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Dear Ms Waterford

### **Industry consultation on proposed metrics under the Regulator Performance Framework**

I refer to Helen Rowell's letter dated 24 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 Prudential Regulation Authority (APRA) 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 per cent of the 12 million Australians with superannuation.

### **1. General comments**

ASFA welcomes the opportunity to provide comment on the proposed evidence metrics developed by APRA. Given the importance that the Framework places on the regulator self-assessment process, it is critical to ensure that the metrics established for APRA enable it to collate evidence which will allow it to make a meaningful assessment of its performance against the six KPIs.

We note that the external validation of APRA's self-assessment, as set out in the Framework, will provide an important level of objectivity to the process. We also consider it important that the self-assessment and external validation processes are not intended to displace existing methods of oversight/accountability, such as the Senate Estimates process.

We have set out below a number of general comments in relation to the proposed metrics.

### **1.1 Use of the biennial stakeholder survey to measure performance against all KPIs**

We note that the primary metric adopted by APRA, and proposed in relation to each of the six KPIs, is “feedback collected and publicly reported from biennial stakeholder survey”.

While ASFA members have, in general, indicated that they consider it appropriate and indeed practical to utilise the survey as the primary metric, this support is subject to a number of enhancements being made to ensure that the survey is genuinely ‘fit for purpose’.

As a preliminary matter, there would in ASFA’s view be considerable merit in combining the survey process for each of the financial regulators, and having the survey conducted in a centralised manner by an independent third party (that is, not by the regulators themselves, nor by Treasury).

ASFA considers that this would deliver a number of benefits, including enhanced confidentiality, as well as the opportunity for Treasury to use the outcomes to benchmark each regulator, not just against its performance in prior surveys, but also against the performance of the other regulators. This would, in ASFA’s view, highlight areas of comparatively high or poor performance by a particular regulator, and would maximise the opportunity for the regulators to improve their performance through shared learning.

#### **Recommendation 1:**

Treasury should consider combining and centralising the stakeholder survey process for the financial regulators.

In the event that this recommendation is not able to be adopted, we set out below a number of enhancements that we consider appropriate to ensure that the current APRA stakeholder survey process is optimised to provide meaningful evidence to support APRA’s performance against its KPIs:

#### **(i) The survey needs to specifically and directly address the KPIs:**

We note that the APRA stakeholder survey has been conducted, in its current form, biennially since 2009. There has been relatively little change to the questionnaire since that time, and also no opportunity for stakeholder input into its content, format and timing.

ASFA members have expressed concern that the content of the existing survey questionnaire may not be optimally suited to provide evidence to support the newly-established KPIs. ASFA considers that if the survey is now to be relied upon so extensively by APRA to self-assess its performance against the KPIs, stakeholders should have an opportunity to consider the adequacy of the survey to provide meaningful and robust feedback.

#### **Recommendation 2:**

The APRA stakeholder survey questionnaire should be reviewed, with stakeholder input, to ensure it is optimised to provide meaningful feedback on the KPIs.

In particular, ASFA suggests that at a minimum, the survey questionnaire should be updated to specifically and directly request feedback addressing each of the six KPIs and the 'measures of good regulatory performance' set out in the Framework.

As noted above, ASFA considers that Treasury should utilise the survey to benchmark the performance of each of the financial regulators against each other. If ASFA's recommendation for centralisation of the surveys is not accepted, the opportunity for direct benchmarking of regulators can still be maintained by ensuring that each regulator's survey includes identical questions addressing each of the KPIs.

**Recommendation 3:**

The stakeholder survey should contain questions directly addressing each of the six KPIs.

**(ii) Confidentiality of the survey process:**

ASFA members have also emphasised the need for stakeholders to have confidence in the confidentiality of the survey process.

As noted above, ASFA members have strongly recommended that the survey process for each of the financial regulators should be combined and conducted centrally by an independent third party.

We note that the biennial survey has to date been undertaken for APRA by an independent organisation, external to both APRA and Treasury (Australian Survey Research Pty Ltd, in 2009, 2011 and 2013). If centralisation of the regulators' surveys is not possible, we strongly recommend that APRA continue with its current process of outsourcing the survey to an independent organisation.

**Recommendation 4:**

In order to ensure confidentiality for stakeholders, APRA should continue to outsource the conduct of the survey to an independent third party.

**(iii) Frequency of the survey:**

ASFA members have expressed the view that, as the Framework requires APRA to perform a self-assessment on an annual basis, and given the critical role of the stakeholder survey in providing input into that process, the survey should be conducted annually rather than biennially.

**Recommendation 5:**

APRA should consider increasing the frequency of the stakeholder survey to annual, to align it with the annual self-assessment process.

#### **(iv) Accurate reflection of outcomes across a diverse regulated population**

Given the diversity of the population regulated by APRA (superannuation funds, authorised deposit-taking institutions, general and life insurance companies and friendly societies), it is critical that the outcomes of the stakeholder survey are reported in a manner which genuinely reflects the experience of each regulated sector.

That is, it is critical that each regulated population is considered separately and that positive responses from one sector do not ‘cancel out’ negative responses from another sector which may have had a different regulatory experience over the survey period. We acknowledge that the report produced for the APRA stakeholder survey in past periods has noted significant differences in feedback between the regulated sectors, however it is important that such differences are not lost when the ‘headline’ results of the survey are reported.

##### **Recommendation 6:**

In reporting the survey results, APRA should ensure that any difference in the regulatory experience reported by different regulated sectors is clearly indicated.

#### **(v) Stakeholder ranking of most important regulator activities:**

The survey should provide stakeholders with the opportunity to clearly indicate the aspects of APRA’s regulatory activity which are of most importance to them – for example, by providing a ranking.

##### **Recommendation 7:**

APRA should ensure that the survey allows stakeholders to indicate the aspects of APRA’s regulatory activity which are considered to be of most importance.

### **1.2 Metrics too process focused**

ASFA members have observed that the proposed metrics appear to be very much focussed on *process* rather than *outcomes*, and that objective measurement/quantification is likely to be difficult for some metrics. Many of the metrics refer quite generally to an activity - for example, engagement with stakeholders - but do not provide any details regarding how the *effectiveness* of that activity will be measured.

In ASFA’s view, simply 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.

##### **Recommendation 8:**

The proposed evidence metrics should include more outcomes-based criteria.

### **1.3 Commonality of metrics between financial regulators**

We note that while there are some key differences between the focus of each financial regulator, there are nonetheless areas of similarity between the activities undertaken. As a result, we would expect that some evidence metrics would be standardised or common across all Australia's financial regulators, while others are more specific to a particular regulator.

Despite this, ASFA has noted significant differences in the approaches taken by APRA, ASIC and AUSTRAC to establishing their proposed evidence metrics.

We acknowledge that the development of common metrics would require liaison between the regulators and Treasury. However, we consider that a basic level of commonality between the metrics would facilitate benchmarking across the financial regulators in key areas of performance, and would accordingly be beneficial to government, regulators and stakeholders alike.

#### **Recommendation 9:**

Treasury should consider the extent to which common metrics can be established across the financial regulators, to allow a degree of benchmarking across regulators.

### **1.4 Benchmarking against overseas regulators**

We note that with the exception of KPI 1, APRA's proposed evidence metrics do not include any concept of benchmarking of its performance against relevant regulators in overseas jurisdictions. ASFA is of the view that a measurement of APRA's performance against its international peers - for example the Financial Conduct Authority and the Prudential Regulatory Authority in the United Kingdom - would be both relevant and valuable. This should include a measurement of the extent to which APRA engages in liaison/collaboration with overseas regulators.

#### **Recommendation 10:**

APRA's evidence metrics should include more extensive benchmarking of its performance with other regulators overseas, including the extent of liaison/collaboration.

### **1.5 Weighting of proposed metrics**

It is not clear from the consultation material how the proposed evidence metrics are to be weighted. For example, in determining APRA's overall performance for a given KPI, is it intended that each metric carry equal weighting, or will some be considered more critical and therefore weighted more heavily? ASFA suggests that the metrics should be weighted, and that stakeholders should have the opportunity to provide input into the weightings.

#### **Recommendation 11:**

APRA should clarify the weighting that will apply to individual metrics and, if different weightings are to be applied, should seek stakeholder input.

## 2. Specific comments on the proposed metrics

In addition to the general comments above, we have outlined below a number of specific issues and comments in relation to APRA's proposed metrics under the KPIs:

### 2.1 KPI 1 – Regulators do not unnecessarily impede the efficient operation of regulated entities

#### (i) Cost-focussed metric:

We note that none of the metrics proposed by APRA are specifically focussed on cost. This is a significant omission, particularly given the current Government's focus on reducing 'red tape' and the cost of compliance, and has been raised as a matter of some concern by ASFA members.

When a regulated entity makes a judgment about the efficiency of regulation, this will necessarily involve consideration of whether the entity perceives that the regulators provide 'value for money' in terms of the funding they receive from the regulated industry (via supervisory levies and other user-pays contributions), and from government sources. APRA-regulated industries pay a substantial amount toward their supervision, and are understandably concerned to ensure that this money is efficiently spent.

ASFA is of the strong view that the stakeholder survey should specifically collect feedback regarding stakeholders' perceptions of the cost of compliance, both generally and in relation to any incremental increase in cost arising from the implementation of regulatory changes during the survey period.

Ideally the survey should also allow the capture of comments, should stakeholders wish to identify particular aspects of regulation that are costly to implement and comply with, but provide little perceived value to individual regulated entities or to the regulated population more generally (an example that continues to be raised with ASFA in this respect is the APRA data reporting standards).

In addition, we consider that the evidence metrics should specifically include consideration of whether the Cost Recovery Implementation Statement has been reviewed and updated, where necessary, to reflect any changes to the cost recovery model. These metrics would appear to fit most naturally under KPI 1.

#### **Recommendation 12:**

APRA should include in its evidence metrics measures focussed on the cost of regulation and on the currency of the Cost Recovery Implementation Statement.

**(ii) Consultation process consistent with Office of Best Practice principles:**

One of the metrics proposed to assess performance against KPI 1 refers to APRA's development of standards and/or the reporting framework including a consultation process consistent with Office of Best Practice (OBP) principles, including preparing Regulation Impact Statements, public release of stakeholder submissions and a response to submissions. In ASFA's view, this should be extended to also consider the appropriateness of the time allowed for stakeholders to implement standards and other changes to the regulatory framework.

ASFA and its members appreciate the efforts APRA makes to provide adequate periods for consultation on proposed reforms, and to publish 'response to submissions' documents which provide some insight into APRA's decision-making process.

However, on numerous occasions, the period provided for industry to implement the final requirements before they commence has been very short. ASFA has raised these concerns in a number of submissions, to APRA, to Treasury, and more recently to the Government in relation to the Financial System Inquiry. Members continue to raise this with ASFA as a matter of major concern.

An unreasonably short implementation timeframe for regulatory change has a substantial impact on stakeholders' operations, including significant cost (both in terms of financial and resource impact) and an increased risk of error. We note that concerns about industry's readiness has led to a number of reporting standards and other compliance obligations having to be deferred in recent times.

In ASFA's view, it would be appropriate for APRA to set out its expectations in terms of consultation periods (ASFA considers that a period of three months would generally be appropriate) and implementation periods (ASFA considers that a minimum of 12 months should generally be allowed, from the time that all requirements have been finalised). Performance metrics should then be formulated which include consideration of how often these timeframes have been met.

We note that where more than one regulator is involved in the development and/or application of compliance obligations, this presents particular challenges for both the regulators and industry alike. This is particularly the case where collaboration between regulators is required, as it is critical that this process does not unduly curtail the implementation time allowed to industry, and that each regulator conveys a consistent message to industry regarding the approach to be taken.

An example that continues to be raised by ASFA members relates to the management of the recent consultation regarding the requirements of section 29QC of the *Superannuation Industry (Supervision) Act 1993*, which requires consistency between data reported to APRA under reporting standards and disclosure to members and others. While there was extensive collaboration between APRA, ASIC and Treasury, and engagement with industry stakeholders, members have expressed the view that the failure to reach and communicate an outcome in a timely manner, for an obligation that was due to commence on 1 July 2015, caused the industry significant uncertainty.

**Recommendation 13:**

APRA's evidence metrics should include a specific reference to providing adequate time for consultation on proposed regulatory changes, and adequate time for industry to implement the requirements after the conclusion of the consultation process.

**(iii) Peer assessments against relevant international practices and standards:**

As noted at 1.4 above, ASFA is of the view that APRA's evidence metrics should refer more extensively to benchmarking against the performance of relevant international regulators, and this should include specific reference to liaison/collaboration with those regulators.

**2.2 KPI 2 – communication with regulated entities is clear, targeted and effective**

The second metric proposed for KPI 2 is that “communication on key developments or consultations are delivered electronically to all relevant APRA contacts and those stakeholders that register for notifications on APRA's website”.

ASFA has two comments in relation to this metric:

- In ASFA's view, this metric should not be limited to communication with those stakeholders who have registered for website notifications. Rather, it should also extend to APRA placing information regarding key developments or consultations in a readily accessible manner on its website.
- The metric should, in ASFA's view, also include a criterion regarding the timeliness of communication.

**Recommendation 14:**

APRA's metric regarding communication with stakeholders should include a criterion regarding timeliness of the communication, and should extend to the general publication of information on the APRA website.

**2.3 KPI 4 – compliance and monitoring approaches are streamlined and coordinated**

The 'better practice' principles for KPI 4, as set out in the 'Regulator Performance Framework' document, include factors such as:

- not seeking information from regulated entities unless the information is required to achieve the regulatory outcome sought
- minimising duplicative information requests
- considering whether the information sought is available from alternative means.



We note that these principles are highly relevant to APRA's development of the data standard/reporting framework. On a number of occasions during consultations on draft data reporting standards (most recently in relation to the proposed data collection for the Australian Bureau of Statistics), ASFA members have raised concerns that data requested is duplicated or already available through other means. Concerns have also been raised to the effect that it is not always clear that the data requested is suited to achieve the stated regulatory purpose.

The extent to which these matters have been raised during the consultation process provides some support for the first metric proposed under KPI 4 - development of the reporting framework including a consultation process consistent with OBP principles. However, in ASFA's view, this metric is somewhat generic in its phrasing and should be linked more explicitly with the 'better practice' principles for KPI 4.

**Recommendation 15:**

The evidence metrics for KPI 4 should be linked more explicitly to the 'better practice' principles.

APRA also makes requests for information from regulated entities outside the formal data reporting process, however this does not appear to be reflected in the proposed evidence metrics.

ASFA members, particularly larger organisations, have indicated that the rate of 'ad hoc' information requests appears to be increasing, and that it is not uncommon for APRA to separately seek the same information from different areas within the one regulated entity. In ASFA's view, fragmentation of requests in this manner demonstrates an opportunity for processes to be streamlined – thus providing efficiencies both for APRA and the regulated entities concerned. The proposed evidence metrics for KPI 4 do not appear to provide for monitoring of the progress made in this respect.

**Recommendation 16:**

Evidence metrics for KPI 4 should explicitly refer to streamlining of information requests made to regulated entities.

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

The second metric proposed for KPI 5 relates to "demonstrated engagement with regulated entities". This, in ASFA's view, is an example of the general concern noted at 1.2 above, that many of the proposed metrics are focussed on the process rather than the outcome. In particular, we note that the metric does not provide any details regarding how the effectiveness of the engagement activity will be measured.

**Recommendation 17:**

The proposed metric regarding engagement with regulated entities should be revised to include consideration of the effectiveness of engagement with regulated entities.

Members have also suggested to ASFA that they would welcome more transparency from APRA in relation to information requests – for example, regarding the objective of the request and the intended purpose for which the information will be used. Members have indicated that this information would assist them in providing an appropriate, timely and meaningful response.

**Recommendation 18:**

APRA should look to increase its openness and transparency when requesting information from regulated entities, particularly in regards to the objective of the request and the intended use of the information.

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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, Julia Stannard, on (03) 9225 4027 or by email [jstannard@superannuation.asn.au](mailto:jstannard@superannuation.asn.au).

Yours sincerely

Glen McCrea

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