



ASIC

Australian Securities & Investments Commission

REPORT 441

Response to submissions on ASIC's Regulator Performance Framework evidence metrics

July 2015

About this report

This report highlights the key issues that arose out of the submissions received on ASIC's proposed Regulator Performance Framework evidence metrics and details our responses to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy.

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A Overview/Consultation process

- 1 As part of the deregulation agenda, the Government established the Regulator Performance Framework. It is designed to assess only one aspect of a regulator's performance—the extent to which it minimises regulatory burden in the course of fulfilling its other activities. Accordingly, it is focused on measuring and reporting on the way regulators administer regulation, with a view to reducing the regulatory burden on regulated populations over time by highlighting areas where the way regulators operate causes unnecessary burden.
- 2 ASIC reports on and is accountable for overall performance against our mandate through a variety of channels, including accountability to the Parliament through Parliamentary committees and inquiries, as well as our Annual Report.
- 3 We undertook a targeted consultation on our proposals for evidence metrics to report against the Regulator Performance Framework. We consulted with selected industry, professional and consumer representatives who represented the majority of our regulated population.
- 4 This report highlights the key issues that arose out of the submissions received and our responses to those issues.
- 5 This report is not meant to be a comprehensive summary of all responses received. We have limited this report to the key issues.
- 6 For a list of the non-confidential respondents, see the appendix. Copies of these submissions are currently on the ASIC website at www.asic.gov.au/reports under REP 441.

Responses to consultation

- 7 We received 16 responses from the 18 organisations we approached. We are grateful to respondents for taking the time to send us their comments.
- 8 Respondents were generally supportive of the move towards greater transparency and the intention of the Regulator Performance Framework to encourage the reduction of regulatory burden for regulated entities where possible over time, where this is consistent with achieving our statutory objectives.

- 9 The main issues raised by respondents related to:
- (a) the Framework's focus on regulatory burden without a corresponding assessment of effectiveness against mandate and objectives;
 - (b) communication and consultation; and
 - (c) enhancing specific metrics, including noting that ASIC's proposed metrics tended to be process and activity focused, rather than outcomes focused.

B Feedback on proposed evidence metrics

General feedback

- 10 Feedback from stakeholders was generally supportive of the move towards greater transparency and the aim of the Regulator Performance Framework to encourage reducing regulatory burden for regulated entities, where possible, over time.
- 11 Many stakeholders noted that the focus on reducing regulatory burden, without corresponding assessment of effectiveness against mandate and objectives, risked over-emphasising this aspect of regulator activity at the expense of other regulatory goals, and would also risk presenting an unbalanced view of ASIC's performance. This view was articulated particularly strongly by consumer advocates.
- 12 We also received feedback about the evaluation and reporting processes required by the Regulator Performance Framework. Stakeholders' suggestions included:
- (a) self-assessment was inappropriate;
 - (b) some standardised metrics should be included across all regulators; and
 - (c) metrics should be weighted, with clarity around weighting.
- 13 A number of stakeholders also suggested that a specific survey could be undertaken to provide evidence against the Regulator Performance Framework, although one stakeholder recognised the additional burden this might impose on our stakeholders to respond.
- 14 On ASIC's proposed evidence metrics generally, several stakeholders suggested that the focus should be more on demonstrated, measurable outcomes, including targets, rather than activities. If this were not possible immediately, then stakeholders suggested it should be aimed for over time.
- 15 Many stakeholders also provided feedback on additional steps or changes ASIC could make to meet the aims of the Regulator Performance Framework. Examples included that ASIC:
- (a) commit to specific transition periods for changes to regulatory obligations;
 - (b) implement a more proactive stakeholder engagement strategy overarching our advisory panels and consultation committees;
 - (c) publish consumer complaints data;
 - (d) commit to post-implementation reviews; and
 - (e) implement additional procedures for information requests.

ASIC's response: Broader concerns with the Regulator Performance Framework

The evidence metrics we have developed reflect the guidance and nature of the Regulator Performance Framework, and are consistent with the example evidence metrics provided by the Framework.

We understand stakeholders would like ASIC to report against broader performance criteria. This will be addressed with enhanced performance reporting against agency purposes under the *Public Governance Performance and Accountability Act 2013*.

We have passed on concerns about the extent to which the Regulator Performance Framework considers broader mandates, together with concerns about the evaluation process—in particular, self-assessment—to the Department of Prime Minister and Cabinet for its consideration.

ASIC's response: Survey

While we appreciate that a purpose-built survey may provide a good baseline and evidence against the Regulator Performance Framework, we are cognisant of the additional burden this might impose on our stakeholders.

Given our reliance on the stakeholder survey to provide evidence against a number of metrics, we will include specific questions in our regular stakeholder survey to provide evidence against the Regulator Performance Framework as suggested in submissions.

We think this will achieve the right balance between specific feedback on regulatory burden for regulated entities, managing the resources of both ASIC and our stakeholders, and seeking feedback in the context of overall performance.

ASIC's response: Changes in ASIC's activities

While the suggestions at paragraph 15 do not go to the measurement of ASIC's performance, but rather to changes in ASIC activities, we will continue to consider these as part of determining how to best meet the goals of the Regulator Performance Framework in the context of our broader mandate and our commitment to continuous improvement, noting that in many cases these would require additional resources. Some of these are reflected in evidence metrics against key performance indicators (KPIs) discussed in the remainder of this report.

ASIC's response: Metrics for future years

We are taking a practical approach in the first year of operation of the Regulator Performance Framework and, in some cases, our evidence metrics will provide a baseline for future measurement. This means that we may be unable to meaningfully report particular evidence in these cases in the first year, although we will give consideration in future years to measuring and reporting on some metrics over time. As we undertake new activities in the future, new ways of measuring KPIs may become available.

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

- 16 Stakeholders made various suggestions about ASIC's engagement with them.
- 17 These included using specific stakeholder survey questions to identify views, although another noted that the survey could be burdensome.
- 18 Timing was raised, with submissions noting that timeliness of consultation and time periods for consultation could be measured.
- 19 One submission also suggested including a complete list of forums where ASIC consults stakeholders and a metric around stakeholder perception of consultation processes.

ASIC's response

We have included a quantitative metric on consultation feedback, providing that feedback will be published following 100% of formal consultation processes.

ASIC has a large and diverse stakeholder population, including, for example, almost 30,000 credit representatives on the one hand and 25 investment banks on the other. Our stakeholder engagement is correspondingly varied and broad. While we capture the number of industry meetings we hold with each stakeholder group annually, we do not think publishing additional information would provide useful evidence to inform the Regulator Performance Framework.

However, we will consider how identifying objectives and reporting on results of stakeholder engagement might contribute to our performance under the Regulator Performance Framework in future years.

KPI 2: Communication with regulated entities is clear, targeted and effective

- 20 Suggestions included that ASIC commit to providing a clear response to stakeholder surveys and identifying a service standard for feedback.
- 21 In response to our proposed evidence metric that the 'ASIC website complies with government accessibility guidelines', one stakeholder noted the target for guidance materials on the ASIC website should be 100%. Another stakeholder suggested an exit poll on www.asic.gov.au to measure the usefulness of information available on our website.
- 22 One stakeholder also suggested including stakeholder satisfaction with the response to complaints, while another suggested publishing complaints data.

ASIC's response: Updated metrics—service charter and website

While we provide explanations where standards are not met under our service charter generally, we have explicitly updated our service charter metrics to recognise this practice.

We have updated our metric to reflect that regulated entities are able to access the information they need on our website, including in accordance with government accessibility guidelines. We will give further consideration to how to better measure this, including considering an exit survey on our website in addition to the existing feedback email route available on the website.

ASIC's response: Additional metrics—feedback and extending and targeting communication

We have included a metric committing us to specifically seeking feedback, as part of our stakeholder survey, on the use and value of ASIC guidance and on ASIC's responsiveness.

We have included an additional metric specifically measuring our efforts to extend and target communications through industry and professional bodies and consumer advocates.

ASIC's response: Complaints to ASIC about ASIC

We are currently implementing a new system for complaints to ASIC about ASIC and will use this to inform how best to report on our responses to complaints to ASIC about ASIC in future years.

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

- 23 Stakeholders suggested adopting a more detailed risk management metric, such as a metric that sufficiently experienced or trained staff members manage particular reviews, or that risk management capabilities are developed when employment commences.
- 24 One stakeholder suggested identifying clearly the problem our consultations are seeking to address and suggested publishing a list of risk management actions being taken.

ASIC's response

We have refined two metrics on risk-based surveillance and risk management training. The former now explicitly covers a risk-based approach to surveillance (including high intensity), and the latter extends training requirements to relevant staff and relevant new staff.

We have included a metric that will demonstrate how consultation papers identify where particular market failures are or may be.

We will publish a general strategic overview of our risk assessment and response as part of our corporate plan from 2015–16. We do not think it is appropriate to publish further details of our risk management identification and assessment activities in the context of the Regulator Performance Framework.

We think any benefit to industry from publishing further detail would be outweighed by material risks, including alerting industry or individuals to, and potentially undermining, our regulatory activities.

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

- 25 Stakeholders suggested addressing repeat information requests, as well as coordination between regulators, including through publication of memoranda of understanding with other regulators.
- 26 One stakeholder suggested that ASIC should report on the quantity of requests for information ASIC issues and the extent to which the requests are streamlined.
- 27 One stakeholder's view was that using case studies as evidence for meeting this KPI was too vague.

ASIC's response

We have included a new metric that covers information requests being targeted and having regard to other information requests.

ASIC regularly publishes memoranda of understanding with other regulators where it is appropriate to do so (see <http://asic.gov.au/about-asic/what-we-do/our-role/other-regulators-and-organisations/>), and we have explicitly included this in the metric to recognise this practice.

We will review metrics to report on coordinated information requests and visits with other regulators in future years.

We welcome specific complaints from regulated entities, especially about multiple information requests, through our complaints to ASIC about ASIC process. This will allow us to address specific complaints, as well as monitor broader issues.

In future years, we will review metrics with a view to using information from other sources (e.g. market data case studies), rather than requesting it directly from regulated entities.

We have not committed to including additional specific stakeholder survey questions that seek feedback on our consistency of supervision and streamlined compliance and monitoring approaches. These approaches are necessarily very different across the various populations we regulate, with different combinations of proactive and reactive surveillances, and different levels of contact with regulated entities.

For example, a majority of stakeholders would have no direct contact with ASIC in a given year. We do not agree that specific stakeholder survey questions, or responses to them, can easily capture the nuances of this approach. We will nonetheless consider ways to include additional evidence metrics against this KPI as we continue to enhance our regulatory business operating model.

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

- 28 Stakeholders suggested including—either now or in future years—specific timeframes for responding to requests for information and developments in the law.
- 29 Stakeholders provided substantial feedback on our policy process, including suggesting that we consider a metric around timeframes for consultation, with user-testing where possible, and provide reasonable transition periods.
- 30 One stakeholder suggested including a metric covering reasons for information requests.

ASIC's response

We have included a metric committing us to specifically seek feedback, as part of our stakeholder survey, on our openness and transparency in dealing with regulated entities.

While we provide explanations where standards are not met under our service charter generally, we have explicitly updated our service charter metrics to recognise this practice.

We have included a metric targeting eight-week consultation periods for major policy, where possible, with more clarity around market failures that consultation papers are intended to address. We have also included a metric indicating that new or revised ASIC guidance will provide for reasonable transition periods where possible.

While we appreciate the suggestion to respond to developments in the law within specific timeframes, given the numerous factors that might affect these timeframes that may be beyond our control, we do not think that including this as a metric would add value to our reporting against the Regulator Performance Framework.

KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks

- 31 One stakeholder suggested including a metric on consultation with industry bodies.

ASIC's response

We have expanded our metric on meeting with key stakeholders to specifically refer to industry and professional body representatives and consumer advocates.

We have also expanded our metric on proposing opportunities to improve the regulatory framework so that it includes opportunities arising as a result of any post-implementation reviews.

Appendix: List of non-confidential respondents

- Association of Superannuation Funds Australia
 - Australian Financial Markets Association
 - Certified Practising Accountants Australia
 - Chartered Accountants Australia and New Zealand
 - Consumer Action Law Centre
 - Customer Owned Banking Association
 - Financial Planning Association
 - Financial Rights Legal Centre
 - Financial Services Council
 - Insurance Council of Australia
 - Mortgage and Finance Association of Australia
 - SMSF Association
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