

SUBMISSION

Submission to Treasury —
Superannuation regulator
roles, Financial Regulator
Oversight Authority, ASIC
directions power

28 February 2020

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28 February 2020

Dear Sir/Madam

Royal Commission consultation – Strengthening regulators (recommendations 3.8, 6.3, 6.4, 6.5, 6.14, 7.2)

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide three separate submissions in response to Treasury’s consultation on the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry’s (Royal Commission) recommendations to strengthen regulators.

About ASFA

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 \$2.9 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 almost 90 per cent of the 16 million Australians with superannuation.

Strengthening regulators – Royal Commission recommendations

ASFA has addressed the three sets of Royal Commission recommendations specifically aimed at strengthening regulators in three separate submissions that are **attached** to this cover letter:

1. Recommendation 3.8, 6.3, 6.4 and 6.5 - Superannuation regulator roles
2. Recommendation 6.14 - Financial Regulator Oversight Authority
3. Additional commitment in response to recommendation 7.2 – ASIC directions power.

Our submissions highlight some common themes, outlined below:

1. Australia's financial regulatory system – 'Twin Peaks' model

The 'twin peaks' model originated in the recommendations of the Wallis Inquiry. As we progress with the implementation of the Royal Commission's recommendations, there are a number of legislative provisions that are to be regulated by both APRA and ASIC. This has the effect of diluting the 'twin peaks' model.

Entities will increasingly become subject to two regulatory regimes, two different ways of administering the same legislative provisions and often two sets of requests from regulators. This has an impact on the compliance and monitoring costs for an RSE licensee and it is hard to see the efficiencies that lie in having two separate regulators with common responsibilities, both for the Government and for regulated entities.

Where particular legislative provisions are dual-regulated, it is absolutely vital that APRA and ASIC liaise closely and confer before any action is taken on particular matters. This includes the use of directions making powers. There needs to be maximum co-ordination of regulatory oversight.

Ideally the number of provisions which are dual regulated should, be kept to an absolute minimum.

2. Review of regulator decisions and breadth of powers

As the breadth of APRA's and ASIC's powers expand in line with some of the Royal Commission's recommendations, it is important that appropriate checks and balances are in place to ensure that the regulators use their powers as intended.

The exercise of these powers, such as the existing and proposed directions powers, have potentially significant commercial, financial and reputational implications for regulated entities.

As such, it is important that entities are provided with an opportunity and ability to request a review of decisions made by the regulators. The channels for review should be both internal (e.g. akin to ATO's review and dispute resolution function), and external (the Administrative Appeals Tribunal and Courts).

For ongoing assessment of regulator performance and effectiveness the proposed Financial Regulation Oversight Authority should play a key role.

3. Commencement of proposed Royal Commission legislation – reliance on regulators

The majority of the draft legislation released for consultation on 31 January has a proposed commencement date of 1 July 2020. In order to comply with some of the proposed legislative provisions, regulators will need to provide guidance and issue new, or varied, licences.

We are concerned that regulators will not be able to provide the required guidance and licensing in time for entities to be compliant. For example, superannuation funds might be required to acquire an Australian Financial Services Licence (AFSL) by 1 July 2020 under recommendation 3.1.

Realistically, it is impossible for a fund to vary or be granted an AFSL in time to be compliant unless legislative commencement dates are reconsidered, regulators make an exception to their service standards, or regulators apply their discretion to provide RSE licensees with sufficient additional time.

4. Increased use of penalties

Across the package of reforms, we are concerned with the significant increase in penalties applicable to regulated entities, directors/trustees and employees. This is likely to have implications for the effective functioning of the industry going forward, including the capacity to attract and retain talent.

If you have any queries or comments in relation to the content of our submissions, please contact the ASFA representative noted on the relevant submission, or Glen McCrea on (02) 9264 9300 or by email gmccea@superannuation.asn.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Glen McCrea', is positioned above the typed name.

Glen McCrea
Deputy CEO and Chief Policy Officer