



SUBMISSION

Submission to APRA — Modernising the prudential architecture

30 November 2022

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General Manager, Policy

APRA

Via email: PolicyDevelopment@apra.gov.au

30 November 2022

Dear Sir/Madam

Modernising the prudential architecture information paper

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the information paper released on 12 September 2022.

ASFA is a non-profit, non-partisan 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 \$3.3 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 17 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact Ross Clare on 0417 680 908 or by email rclare@superannuation.asn.au.

Yours sincerely

Ross Clare

Director of Research

By way of general comment, ASFA supports the updating of APRA's prudential architecture. However, it is important that any changes that are made deliver improvements and do not have any unintended consequences. To address such issues we recommend that APRA hold Industry workshops and provide discussion group opportunities via industry forums to co-create/validate/sequence any changes before they are finalised.

Comments on specific issues raised in the information paper follow.

1. Taking a digital first approach

ASFA supports APRA taking a digital first approach through developing machine readable regulation and also making regulations easier to search.

At the very least, this should involve various regulatory documents being available on the APRA website in a Word document and/or HTML format.

ASFA also supports enhancements being made to the APRA website to improve the way that the various Guides and Standards are presented. This should include the development of a site specific search engine that could be used to search for key terms within the various regulatory documents. It could also facilitate searches for all regulatory requirements relevant to a specific topic or relevant to a specific role within a regulated entity.

In this context, authors when drafting documents could tag sections of documents with key terms in order to assist with the search functionality.

2. Preparing a guide for superannuation fund trustee board members

The information paper notes that APRA will be preparing a new Guide for ADI Board directors.

Given the substantial responsibilities that are placed on superannuation fund trustee board members, including a range of recently introduced responsibilities, ASFA recommends that APRA also take early action to prepare an equivalent Guide for superannuation trustees.

3. Timely provision of guidance

In a number of cases prudential guidance from APRA comes after new standards or other requirements have come into effect or very shortly before they come into operation.

For instance, recently in regard to SPG 530 APRA advised the following:

APRA received some feedback from regulated entities raising concerns over the effective date for updated SPS 530 on 1 January 2023, which occurs before draft SPG 530 will be finalised.

It is APRA's view that the updated requirements in SPS 530 reflect, in many cases, existing industry practices and existing investment governance guidance. APRA therefore expects that prudent RSE licensees would be in a position to meet updated SPS 530 from 1 January 2023, supported where needed by the existing guidance in current SPG 530 and SPG 531. APRA's supervisory approach, however, will take into account that draft SPG 530 is yet to be finalised.

Given that the consultation period for the guidance will run until 17 March 2023 it is unlikely that the guidance will be finalised until the middle of 2023 at the earliest.

ASFA considers that new prudential standards generally should not come into force for at least 6 months after applicable guidance is finalised and a transition period of up to 12 months may be necessary if the prudential standard and guidance effect a significant change to the regulatory framework. Trustees need time to implement new Standards, and that implementation should be supported by the relevant guidance from APRA. standards. It is important that resolution of issues and addressing of questions that have been raised be before rather than after a new Prudential Standard comes into effect.

4. Avoiding uncertainty caused by overlap with other prudential requirements

As the information paper notes, the Australian Law Reform Commission (ALRC) has commented in their review of financial services legislation that complexity matters because it can make the law difficult to understand; it makes it harder for entities to comply with and for regulators to enforce, and it can lead to increased costs for the system.

ASFA considers that APRA could go further in terms of simplifying the structure of the framework, with a clearer hierarchy across standards and less duplication.

The paper puts forward the draft Prudential Standard CPS 230 as an example of improvements that have been made in terms of rationalising five standards into one (page 11 of the Information Paper).

However, as noted by ASFA in its submission on Draft CPS 230, that Standard directly or indirectly raises several concepts that are addressed in other prudential standards, in particular, SPS 220/CPS 220 Risk Management, CPS 511 *Remuneration* and CPS 234 *Information Security*. This has the potential to cause confusion as to whether certain standards take precedence over others.

In particular, ASFA considers it would be helpful for APRA to provide clarity about the relationship between APRA's suite of prudential requirements and guidance that deal with risk. This would assist regulated entities in understanding how requirements across different standards intersect. We recommend that this be outlined in a standalone document, rather than incorporated into CPS 230, so it may be more readily updated as the prudential framework continues to evolve.

In addition, we understand that it is APRA's present intention to keep its requirements in relation to outsourcing to a cloud computing service provider separate from CPS 230. ASFA recommends that APRA reconsiders this approach, which is likely to cause confusion. In ASFA's view all requirements in relation to the outsourcing of a critical function should be integrated into CPS 230 or, at a minimum, there should be reference to any separate requirements for particular functions within CPS 230.

The approach recommended by ASFA in regard to CPS 230 could also be adopted in regard to other issues which are covered by more than one APRA Prudential Standard. The relationship between superannuation specific Standards and cross sector Standards should also be made clear in the prudential architecture.

5. The need for greater clarity in APRA guidance on what is binding on APRA and on regulated entities

APRA in its various prudential practice guides includes a disclaimer along the following lines:

This prudential practice guide is not legal advice and users are encouraged to obtain professional advice about the application of any legislation or prudential standard relevant to their particular circumstances and to exercise their own skill and care in relation to any material contained in this guide. APRA disclaims any liability for any loss or damage arising out of any use of this prudential practice guide.

In contrast, the Australian Taxation Office treats advice that is has provided to taxpayers as legally or administratively binding:

We provide you with advice on how the laws we administer apply to you. We generally provide this advice in the form of a ruling. This advice provides you with the highest level of protection if you rely on it. Our advice includes parts which are legally binding on us, and parts which are not. We clearly identify which parts of our advice are binding and non-binding.

Where you rely on the binding parts, the law protects you from having to pay a tax shortfall if the advice turns out to be incorrect and you then make a mistake. In addition, because we will apply the law as set out in the ruling, the false and misleading penalty and interest on the tax shortfall will not apply.

Where you rely on the non-binding parts, we will apply those parts to you as if we were administratively bound by them, unless we have good and substantial reasons not to. For example, if you rely on a ruling knowing that it is not appropriate for your circumstances.

ASFA considers that APRA should take an approach more like that taken by the ATO. If APRA provides guidance or advice to superannuation funds (and others), then the recipients of such guidance or advice should be entitled to rely on that material.

In addition, there should be greater clarity on the implications of 'recommendations' in guidance material. If they are requirements then this should be clearly specified. As well, if there are differences between good practice and best practice this should also be made clear.