

# SUBMISSION

## Submission to Treasury – APRA Capability Review

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10 April 2019

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APRA Capability Review Secretariat  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Via email: [apracapabilityreview@treasury.gov.au](mailto:apracapabilityreview@treasury.gov.au)

18 April 2019

Dear Sir/Madam

**APRA Capability Review**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Treasury's consultation on APRA's Capability Review.

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$2.7 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 15.6 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact Maggie Kaczmarska, Senior Policy Advisor on (02) 8079 0849 or by email [mkaczmarska@superannation.asn.au](mailto:mkaczmarska@superannation.asn.au).

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Glen McCrea', is written over a light blue horizontal line.

Glen McCrea  
Deputy Chief Executive Officer and Chief Policy Officer

## Improved transparency in use of resources by APRA

ASFA considers it critical that the regulators are funded to a level that is appropriate to enable them to fulfil their regulatory functions, while balancing the impost on industry and, indirectly, on consumers. It is also important to ensure that the regulators apply their funding in an effective manner, including by directing resources to those supervisory/enforcement activities which deliver appropriate outcomes in terms of the cost-benefit differential.

It is also necessary to ensure that the regulators have access to an adequate level and mix of resources, including appropriately skilled and experienced staff. This should specifically include consideration of whether sufficient resources are directed toward investigation of (potential) misconduct and the pursuit of appropriate enforcement activity.

It is important that APRA provides an appropriate level of transparency to all stakeholders – including the Government, industry participants and consumers – as to their utilisation of allocated funding and resources. This should specifically include information on the resources allocated toward enforcement activity and outcomes of that activity. Greater reporting could be provided through more details in the APRA annual report on specific activities undertaken and how they are funded.

Increasing transparency over the calculation, allocation and use of levies raised from industry would provide appropriate insight into APRA's activities and build confidence that APRA is functioning well. Transparency is particularly important given APRA collects an annual levy from trustees that involves full recovery of all supervisory costs incurred by APRA.

Funds raised from the APRA regulated superannuation sector should not cross-subsidise regulation of other sectors, providers or financial services. Cross-subsidisation of other activities is not equitable and contributes to higher fees in superannuation without improving outcomes for fund members.

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) recommended a new oversight body be created to biennially assess the effectiveness of regulators and evaluate performance. For transparency, the report would be laid before the Houses of Parliament.<sup>1</sup> ASFA supports this recommendation in-principle.

### Recommendation

- Increasing transparency over the calculation, allocation and use of levies raised from industry
- Implementation of recommendation 6.14 of the Royal Commission Final Report

## Greater clarification of APRA's role and co-operation between regulators

There is the potential for 'grey areas' to develop between regulators in relation to their regulatory roles. While APRA's and ASIC's present allocation of regulatory responsibilities remains broadly appropriate, there is need to review the regulatory mandates for APRA and ASIC to identify any overlaps or gaps. As the Productivity Commission noted, any overlaps or gaps between ASIC's and APRA's supervisory

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<sup>1</sup> Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (2019) Vol. 1, pages 477-480

responsibilities creates the risk of regulatory breaches not being addressed.<sup>2</sup> To maintain confidence in the system it is necessary that regulators act promptly and appropriately to investigate and address misconduct or potential misconduct.

The Royal Commission recommended that the roles of APRA and ASIC, in relation to superannuation, be adjusted to ensure there are no supervisory gaps. APRA should be the prudential regulator and ASIC the conduct regulator. ASFA is supportive of recommendations 6.3 – 6.5 made in the Royal Commission’s Final Report and encourages their implementation.<sup>3</sup>

In addition, given the commonality of their regulated populations, ASFA sees scope for APRA and ASIC to undertake a greater level of joint supervisory action — as has occurred recently in relation to life insurance claims and claims-related disputes.<sup>4</sup> In such cases, publication of joint reports or guidance material is particularly beneficial as it provides:

- clear messaging to industry participants regarding the regulators’ expectations without any potential for inconsistency between the regulators
- positive confirmation to all stakeholders regarding the ability of the regulators to work collaboratively across their shared regulatory responsibilities.

| Recommendation   |
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| <ul style="list-style-type: none"><li>• Review of the regulatory mandates for APRA and ASIC to identify any overlaps or gaps</li><li>• Implementation of recommendations 6.3 – 6.5 of the Royal Commission Final Report</li><li>• ASIC and APRA to undertake greater level of joint supervisory action</li></ul> |

## Increased utilisation of reported data to inform APRA’s engagement

Access to data, and insightful analysis of that data, enables a regulator to act more promptly to address (potential) non-compliance or misconduct. Superannuation trustees currently report substantial volumes of data to APRA on a quarterly, annual and ad hoc basis. It is not clear that APRA has yet optimised its use of this data for supervisory purposes, despite receiving specific funding allocations in recent years to enable them to enhance their analytics.

We note that APRA’s corporate plan for 2018-22 acknowledges the need to improve its use of data and notes that the “increasingly interconnected nature and complexity of financial system risks requires APRA to better leverage a broad range of data and information to enhance the quality and speed of decision making”<sup>5</sup>. ASFA welcomes the commitments made in the plan, including to ‘articulate a well understood data strategy to enable better decision-making’.

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<sup>2</sup> Productivity Commission 2018, *Superannuation: Assessing Efficiency and Competitiveness*, Report no. 91, Canberra, page 475

<sup>3</sup> Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (2019) Vol. 1, pages 453-455

<sup>4</sup> ASIC Media Release 18-150MR, APRA and ASIC release new life-claims data, 24 May 2018 & ASIC Media Release 19-070MR, APRA and ASIC publish world-leading life insurance data, 29 March 2019

<sup>5</sup> APRA, 2018-22 Corporate Plan

APRA and the other regulators have access to considerable volumes of data that should, if analysed effectively, provide insight on emerging risks (both sector-wide and entity-specific). In some cases, it may only be possible to draw those conclusions where data is shared. Given the overlap between their regulated populations and the division of regulatory responsibilities, it is vital that the regulators are in close communication and work co-operatively to identify and address potential risk areas. As the Royal Commission noted, ‘failures to share information, co-ordinate approaches and act with a consistent purpose will result in duplication of effort or, worse, regulatory failings’.<sup>6</sup>

ASFA acknowledges that the regulators have mechanisms in place for information sharing, however we consider that these should be subject to a process of continuous review and improvement, to ensure they are operating effectively. As recently noted by Treasury, the regulators’ ability to effectively share information is affected by legislative restrictions to maintain confidentiality, systems to make sharing information simple and accessible, and the capabilities of staff to identify information of common interest.<sup>7</sup> The Royal Commission also recommended that APRA and ASIC share information to the maximum extent practicable.<sup>8</sup>

Increasing the information flow between regulators should create administrative efficiencies for both government and superannuation trustees. The current reporting requirements and standards vary from agency to agency and there are examples of the same information being required in different formats by different agencies. For some time ASFA has been arguing that reporting requirements should be made as consistent as possible across all government agencies, and any new reporting requirements should take account of data that is already available.<sup>9</sup> Duplicative effort creates unnecessary work for both government and superannuation trustees. ASFA considers the best way to ensure consistency and efficiency in data collection is for the government to adopt a centralised approach to data collection.

ASFA also notes that the Australian National Audit Office (ANAO)’s audit of APRA in 2016 recommended that APRA promote a proportionate, risk-based supervision of superannuation entities and independent reviews of work undertaken by supervisors.<sup>10</sup> APRA’s Risk and Data Analytics Division (RDA) is optimally placed to undertake appropriate analysis of the available data and help implement these ANAO recommendations. RDA expertise should be utilised by APRA’s supervisors in their work, as it would provide an objective analytic overlay to the interactions between APRA supervisors and superannuation entities. It would also help the transfer of knowledge between staff in APRA, as the RDA should have a better overview of the superannuation system overall through its data analytics.

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<sup>6</sup> Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (2019) Vol. 1, page 458

<sup>7</sup> Treasury, Financial Services Royal Commission, *Submission on key policy issues*, 13 July 2018 (uploaded to the Commission’s website as Background Paper No 24), paragraph 124

<sup>8</sup> Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (2019) Vol. 1, Recommendation 6.9

<sup>9</sup> See, for example, <https://www.superannuation.asn.au/policy/submissions/2018>, Submission to the Productivity Commission, ASFA response to the draft report *Superannuation: Assessing Efficiency and Competitiveness*

<sup>10</sup> The Auditor-General ANAO Performance Audit, *Prudential Regulation of Superannuation Entities: Australian Prudential Regulation Authority*, Report No.26 2016–17, recommendations 1 & 3

#### Recommendation

- Better optimising the use of data provided by superannuation trustees for supervisory purposes
- Information sharing mechanisms between regulators should be subject to continuous review and improvement to ensure they are operating effectively
- A coordinated approach to data collection by regulators
- Greater use of the Risk and Data Analytics Division in the supervision of superannuation entities

## Consideration of compliance costs and impact on industry

Regulatory burden is a perennial drag on superannuation and the retirement outcomes of Australians. The superannuation sector has recently been subjected to significant regulatory change and reporting requirements. There is need to develop regulation and legislation with a view of removing regulatory red tape, waste and inefficiency in the system.

More consideration needs to be given to the costs of compliance for businesses affected by new regulation. At a minimum, the Office of Best Practice Regulation's principles should be followed when developing regulation. There needs to be greater internal capacity to undertake cost benefit analysis of new regulation and this should be undertaken prior to APRA making detailed regulatory recommendations to government. In addition, there needs to be greater flexibility by APRA in achieving objectives whilst considering the impact on industry.

#### Recommendation

- Greater consideration of costs of compliance for businesses affected by new regulation