

File Name: 2015/14

21 May 2015

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Dear Mr Atkins

Industry consultation on proposed metrics under the Regulatory Performance Framework

I refer to your letter dated 23 April 2015 regarding the industry consultation established under the Australian Government's Regulator Performance Framework (the Framework). The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in relation to proposed metrics that will be used to assess the performance of the Australian Transaction Reports and Analysis Centre (AUSTRAC) against the six Key Performance Indicators (KPIs) established under the Framework.

About ASFA

ASFA is a non-profit, non-politically aligned national organisation. We are the peak policy and research body for the superannuation sector. Our mandate is to develop and advocate policy in the best long-term interest of fund members. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

General comments

As an overall comment, ASFA is broadly supportive of the proposed metrics developed by AUSTRAC. We believe they are a good starting point in terms of enabling the regulator to draw evidence (including feedback from the industries which AUSTRAC regulates) to enable the independent assessment of its performance against the six KPIs.

In terms of developing the metrics, our members have suggested that there should be some metrics that are standardised/consistent across all regulators, supplemented with some metrics which are more specific to a particular regulator. Obviously there will need to be liaison between the regulators to achieve this.

Further, clarity is needed around the weighting that will be applied to each of the metrics – that is, will they all receive equal weighting or are some considered more critical than others? We suggest that they should be weighted and industry should have the opportunity to provide input into how the metrics are weighted.

Also, during ASFA's recent consultation with our members, there was some concern raised regarding the focus of the proposed metrics and the need for a survey to measure the performance of each of the regulators against the six KPIs. These are discussed below.

(i) Metrics too process focused

The view of our members was that, generally speaking, the proposed metrics appear to be too process focused rather than outcomes focused. Most of the performance metrics make reference to an activity (for example, collaboration with other industry sector regulators) but do not provide any details regarding how the effectiveness of the activity will be measured.

One example cited by our members was the lack of harmonisation between regulators in the management of section 29QC¹ (i.e. reporting standards requirements to improve the comparability of information about superannuation products). The view of our members was that, the collaboration between APRA, ASIC and Treasury was not timely and the delay in finding a solution to the practical problems associated with the operation of section 29QC was very unhelpful for the industry. For example, we have been informed that a number of members had commenced drafting PDSs based on the premise that section 29QC would be implemented on 1 July this year only to find out that the rules were being changed.

Therefore, measuring the level of collaboration alone would not, in and of itself, be an accurate indicator of the performance of the regulators in terms of establishing a streamlined and co-ordinated approach (KPI 4). More broadly, measuring the activity (rather than the desired outcome of the activity) will not necessarily give a true picture of the performance of the regulator. ASFA therefore recommends that, wherever possible, consideration be given to including more outcomes-based criteria into the proposed metrics.

(ii) Survey to measure performance against KPIs

ASFA received feedback from our members that there needs to be a regular survey to measure the effectiveness of each regulator against the six high level KPIs. It was the strong view of our members that the industry needs to be involved in the design of the survey. It was also felt that the surveys should be used to benchmark the relative performance of each regulator (APRA, ASIC and AUSTRAC) and that the survey findings should be publicly reported.

In addition, there was concern raised by ASFA members around the need to maintain the confidentiality of the organisations participating in the survey of the regulators' performance. In particular, our members felt that the surveys should be conducted by an independent third party. That is, the surveys should not be conducted by the relevant regulator or Treasury. One possible suggestion was for the Auditor General's Department to conduct the surveys.

Finally, given the surveys would measure the effectiveness of the each of the regulators against the overall KPIs, ASFA suggests that it would be appropriate to include a specific metric under each of

¹ Superannuation Industry (Supervision) Act 1993

the six KPIs that feedback will be collected on AUSTRAC's performance from industry stakeholders on an anonymous basis through (biennial) surveys and its results publicly reported. The inclusion of the use of surveys as a metric under each of the KPIs is consistent with the approach taken by both APRA and ASIC.

Specific comments on the proposed metrics

The remainder of this submission outlines specific issues/feedback in relation to AUSTRAC's proposed metrics under the six KPIs.

KPI 3 – Actions undertaken by regulators are proportionate to the regulatory risk being managed

The third metric under KPI 3 is that "AUSTRAC recognises the compliance record of regulated entities and takes into account industry-specific risk". ASFA fully supports this proposed metric, particularly the reference to AUSTRAC recognising, and taking a different approach to, the different levels of money laundering and terrorism financing risk posed by the diverse industries which it regulates.

As you may be aware, in the past ASFA has sought and gained concessions for superannuation from some of the requirements, including refinements to the AML/CTF Rules, which were not applicable for our sector (due to superannuation-specific legislation already being in place designed to achieve similar outcomes). Also, ASFA has been successful in having some superannuation specific rules implemented, reducing the regulatory burden on superannuation funds.

KPI 4 – Compliance and monitoring approaches are streamlined and co-ordinated

The first metric under KPI 4 is that "AUSTRAC employs risk-based targeting of regulation and enforcement, taking into account the circumstances and operational needs of regulated entities". ASFA suggests that this metric be amended slightly to add the word "different" before "regulated entities". Although very minor, our proposed amendment reflects the concept discussed above that the diverse industries that AUSTRAC regulates pose different levels of risk. It is intended to recognise that AUSTRAC does not follow a 'one-size-fits-all' approach to regulation and enforcement.

KPI 5 – Regulators are open and transparent in their dealings with regulated entities

The second proposed metric under KPI 5 is that "AUSTRAC's advice and decisions are communicated consistently and in a transparent manner". ASFA supports this metric, however we suggest that the words "in a timely fashion" be included. Feedback from some of our members suggests that it sometimes takes many months for decisions to be made and outcomes communicated back to regulated entities following industry consultations conducted by AUSTRAC on proposed changes to the AML/CTF Rules, legislative changes etc.

Whilst we recognise that it can often take time for decisions to be reached, we believe it is appropriate for the proposed metric on communicating advice and decisions to regulated entities to include some reference to timeliness. (Note: A reference to information being made publicly available in a timely manner could also be incorporated into the second metric under KPI 3.)

Also, we suggest that consideration be given to including the reporting mechanisms that AUSTRAC will utilise to communicate/publish information on advice and decisions (eg. annual reports, e-news emails, other updates etc).

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I trust that the information contained in this submission is of value. If you have any queries or comments regarding the contents of our submission, please contact ASFA's Senior Policy Adviser, Jon Echevarria, on (02) 8079 0859 or by email jechevarria@superannuation.asn.au.

Yours sincerely

Glen McCrea
Chief Policy Officer