File Name: 2015/15

22 May 2015

Mr. Greg Kirk
Senior Executive Leader
Strategy Group
Australian Securities and Investments Commission

Dear Greg,

Industry consultation on proposed metrics under the Regulatory Performance Framework

I refer to your letter dated 27 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 Securities and Investments Commission (ASIC) 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 ASIC. We believe they are a good starting point in terms of enabling the regulator to draw evidence (including feedback from the industries which ASIC 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.

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 raised by our members was the lack of harmonisation between regulators in the management of section 29QC[1] (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 unhelpful for the industry. For example, we are informed that a number of members had commenced drafting PDSs based on the premise that section 29QC would be implemented on 1 July only to find out that the rules were being changed. This being said, the final solution posed by ASIC in Option 1 of Consultation Paper 227 is indeed practical and helpful.

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 and evaluated by an independent third party. That is, the surveys should not be conducted and evaluated by the relevant regulator or Treasury. One possible suggestion was for the Auditor General's Department to conduct, evaluate and publish the surveys.

[1] *Superannuation Industry (Supervision) Act 1993*

Specific comments on the proposed metrics

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

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

In regards to the evidence metric around stakeholder panels, we reiterate the point made above that this metric describes an activity (being the holding of stakeholder panels). It does not address the regularity of the panel meetings, attendance and participation or the effectiveness and outcomes of the meetings. It will be essential that the surveys provide a mechanism to address and measure these outputs. This comment applies to nearly all of the metrics under the six KPIs.

In regards to what impedes the efficient operation of regulated entities, probably the biggest complaint that we have received from our members is that there is not always sufficient time, certainty and clarity provided to industry to properly prepare for changing legal, compliance or reporting requirements. For example, on numerous occasions the industry have undertaken significant work to prepare for pending requirements on a tight timeframe, only for ASIC to postpone the requirements, sometimes at the last minute, in response to industry implementation concerns. While generally the delays provided by ASIC are appreciated and necessary, the uncertainty creates a regulatory burden in that funds are either preparing for uncertain rules (which is generally ill-advised and potentially very expensive) or are operating in an environment where they are uncertain if they are likely to become uncompliant if the regulator does not delay the change. The previously stated issue of section 29QC is a good example of this. A better approach would be for the regulators and Treasury to adopt more realistic implementation timeframes. A metric that captures and measures this would be helpful.

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

In regards to the example metric that 'Relevant staff trained in risk management policies, processes and procedures' – rather than repeating the example, our members are of the view that a more practical metric would be useful. Such a metric could be something along the lines of: the provision of sufficiently experienced and senior staff for the performance of the field work. Also a metric measuring continuity of staff working on the fund review, and adequate briefing to staff prior to commencement of the review would be helpful.

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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 Policy Adviser, David Graus,

Yours sincerely

Glen McCrea
Chief Policy Officer