of Australia's Committed Liquidity Facility - Calendar Year 2019

EXPLANATORY STATEMENT

Issued by the Australian Prudential Regulation Authority (APRA)

Australian Prudential Regulation Authority Act 1998, paragraphs 51(1) (a) and (b)

Instrument to which this explanatory statement relates

This Explanatory Statement relates to the instrument fixing charges which is made under paragraphs 51(1)(a) and (b) of the *Australian Prudential Regulation Act 1998* (the APRA Act) and which is dated 05 June 2020 (the instrument).

1. Background

Legislative framework

APRA has statutory responsibility for the prudential supervision of most of the superannuation industry, the life, general and private health insurance industries, and authorised deposit-taking institutions (ADIs). ADIs include banks, building societies and credit unions.

Subsection 51(1) of the APRA Act provides that APRA may, by legislative instrument, fix charges to be paid to it by persons in respect of:

- (a) services and facilities which APRA provides to such persons; or
- (b) applications or requests made to APRA under laws of the Commonwealth.

Subsection 51(2) of the APRA Act provides that a charge fixed under subsection 51(1) must be reasonably related to the costs incurred or to be incurred by APRA in relation to the matters to which the charge relates and must not be such as to amount to taxation.

Purpose and operation of the instrument

The instrument, made by the Executive General Manager (Corporate) as a delegate of APRA, imposes a charge for the review of applications made to APRA under Attachment A, paragraphs 17 and 19 of *Prudential Standard APS 210 – Liquidity* made under subsection 11AF(1) of the *Banking Act 1959*, and the assessment and determination of an appropriate size of Committed Liquidity Facility (CLF) sought by ADIs and offered by the Reserve Bank of Australia (RBA) under the Basel III Liquidity Framework (Basel III).

Factual background

In December 2010, the Basel Committee on Banking Supervision (the Committee) released Basel III which included a series of measures designed to strengthen liquidity risk management so as to promote a more resilient banking system. In January 2013, the Committee released a revised version of these measures. APRA's core objective in implementing these reforms is that ADIs in Australia appropriately manage their liquidity risk. The Liquidity Coverage Ratio's (LCR) contribution to this objective is the requirement that ADIs subject to the LCR must at all times be able to demonstrate their ability to withstand net cash outflows for a minimum of 30 days under a severe liquidity stress.

Also in December 2010, APRA and the RBA announced that ADIs would be able to establish a secured Committed Liquidity Facility with the RBA. The CLF enables participating ADIs to access, if eligible, a pre-specified amount of liquidity. The CLF sought would be sufficient in size to cover any shortfall between the ADI's holdings of high-quality liquid assets (HQLA), and the requirement to hold such assets under the LCR. The need for such a facility arises from the relatively short supply of Australian dollar HQLA.

Eligible ADIs are invited to apply for the inclusion of a CLF in their LCR on an annual basis. APRA determines the appropriate size of the CLF for each ADI. The LCR regime, including CLF arrangements, commenced in Australia from January 2015.

Basis of charging

APRA is principally funded by the annual supervisory levy imposed by the *Financial Institutions Supervisory Levies Collection Act 1998* and the related levy imposition Acts. However, section 51 of the APRA Act empowers APRA to impose charges in respect of services or facilities provided by it and in respect of applications made to it under Acts which it administers. Underlying section 51 is the principle of 'user pays' – that parties who receive special services or benefits from APRA should, where appropriate, have to pay the cost of providing them rather than leaving them to be funded out of the supervisory levy, which is paid by the general body of regulated institutions.

APRA commenced charging fees to recover its cost for undertaking CLF reviews, assessments, size determinations and approvals (CLF approval activities) from those ADIs seeking to include a CLF in their LCR from the calendar year 2016.

How the charges have been calculated

The charges set by the instrument are fixed on a cost recovery basis and in line with the *Australian Government Cost Recovery Guidelines July 2014*.

The charge is based on the need to recover APRA's costs of carrying out new or annual CLF approval activities. These costs are calculated based on an estimation of the APRA staff time required to complete the CLF approval activities. On this basis, APRA's total cost recovery in respect of CLF approval activities in 2019 is \$605,000 (excluding GST).

The charge fixed for each ADI relates to the costs expected to be incurred by APRA in relation to CLF approval activities, which in turn are driven by the size, business mix and complexity of each case.

2. Operation of the instrument

Description of the charges

The charge imposed by the instrument reflects APRA's expected costs, based on associated time and effort to be expended on the relevant activities. It ranges from \$10,000 through to \$80,000, excluding GST.

Charges must be reasonably related to the costs and expenses incurred

As indicated above, the charge fixed by the instrument are set on a cost recovery basis related to the estimated time and effort involved in the discharge of APRA's responsibilities and in line with the *Australian Government Cost Recovery Guidelines July 2014*.

Cost Recovery Implementation Statement

A Cost Recovery Implementation Statement (CRIS) has been tabled in support of this Explanatory Statement and will be published on the APRA website prior to invoicing.

Charges must not amount to taxation

As disclosed in the accompanying CRIS, the charges are reasonably related to the costs incurred or to be incurred by APRA in providing the services concerned and therefore do not constitute a tax.

3. Consultation

The *Legislation Act 2003* requires that, before a legislative instrument is made, an appropriate consultation must be undertaken with those impacted. Section 17 of that Act outlines the criteria for what constitutes an appropriate consultation.

Before making the instrument, APRA informed the affected ADIs of the proposed charges. The relevant officers of all the entities were advised by email of APRA's intention to recover the costs of APRA's CLF approval activities. The email also invited the entities to raise any questions or concerns.

The relevant Chief Risk Officers or the Executive Directors in the risk management groups of the ADIs were consulted.

During the consultation process, the affected ADIs did not raise any objections to the charges being applied.

4. Statement of Compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

A Statement of Compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is provided in Attachment A to this Explanatory Statement.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (HRPS Act).

Overview of the Legislative Instrument

The Legislative Instrument will fix charges to be paid to APRA by ADIs for approval of ADIs' applications with respect to the RBA's Committed Liquidity Facility - Calendar Year 2019.

Human rights implications

APRA has assessed the Legislative Instrument against the international instruments listed in section 3 of the HRPS Act and determined that the Legislative Instrument does not engage any of the applicable rights or freedoms, as the charges payable by the ADIs will not have any direct or indirect effect on the rights of individual persons.

Conclusion

Australian Prudential Regulation Authority instrument fixing charges No. 2 of 2020 is compatible with human rights as it does not raise any human rights issues.