

SUBMISSION

Submission to the FRAA
— Effectiveness and
capability review of the
Australian Prudential
Regulation Authority

15 December 2022

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Financial Regulator Assessment Authority
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: FRAA@treasury.gov.au

15 December 2022

Dear Sir/Madam,

Effectiveness and capability review of the Australian Prudential Regulation Authority

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the FRAA's Effectiveness and capability review of the Australian Prudential Regulation Authority (APRA) **(Review)**.

ABOUT ASFA

ASFA is a nonprofit, 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 over 90 per cent of the 17 million Australians with superannuation.

GENERAL COMMENTS

ASFA supports the role of APRA in prudentially regulating and supervising trustees of superannuation products, other than self-managed super funds, to ensure good governance, protect the financial interests of fund members and ensure good member outcomes.

As with all organisations, however, there are some opportunities for improvement in both the effectiveness and capability of APRA.

SPECIFIC COMMENTS

Specific feedback from member organisations with respect to the Discussion Paper, and the effectiveness and capability of APRA, is contained in the body of the submission.

Should you have any queries or comments in relation to the content of our submission, please contact me on (03) 9225 4021 or by email to fgalbraith@superannuation.asn.au.

Yours sincerely

Fiona Galbraith
Director, Policy

Contents

1. Assessment of the effectiveness and capability of APRA's supervision function in superannuation	4
1.1. Are APRA's supervisory priorities clearly communicated by APRA staff to the regulated population and external stakeholders?	4
1.2. Does APRA clearly communicate and implement its supervision activities, and are supervision activities appropriately targeted?	4
1.3. How effective is APRA's supervision in achieving APRA's objectives? Are there any gaps in APRA's supervisory activities in superannuation?	5
1.4. To what extent does APRA have the appropriate organisational capabilities (including, people, data, technology, and systems) for detecting prudential risks, prioritising issues, and conducting its supervisory activities to achieve the right outcomes?	6
1.5. What steps has APRA taken to effectively reduce the regulatory impost of its supervisory activities? How could APRA improve?	7
1.6. How has APRA's supervisory activities and the nature of its relationship with stakeholders changed following recent independent inquiries and reviews?	10
2. Assessment of the effectiveness and capability of APRA's resolution function in superannuation	10
3. Broader experience with APRA	10

1. Assessment of the effectiveness and capability of APRA's supervision function in superannuation

1.1. Are APRA's supervisory priorities clearly communicated by APRA staff to the regulated population and external stakeholders?

1.1.1. Greater detail about supervisory priorities

APRA generally outlines its policy priorities in its Corporate Plan and Annual Policy Priorities paper. While this is useful, the regulated population and external stakeholders would find the provision of more detail with respect to APRA's supervisory priorities to be valuable.

1.1.2. Rolling calendar of proposed supervisory activities

In addition to the Corporate Plan and Annual Policy Priorities paper, from time to time APRA makes separate announcements with respect to its priorities through such mechanisms as speeches or media releases.

Member organisations have indicated that, while they appreciate the need for flexibility, it would be valuable if APRA were to communicate its proposed supervisory activities in a rolling calendar. Communicating details with respect to the nature and proposed timing of supervisory activities would enable superannuation funds to determine the scope of APRA's activities, anticipate the likely work involved in responding to APRA and determine which of the fund's functions/teams were likely to be affected and when, thereby enabling more effective planning to take into account the likely effect on APRA's activities on the fund.

1.2. Does APRA clearly communicate and implement its supervision activities, and are supervision activities appropriately targeted?

1.2.1. Engagement with 'frontline supervision teams' and 'back office' specialist functions

Member organisations have indicated that they are supportive of APRA's model of having a 'frontline supervision team'.

Superannuation funds generally appreciate APRA's 'open-door' policy with respect to being able to reach out to consult with their supervisory team. It was noted, however, that when the frontline supervision team needs to send queries or requests to 'back-office' specialist functions for a response often there were significant delays before a response was received.

Ideally some of the 'back-office' specialists should meet directly with the industry from time to time. Generally, as the matters are likely to be technical in nature, there would not be a need for frontline supervision team members to be involved, except possibly at a senior level for awareness (please refer to our response in section 3).

Member organisations observed that, while they appreciate the need for a degree of flexibility, interaction with APRA on supervisory matters sometimes appears to arise in a slightly ad hoc/unplanned manner. It would greatly assist funds in managing resources if APRA were able to adopt plan and communicate supervisory engagements in advance, if at all possible.

Member organisation also observed that, on occasions, it appears as though various APRA teams may not always share a common appreciation or understanding of the supervision activities being undertaken by frontline supervision teams.

1.2.2. Targeting and scoping of supervision activities

Member organisations provided some examples of where the scope of supervision activities may not be as well targeted as they could be:

- **Reporting ten years of historical data:** Member organisations have indicated that APRA should review the requirement to report ten years of historical data, which represents the imposition of a retrospective obligation. A number of funds experience considerable difficulties in accessing historical systems/data, especially where there have been one or more Successor Fund Transfers into the fund, and due to the evolution of products and regulation over the past ten years some data is not available. It has been suggested that the connection between reporting ten years of historical data and improving member outcomes is limited.
- **Legacy products:** Member organisations indicated that there may be a need for APRA to review the size and scope of the obligations to report on legacy products and to assess the regulatory impact. Comparisons involving legacy products can be difficult, generally they are not open to new members and often they are administered on older IT systems. As such, the benefit to the diminishing pool of members in the product of extensive reporting may not justify the cost to those members of sourcing and deriving the full range of data required to be reported under the reporting standards.

1.3. How effective is APRA's supervision in achieving APRA's objectives? Are there any gaps in APRA's supervisory activities in superannuation?

1.3.1. Increasing regulatory compliance costs

Member organisations observed that there is an inconsistency between government policy and the APRA regulatory objective to reduce costs in superannuation, and the resultant fees charged to members, and the sustained increase in APRA regulatory requirements, including data reporting, which serve to increase regulatory costs significantly.

1.3.2. Improved member outcomes

Generally APRA's supervision activities, such as scrutiny of fund's governance, risk management, compliance, investment performance and fees, have resulted in improved member outcomes, such as some lowering of fees and an increased rate of fund mergers.

Member organisations indicated, however, that APRA needs to give greater consideration to potential unintended consequences that may flow from their activities, and from their advice to Treasury and Government. Often the consequences can be a disproportionate regulatory impost/compliance cost for the benefit derived, which ultimately is borne by the members.

One example of an APRA activity where the benefit may not always exceed the cost are some aspects of superannuation data reporting, where the size, scope, frequency and/or content of some of the reporting obligations impose a considerable cost, and risk, onto funds.

Member organisations have observed that often it is not clear how the new superannuation data reporting standards have assisted APRA in their supervision of the sector, while the implementation costs and effort imposed on the industry have been significant and may well have exceeded any benefits gained. It has also been suggested that the reporting standards can have the effect of dictating how some aspect of the funds should operate, through imposing obligations on the sector to collect, generate and report different information, especially with respect to investments.

Another example is the Your Future, Your Super Performance Test. While it is prescribed in legislation, and therefore APRA must implement it as specified, we understand that the nature and design of the test was influenced by APRA. The test has produced some anomalous results and unintended consequences, including investment teams determining asset allocations designed to meet the test rather than optimise returns, prompting a review of the test by Treasury.

1.3.3. Reporting on supervision activities in annual report

Member organisations have suggested there may be scope to improve APRA's reporting in their annual report on the number and types of supervision activities undertaken, for example with respect to its objective of improving member outcomes through industry consolidation.

1.4. To what extent does APRA have the appropriate organisational capabilities (including, people, data, technology, and systems) for detecting prudential risks, prioritising issues, and conducting its supervisory activities to achieve the right outcomes?

1.4.1. People

Member organisation observed that recently it appears as though APRA may have experienced challenges with resourcing.

It has been suggested that APRA's frontline supervisory teams in particular may benefit from engaging more staff who have worked in a range of roles and performed different functions within the superannuation sector, who would be able to provide a pragmatic and practical perspective.

Further, it is critical that APRA retain and recruit people with expertise in fund mergers, to assist APRA's appreciation and understanding of the complexities involved with mergers and the issues that can arise. This would enable APRA to engage better with the sector and work more effectively with superannuation funds that are merging.

1.4.2. Data

APRA's Superannuation Data Transformation project has imposed extensive reporting obligations, and a significant cost burden, on the sector, and member organisations have queried whether it is providing benefits that are commensurate with those costs.

While member organisations recognise the importance of data for prudential supervision, they have suggested that consultation with entities may result in the sector achieving an enhanced appreciation of what APRA is intending to achieve and how the data is expected to be used. This is likely to lead to an improvement in the design of the reporting standards and guidance, which will enable the sector to report data more efficiently and cost effectively.

1.4.3. Technology and systems

APRA is in the process of transitioning from its Direct To APRA (D2A) reporting system to a new system called APRA Connect.

As part of the Superannuation Data Transformation project, data reported under the new Superannuation Reporting Standards was the first data to be submitted utilising APRA Connect.

APRA Connect has experienced considerable processing capacity issues during the end of quarter/end of year lodgement periods, severely affecting, and even precluding, superannuation funds' ability to lodge their reports on time. This has seen compliance breach notifications sent by APRA to funds.

Generally receipt of these breach notifications is treated as a significant compliance breach and escalated automatically to governance, compliance and/or risk functions and the trustee board. Notwithstanding that APRA may advise that they are aware that the delays in lodging data were caused by APRA Connect, the receipt of a breach notification from APRA can create considerable work for fund personnel to deal with compliance functions and to assure the trustee board.

1.5. What steps has APRA taken to effectively reduce the regulatory impost of its supervisory activities? How could APRA improve?

Member organisations have identified areas where APRA could improve to reduce the regulatory impost of its supervisory activities, as follows.

1.5.1. Consultations — improve timing and coordination, scope and how conducted *Timing and coordination*

While the industry appreciates that APRA consults with it, the extent and timing of recent APRA consultations has served to increase the cost of doing business and has contributed to a growing level of industry uncertainty.

Member organisations observed that this is at odds with the Royal Commission and Australian Law Reform Commission recommendations to consolidate legal obligations and requirements, to make it easier for trustees to comply. We note in this context that APRA has consulted on modernising the prudential architecture, an initiative which ASFA supports.

Recently APRA has had a tendency to conduct a number of consultations concurrently and sometimes with a reduced timeframe in which to make a submission.

By way of example, in November APRA announced eight separate consultations for feedback from the superannuation sector, with some providing as little as one month in which to respond, during a time when superannuation funds are trying to implement regulatory requirement and obligations. This includes SPS 530 - despite the standard only being finalised at the end of November 2022 it has a 1 January 2023 date for compliance.

Member organisations have suggested that, if consultations were distributed more evenly throughout the year, this would assist them with being able to schedule resources to respond and ensure that proper consideration can be given to the consultation.

Scope

On occasions APRA consultations do not address wider issues with respect to a particular topic but adopts a narrower focus.

A recent example includes their consultation on issues with respect to Transfer Planning in Super.

ASFA has raised with the Government and Treasury a number of issues with agreeing and implementing Successor Fund Transfer. Treasury has shared the list of issues with APRA, however, the consultation does not refer to them. APRA expects trustees to implement and comply with any new requirements, once finalised, but does not appear to be coordinating its approach with the Government and/or other departments such as Treasury.

How conducted — proactive engagement and providing responses

Member organisations have indicated that APRA's consultation process could be improved through APRA proactively engaging with industry participants.

It was also suggested that APRA could provide more timely responses to industry submissions to consultations, as at times APRA's responses are provided shortly before, or even after, the compliance date. This places undue pressure on the business when working to achieve compliance deadlines, especially where it necessitates changes to technology systems, and serves to significantly increase both risk and costs.

1.5.2. Provide a regulatory impact assessment for APRA Prudential Standards

One of the major process deficiencies in reducing the regulatory impost of its supervisory activities is that APRA does not have to prepare a regulatory impact assessment for APRA Prudential Standards, notwithstanding the fact that they are creating legal obligations with which trustees must comply.

1.5.3. Improve coordination with ASIC

On occasions there has been limited coordination on regulatory issues between APRA and ASIC, in particular with respect to breach reporting and requests for fund data.

Further alignment between ASIC and APRA would greatly assist with reducing the regulatory burden on jointly supervised entities.

By way of example, the upcoming Financial Accountability Regime is dual regulated by APRA and ASIC. Member organisations identified that it would be significantly more efficient if the process for reporting breaches, and making enquiries, is such that funds just have to liaise with one regulator.

Currently APRA and ASIC each have their own breach reporting portal that request similar information with respect to the same breaches. The creation of a joint APRA/ASIC breach reporting portal would permit a more coordinated approach, whereby entities are able to report information to both regulators simultaneously, and would significantly reduce the regulatory impost.

Another example is with respect to requesting information from funds.

In March 2022 ASIC served multiple notices on a number of superannuation funds requiring the production of extensive information and documents with respect to insurance. In November 2022 APRA required a number of the same funds to complete an extensive survey with respect to insurance, which covered similar ground to the ASIC notices and necessitated the same and similar input from specialist teams.

1.5.4. Allow sufficient time to implementation

One of the main concerns of member organisations is having adequate time to implement regulatory change in a compliant, effective and efficient manner.

The superannuation industry generally requires a minimum of 12-month's lead-time **from the finalisation of the regulatory requirements** to their final implementation.

This allows sufficient time for

- detailed analysis of the new requirements
- further clarification from the regulators as to interpretation or application (if necessary)
- the documentation of business, functional and technical system requirements
- the design of the system solution
- the building of system changes/solution
- comprehensive regression testing; and
- other implementation activities, such as the development of processes and procedures; the delivery of training to fund operational/administrative staff and changes to disclosure documentation.

Deployment of IT builds must also coincide with predetermined IT release dates for other projects and system enhancements, which often are scheduled monthly or even quarterly.

Given this, it is critical that APRA standards and guidance are finalised on a timely basis. In the event there are delays in releasing the final standards or guidance then, to the extent that the compliance timeframe is within the control of APRA, the effective date should be adjusted accordingly.

1.5.5. Provide guidance on a timelier basis

If APRA could provide guidance with respect to upcoming regulatory change earlier this would assist funds greatly, as it would give them more time to implement amendments to existing systems, processes and procedures, and to develop new ones, in a compliant and cost-effective manner.

On occasions guidance has been finalised close to, or even after, commencement of the requirements. Generally the effective date for compliance with new regulatory requirements is fixed, especially if it is prescribed in a legislative instrument. The provision of guidance close to the commencement of new regulatory obligations is inefficient and can result in considerable re-work by funds, causing them to incur additional, unnecessary, costs.

1.5.6. Simplify and modernise the regulatory framework

We note in this context that recently APRA has consulted on its approach to modernising the architecture of prudential standards and guidance, designed to make the design of the regulatory framework clearer, simpler and more adaptable.

ASFA supports this strategic objective and notes that this will be a period of considerable change for the industry, which APRA will need to recognise when it comes to its expectations about timelines for consultation and implementation.

1.5.7. Clarify use of different communication channels

APRA employs a range of different mediums to communicate with industry, including public communications published on their website and emails to trustees.

This necessitates the monitoring of multiple channels to mitigate the risk of a communication from APRA is missed or overlooked. If APRA were to provide guidance with respect to which channels it will utilise for which type of communication this would assist the industry in its monitoring of the regulatory environment.

1.5.8. Provide greater visibility over APRA's roadmap

Visibility over APRA's strategic roadmap could assist the industry to plan more effectively.

Member organisations identified that, while the industry has an overarching understanding of APRA's strategic initiatives and priorities, what is needed are details with respect to timing and scope and a greater understanding of APRA's expectations. These are important considerations for superannuation funds when developing their strategies and business plans.

1.6. How has APRA's supervisory activities and the nature of its relationship with stakeholders changed following recent independent inquiries and reviews?

Member organisations have indicated that their recent experiences of engagement with APRA generally have been positive.

One example provided was the thoroughness of the engagement and review process undertaken by APRA during their thematic review of material outsourcing agreements.

2. Assessment of the effectiveness and capability of APRA's resolution function in superannuation

Member organisations did not provide any feedback with respect to the effectiveness and capability of APRA's resolution function in superannuation.

This is likely to be because the majority of superannuation funds have had very little, if any, experience with APRA's resolution function in superannuation.

3. Broader experience with APRA

3.1. Need for informal, broader, policy engagement with industry

Notwithstanding the generally positive interaction with the frontline supervision teams, member organisation observed that there can be a lack of engagement with the sector by some of the 'back office' specialist teams.

Policy consultation with industry generally is confined to formal consultations on draft standards, guidance and discussion papers. Members observed that there is little informal consultation, for example in the form of meetings which would enable discussion, and generally there is a relatively low rate of take-up by APRA of feedback provided by the industry in submissions made in response to consultations.

We would encourage broader, informal, engagement with industry by some of the 'back-office' functions of APRA, through meetings and discussions, to enable an exchange of information and views on emerging issues and other matters of interest. Generally there would not be a need for frontline supervision team members to be involved in such meetings, except possibly at a senior level for awareness.